(2009) 11 AHC CK 0094

In the Allahabad High Court

Rajiv Kumar Rajneesh Kumar APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

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

Citation : (2010) 30 VST 269

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This revision is filed by the assessee u/s 11(1) of the U.P. Trade Tax Act, 1948 against the judgment/order dated September 1, 2000 passed by the U.P. Trade Tax Tribunal, Lucknow.

2. The brief facts of the case are that during the assessment year under consideration (1987-88), the assessee was engaged in the trading of food-grain items. It has send the goods to ex-UP principal at Delhi by three trucks No. URN-9676; USD-3967; and UGD-92. The said trucks were intercepted at the Ghaziabad check-post where the goods were found without form C. So, the goods were seized but the same were released after depositing the security. Later, the assessing officer found that the goods were not properly shown in the books of accounts. So, he has rejected the books of accounts and estimated the turnover and levied the tax. However, the first appellate authority has observed in its order that the truck No. URN 9676 and truck No. USD 3967 were carrying the goods along with the gate passes issued by the mandi samiti. So, no tax can be levied on the goods carried by the said two trucks. However, the first appellate authority considered the goods carried in the third truck No. UGD-92 were outside the books of account as there was no gate pass issued by mandi samiti. Finally, he has uphold the levy of the tax pertaining to only third truck. Not being satisfied, the Department has filed an appeal before the Tribunal who vide its impugned order has restored the order of the assessing officer and

enhanced the tax by Rs. 24,000. Being aggrieved, the assessee has knocked the door of this Court through the present revision.

3. With this background, Sri M.M. Deewan learned Counsel for the revisionist, submits that the Tribunal has exceeded its jurisdiction. The Department has filed an appeal pertaining to only third truck. So tax cannot be revived pertaining to first two trucks for which first appellate authority has already reduced the tax. For this purpose, he has drawn the attention on the question of law number (ii), which runs as under:

(ii) Whether, on the facts and circumstances of the case, the Tribunal has not acted beyond its jurisdiction by giving its finding in respect of consignments being transported by truck No. URN 9676 and USD 3967 when the dispute regarding these consignments was finally settled by the order of first appellate authority against which no ground was taken in the memorandum of appeal by the respondent?

4. He also submits that the Department was not allowed to take the additional ground before the Tribunal. For this purpose, he relied on the ratio laid down on the following cases:

(1) Anand General Store Vs. Commissioner of Sales Tax,

(2) Commissioner of Sales Tax v. Gaya Prasad Arora and Brothers, Mathura [1999] UFTC 119 (All).

5. He further submits that in the instant case, the assessing officer has made the addition arbitrary. The Tribunal has wrongly restored the order of the assessing officer. The first appellate authority has judiciously deleted the addition pertaining to first two trucks. The addition was made regarding the third truck only. The Tribunal was suppose to confine its findings pertaining to third truck only. Lastly, he made a request that the impugned order of the Tribunal may kindly be set aside by restoring the order of the first appellate authority.

6. On the other hand, Sri Sanjieva Shankdhar learned Counsel for the Department has justified the impugned order of the Tribunal.

7. By considering the rival submission of the Counsel for the parties and on perusal of the record, it appears that there was no form C with all the three trucks when they were intercepted at the check-post. Later, it was found that there was no proper entry in the books of accounts. The gate passes were issued by the mandi samiti pertaining to first two trucks, is not a conclusive proof that the goods were properly shown in the books of accounts. The gate pass can be issued to any vehicle which is crossing the gate of the mandi samiti after paying necessary fee.

8. In these circumstances, I agree with the order of the assessing officer who has rightly rejected the books of account and estimated the turnover. Regarding the additional ground, it may be mentioned that it can be raised before the

Tribunal even it was not raised before the lower authorities as per the ratio laid down in the following cases :

(1) National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax,

(2) Shilpa Associates Vs. Income Tax Officer,

9. Hence, I find no force in the argument advanced by the learned Counsel for the revisionist that the Department was not at liberty to raise the additional ground.

10. In the instant case, the first appellate authority has deleted the addition without having the remand report from the assessing officer. The first appellate authority has deleted the addition pertaining to first two trucks solely on the basis of the gate passes issued by the mandi samiti, which is not a conclusive proof as stated above.

11. In the light of the above discussion and by considering the totality of the facts and circumstances of the case, I find no reason to interfere with the impugned order of the Tribunal, which is hereby sustained along with the reasons mentioned therein.

12. In the result, the revision filed by the assessee is dismissed.