
(1982) 02 AHC CK 0070

In the Allahabad High Court

Case No : Sales Tax Revision No's. 338 of 1981 and 221 of 1982

Punjab Tyres

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 19-02-1982

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1983) 52 STC 238

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : R.P. Saxena, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—The applicant, in these two revisions u/s 11(1) of the U. P. Sales Tax Act, is a dealer who is aggrieved by the levy of tax upon him, during the years 1973-74 and 1974-75, on sale of tyres of motor vehicles, etc., on the assumption that he had sold them after purchasing them from outside the State of U. P.

2. In respect of both the years, the books of account of the dealer were rejected. The case of the dealer was that he was making sale of tyres, which was a controlled commodity, after purchasing them within the State of U. P. His case also was that he did not import any tyres nor did he sell them after such import.

3. The turnover of sale of tyres and tubes of motor-cycles, motor scooters, etc., was, under notifications issued by the State Government in exercise of powers u/s 3-A of the Act, liable to tax only in the hands of the manufacturer or importer. There is no dispute about this fact nor is there any dispute about the fact that the applicant was not a manufacturer. The turnover of sale which has been brought to tax in the hands of the applicant-dealer in these two years is Rs. 10,000 and Rs. 15,000 respectively and the dealer has been held liable to pay tax thereon because, in the opinion of the authorities, he had made sales after

importing the tyres.

4. A perusal of the order of the Tribunal common to both the years, shows that the Tribunal has not given any reasoning of its own nor has it recorded a conclusion that the dealer had imported tyres and then sold them to the extent aforesaid. The Assistant Commissioner (Judicial), Sales Tax, also passed an order, common to both the years. For the year 1973-74, he recorded his finding against the dealer by saying that the possibility of sale by him after importing tyres could not be ruled out. In regard to 1974-75 even this finding has not been recorded by him. The assessing authority, in its orders, has observed that the dealer had also sold tyres imported by him from outside the State. It has, however, not referred to any positive material on which this finding was based. The finding by the assessing authority appears in the form of an inference from the failure of the dealer to maintain proper accounts from which the purchases made by him could be held verifiable. Also on the fact that during the relevant period, there were no check posts through which the entry of the goods could have been checked.

5. Before the turnover of sale, even as estimated, could be subjected to tax in the hands of the applicant-dealer it had to be found, as a fact, that what had been sold by him were tyres imported by him from outside the State. Further, this finding had to be based on positive material to which reference should have been contained in the orders passed. Since, in this case, no positive finding has been recorded that the applicant had made sale of tyres to the extent aforesaid after importing them, it is obvious that the liability fastened upon him cannot be upheld.

6. The revisions succeed and are allowed. The orders passed by the authorities are set aside. Parties shall bear their own costs.