

(2009) 11 AHC CK 0056

In the Allahabad High Court

Case No : Trade Tax Revision No's. 138, 139, 140 and 141 of 1992

Prabhu Dayal Jagannath

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10B, 11, 21(7), 263(1), 41(7)

Citation : (2011) 40 VST 485

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Judgement

Satish Chandra, J.—All the four revisions have been filed by the Assessee u/s 11 of the U. P. Trade Tax Act, 1948 against the common judgments/orders dated August 31, 1992.

2. The brief facts of the case are that the Assessee is dealing in the items of sanitary-ware. During the assessment year 1984-85, the Assessee has claimed that export was made to Nepal for Rs. 2,05,526 and Rs. 1,90,840 total Rs. 3,96,366. In this regard, the Assessee has submitted two certificates issued by the Nepal Custom Authorities, Bhairwan (Nepal). During the next assessment year 1985-86, the Assessee has also claimed the export of goods worth of Rs. 13,08,159 in four instalments to Nepal. To this effect, the Assessee has also submitted four certificates issued by the Nepal Custom Authorities, Bhairwan (Nepal). The assessing officer has allowed the exemption as claimed by the Assessee on the basis of the said certificates issued by the custom authorities of Nepal.

3. Later on, these certificates were verified by the Department from Bhairwan Custom Office. Nepal Custom Authorities, Bhairwan, has informed that the said certificates were never issued by them. Hence, the D. C. (Executive) had issued the notice to Assessee. The Assessee has claimed that the custom fee was paid by the Nepal dealer and pay orders were received from Nepal. So, D. C. (Executive) remanded all the cases (State and Central) for both the assessment

years under consideration to the assessing officer for fresh adjudication after making necessary inquiry in respect of the alleged export.

4. Being aggrieved, the Assessee has approached the Trade Tax Tribunal in all the four cases. The Tribunal vide its impugned order upholds the order passed by the D. C. (Executive) who has remanded the matter back to the assessing authority with the specific direction to examine these transactions. Finally, the Tribunal has dismissed the appeals filed by the Assessee. Not being satisfied, the Assessee has knocked the door of this Court through present revisions.

5. With this background, Sri Bharat Ji Agarwal, learned senior counsel for the revisionist, submitted that notices were issued u/s 10B of the U. P. Trade Tax Act. So, only the orders pertaining to the Central sales tax can be referred to the assessing officer. He submitted that the cases pertaining to the State Trade Tax Act cannot be restored to the assessing officer. According to him, the reassessment proceedings pertaining to the State sales tax falls u/s 21(7) of the U. P. Trade Tax Act. But in the instant case, notice was issued only u/s 10B of the Act. For this purpose, he has drawn the attention to legal ground (d) raised in the revisions which runs as under:

Whether there being no discussion whatsoever and there being no question in the assessment order in respect of the sales made to Nepal, under the U. P. Sales Tax Act and the order passed under the U. P. Sales Tax Act nowhere deals that the question as to whether the sales made to Nepal were liable to be considered or not under the U. P. Sales Tax Act, no proceedings u/s 10B of the Act for revising the said order passed under the U. P. Sales Tax Act can be legally initiated and the entire proceedings u/s 10B of the U. P. Sales Tax Act in respect of the assessment order passed u/s 41(7) of the Act is wholly illegal and liable to be set aside ?

6. During arguments, except legal ground (d) (supra), no other legal ground was pressed by learned Counsel for the revisionist. However, learned Counsel for the revisionist submitted that the subsequent information received after passing the assessment orders cannot be considered by the assessing officer. To support his arguments, he relied on the ratio laid down in the case of Ganga Properties Vs. Income Tax Officer, where it was observed that the materials which were not in existence at the time when the assessment was made and came into existence afterwards cannot form part of the record of the proceedings of the ITO at the time he passed the order and cannot be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction u/s 263(1), for he is not acting as an appellate authority but exercises only a revisional jurisdiction.

7. Lastly, he made a request that the impugned order passed by the Tribunal as well as D. C. (Executive) may kindly be set aside.

8. On the other hand, Sri Sanjeev Sankhdhar, learned Standing Counsel for the Department, relied on the impugned order passed by the Tribunal. He submitted that the certificates issued by the Nepal Custom Authorities were found bogus. It

means that the goods were never exported to Nepal. Naturally, these goods were sold within the U. P. and exemption was wrongly claimed by the Assessee. The sale against the payment has already been shown by the Assessee. So, he submitted that when the goods were sold in U. P. then it will have to be added in the assessment orders to be made under the U. P. Trade Tax Act.

9. I heard both the parties at length and gone through the material available on record.

10. From the record, it appears that for both the assessment years under consideration, the Assessee has claimed that goods were sold to a dealer in Nepal and payment was received through banking channel. The said transaction was duly shown in the books of account.

11. In the instant cases, the custom authorities at Bhairwan (Nepal) has informed the Department that they never issued such certificates. In spite of several opportunities, the Assessee has not brought any certificate issued by the Indian Custom Office at Bhairwan. However, the Assessee has claimed that custom fee was paid by the dealer who has received the goods in Nepal. The payment was received from Nepal by way of pay order. Hence, the transaction pertaining to export becomes doubtful. In these circumstances, the D. C. (Executive) has rightly set aside the original assessment orders passed by the assessing officer for both the assessment years under consideration and remanded the matter to the assessing authority with specific direction to examine these transactions carefully and pass fresh assessment orders. The information was received by the D. C. (Executive) so he exercised power u/s 10B and directed the assessing officer to examine these documents and pass the necessary assessment orders. The information was not received by the assessing officer so there is no question to issue the notice by the assessing officer u/s 21 of the Trade Tax Act. So, the submission made by learned Counsel for the Assessee is not acceptable.

12. In the instant cases, if the export to Nepal will be found bogus then it will have to be added as a sale in the State. So, D. C. (Executive) has rightly restored the cases pertaining to the State Sales Tax Act as well as Central Sales Tax Act for both the assessment years under consideration.

13. However, I agree with the submissions made by the learned Counsel for the revisionist that the subsequent information received after passing the assessment order may also be confronted to the Assessee before passing reassessment orders as per principle of natural justice.

14. By considering the totality of the facts and circumstances of the case, I find nothing wrong in the abovementioned direction. Needles to mention that when the matter is remanded to the assessing officer no question of law is emerging as per the ratio laid down in the case of Roxy Engg. (P) Ltd. Vs. Commissioner of Income Tax,

15. However, it is clarified that the assessing officer will decide the issue de novo by considering the entire evidence and by providing the reasonable opportunity of being heard to the Assessee. The information received from the Nepal Custom Office may also be confronted to the Assessee. In the interest of justice, if need be, the assessing officer will be at liberty to admit the fresh evidence.

16. With the above direction, all the four revisions filed by the Assessee are disposed of.