(2007) 09 AHC CK 0229

In the Allahabad High Court

Rajesh Kumar Satish Kumar — APPELLANT

Vs

Commissioner, Trade Tax — RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 14 VST 337

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated June 14, 2007 for the assessment year 2000-01.

2. The applicant claimed to have made the purchases for Rs. 38,69,729.50 on behalf of four ex-U.P. principals. Out of which, three were claimed to be from Bombay and one from Calcutta. The applicant claimed that such purchases being in the course of inter-State purchases were not liable to tax in view of the decision of the apex court in the case of Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., . The assessing authority however rejected the claim on the ground that the dealer was not able to prove that such purchases were made on behalf of ex-U.P. principals and were inter-State purchases. The assessing authority had doubted the existence of the ex-U.P. principals. Being aggrieved by the order, the applicant filed appeal u/s 9 of the Act. The appellate authority had allowed the appeal and remanded back the matter to the assessing officer with the direction to issue notices to the alleged ex-U.P. principals and make the necessary inquiry. In pursuance thereof, the notices were issued to the said ex-U.P. principals on the given addresses. It appears that only one notice to one Bombay party was served and the notices to others were not served. However, the Bombay party to whom the notice was served had also not given any reply.

3. In view of the above, the assessing authority doubted the existence of the alleged ex-U.P. principals. Further it was held that the dealer had not produced any purchase order placed by ex-U.P. principals and was not able to prove that the goods were purchased on the basis of the order given by the ex-U.P. principals. The assessing authority accordingly treated the said purchases as the purchases of the applicant and levied the tax. Being aggrieved by the assessment order, the applicant filed appeal u/s 9 of the Act before the Joint Commissioner (Appeals), Trade Tax, Allahabad. The Joint Commissioner (Appeals) vide order dated October 30, 2006 rejected the appeal. The applicant further filed the appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal and remanded back the matter to the assessing authority. Before the Tribunal, the applicant contended that since the payments were made through draft the existence of ex-U.P. principals cannot be doubted. The Tribunal held that the burden lies upon the dealer to prove that the purchases were made on behalf of ex-U.P. principals. Since the notices could not be served and one party of Bombay M/s. Champasi Keshav Ji & Company, Vasi, Mumbai to whom the notice was served had not responded the existence of the ex-U.P. principals appears to be doubtful. However, the matter has been remanded back to the assessing officer to make inquiry with regard to the drafts which are claimed to have been received from the ex-U.P. principals as a purchase consideration.

4. Heard Sri Piyush Agrawal, learned Counsel for the applicant and Sri B. K. Pandey, learned Standing Counsel.

Learned Counsel for the applicant submitted that the remand of the case is unjustified. He further submitted that the payment through draft was never in dispute and therefore, the direction given by the Tribunal to make the necessary inquiry about the draft is not justified.

5. I do not find any substance in the argument of the learned Counsel for the applicant. Since it was the claim of the applicant that the alleged purchases were made for and on behalf of ex-U.P. principals as per their direction and thereafter the goods had been dispatched outside the State of U.P. at the destination of ex-U.P. principals and the said purchases were in the course of inter-State purchases in view of the law laid down by the apex court in the case of Commissioner of Sales Tax v. Bakhtawar Lal Kailash Chand Arhti reported in [1992] 87 STC 196 : [1992] UPTC 971 it was on the applicant to prove its case by adducing the necessary evidences. The apex court in the case of Commissioner of Sales Tax v. Bakhtawar Lal Kailash Chand Arhti reported in [1992] 87 STC 196 : [1992] UPTC 971 has held that in case, where the purchases are made for and on behalf of ex-U.P. principals and the goods are dispatched outside the State of U. P. at the destination of the ex-U.P. principals and there is co-relation between the purchases and the dispatch of the goods, the said purchases are in the course of inter-State purchases and the State of U.P. has no jurisdiction to levy the tax. Therefore for coming to the conclusion that the purchases are in the course of inter-State purchases in view of the law laid down by the apex court it is to be

seen whether there was any existing order or instruction on behalf of the ex-U.P. principals to make the purchases, entries of such purchases in the books of account, in the account of ex-U.P. principals, the dispatch of the goods at the destination of the ex-U.P. principals and the mode of payment. The existence of the ex-U.P. principals is essential and if the ex-U.P. principals are not in existence, the entire claim of the purchases made on behalf of ex-U.P. principals stand falsified. Therefore, existence of the ex-U. P. principals has to be established. It is open to the applicant to adduce evidences to prove the existence of the ex-U.P. principals which may be in the form of filling affidavits or producing those parties. Since the dealer has claimed that the payments were made through draft, therefore, the Tribunal''s direction to make the inquiry with regard to the draft cannot be said to be unjustified.

6. In view of the above, no interference is called for. Revision fails and is accordingly dismissed.

