(2007) 08 AHC CK 0032

In the Allahabad High Court

Ram Dutt Sharma APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 27-08-2007

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

Citation : (2009) 20 VST 880

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present ten revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the order of the Tribunal dated May 22, 2007 relating to the assessment years 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 both under the U.P. Trade Tax Act, 1948 and the Central Sales Tax Act, 1956.

2. Brief facts of the case are that the applicant was a registered dealer under the U.P. Trade Tax Act and claimed to be the purchasing commission agent and during the years under consideration purchased gur on behalf of ex-U.P. principal and after purchasing the said goods, the same have been dispatched at the destination of ex-U.P. principal. The claim of the applicant was that the movement of goods outside the State of U.P. was in the course of inter-State purchases and therefore, neither the purchases nor its movement of goods outside the State of U.P. were liable to tax. The assessing authority has not accepted the plea of the applicant and treated the purchases on own account and, accordingly, levied the tax on the purchases as well as on the movement of goods outside the State U.P. under the Central Sales Tax Act. Being aggrieved by the orders, the applicant filed appeals before the Joint Commissioner (Appeals). The Joint Commissioner (Appeals), dismissed all the appeals. The applicant further filed appeals before the Tribunal. The Tribunal by the impugned order came to the conclusion that neither the assessing authority nor the first appellate authority examined each and every transaction. According to the Tribunal for

arriving to the conclusion that the purchases were made in the course of inter-State purchases, it was necessary to examine each and every transaction and, therefore, the matter has been remanded back to the assessing authority with the direction to examine each and every transaction in the light of the law laid down by 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.,

3. Heard the learned Counsel for the parties.

4. With the consent of both the parties, present petitions are being disposed of at the admission stage.

5. Learned Counsel for the applicant submitted that the Tribunal being the last court of fact ought to have examined each and every transaction itself instead of remanding back the case to the assessing authority.

6. I do not find any substance in the argument of the learned Counsel for the applicant.

7. u/s 10 of the Act, the Tribunal has power to remand back the case to the assessing officer with the direction to examine the transactions. There is no dispute that each and every transaction has not been examined by the assessing authority and without examining the nature of the transactions, the claim of the applicant had been rejected. Therefore, the Tribunal is right in saying that before rejecting the claim of the applicant, each and every transactions should be examined in the light of the law laid down in the case of Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., . In the said case, the apex court held that the purchases made on behalf of ex-U.P. party and their dispatches outside the State of U.P. at the destination of the ex- U.P. party as inter-State purchases not liable to tax under the U.P. Trade Tax Act in case, if the purchases are made on the instruction or direction of ex-U.P. party as a purchasing commission agent and there is co-relation between the purchases and dispatches. Therefore, for a transaction being an inter-State purchase there should be an order or instruction for making purchases; purchases should be in pursuance of such order; and after making the purchases there should be dispatch of the goods at the destination of the ex-U.P. principal and there should be a co-relation between the purchases and dispatches.

8. In view of the above, I do not find any merit in the present petitions.

In the result, all the ten revisions fail and are, accordingly, dismissed.