(2017) 01 AHC CK 0124

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 247 of 2011

M/S R.N. Products APPELLANT

Vs

Commissioner,Commercial Tax RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 143

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Aloke Kumar, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—The present revision is directed against an order passed by the Trade Tax Tribunal in Second Appeal No.228 of 2010. The Tribunal by its order under challenge has set aside the order passed in first appeal by the Joint Commissioner, Agra, and has restored the assessment order passed by Assessing Authority. The effect of the order is that in respect of Sweet Betel Nut (Supari), revisionist has been held liable to pay tax 10% Central Sales Tax.

2. Learned counsel for the applicant submits that first appellate authority had allowed the appeal of the assessee with a categorical finding that there is no central sale, and therefore, there was no occasion for the Assessing Authority to have levied such tax. This finding of the first appellate forum has not been interfered with, and without reversing it, the Tribunal has restored the assessment order passed in the matter. Learned counsel further submits that under the State Act, Sweet Supari is liable to be taxed at the rate of 4%, and therefore, Central Sales Tax would otherwise not be levied upon the revisionist. Various other submissions have also been urged.

3. Learned Standing Counsel in opposition has advanced various submissions. It

has, however, not been disputed that finding returned by the first appellate forum that there was no central sale, has not been reversed.

4. In view of the materials brought on record, this Court finds that finding returned by the first appellate forum that central sale has not taken place, so as to attract liability of tax under Central Act, has attained finality. Without setting aside such finding, it was not open for the Tribunal to have set aside the order passed by the first appellate authority, and restore that of the assessing authority. On this short ground, the revision is liable to be allowed.

5. Consequently, the revision succeeds and is allowed. The order of Tribunal passed in Second Appeal No.228 of 2010, dated 13.12.2010, is set aside. The Tribunal shall proceed afresh, in accordance with law.

