(2007) 09 AHC CK 0189

In the Allahabad High Court

Ramesh Chandra Shashikant — APPELLANT

Vs

Commissioner of Trade Tax — RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 16 VST 177

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These three 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 February 27, 2003 for the assessment years 1984-85, 1985-86 and 1988-89.

2. The brief facts of the case are that the applicant was carrying on the business of foodgrain, etc., and during the years under consideration, dispatched goods for sale to alleged consignment agent Ganga Enterprises, Calcutta through the transport companies Allahabad Azamgarh Forwarding Agencies, Allahabad Jaunpur Road Lines, Allahabad and Allahabad Gorakhpur Road Lines. In support of the claim that the goods were dispatched to Calcutta for sale through consignment agent, form F obtained from such consignment agent was furnished before the assessing authority. It appears that the assessing authority doubted the transaction and form F issued by the consignment agent, and inquires were made from the transport companies as well as Ganga Enterprises, Calcutta. According to the assessing authority, the transporters denied to have issued any such G. Rs and the transportation of the alleged goods to Calcutta and on inquiry, Ganga Enterprises, Calcutta denied to have received any such goods and to have sold any goods on behalf of the applicant and form F was issued after taking the commission. Before the assessing authority when the aforesaid inquiry

was confronted, the applicant sought opportunity for the cross-examination to the transport companies and Ganga Enterprises, Calcutta from whom the inquiries were made behind the back of the applicant. It also appears that when such inquires were confronted to the applicant, an affidavit of Ganga Enterprises, Calcutta was filed admitting the receipt of the goods and sale by it on behalf of the applicant. The assessing authority without giving opportunity of cross-examination to the Ganga Enterprises, Calcutta and to the transport companies had drawn adverse inference and held that the goods had not been moved outside the State of U. P. from inside the State of U. P. The assessing authority treating the transaction as intra-State sales and levied the tax.

3. Being aggrieved by the order, the applicant filed appeals before the Assistant Commissioner (Judicial), Sales Tax 2, Allahabad. The Assistant Commissioner (Judicial), Sales Tax 2, Allahabad, vide order dated April 28, 1992 rejected all the three appeals. Being aggrieved by the order of the Assistant Commissioner 0udicial), Sales Tax 2, Allahabad, the applicant filed three appeals before the Tribunal. The Tribunal by the impugned order, rejected the appeals.

4. The Tribunal though admitted that the dealer had sought opportunity of cross-examining the transport companies and Ganga Enterprises, Calcutta and had also mentioned that an affidavit of Ganga Enterprises, Calcutta was filed admitting the receipt of the goods. But the order of the first appellate authority rejecting the claim of the cross-examination of the transport companies and Ganga Enterprises, Calcutta have been upheld on the ground that Ganga Enterprises, Calcutta was the agent of the applicant and the applicant should have produced Ganga Enterprises, Calcutta. The Tribunal further held that the dealer submitted that since the matter has become quite old it should not be remanded. It means, the dealer does not want opportunity to adduce the evidence.

5. Heard Sri S.D. Singh, learned Counsel for the applicant and Sri K. M. Sahai, learned Standing Counsel.

6. Learned Counsel for the applicant submitted that there is no dispute that the inquiries from the transport companies and the Ganga Enterprises, Calcutta were made behind the back of the applicant and therefore, if the assessing authority wanted to rely upon the said inquires, the burden lies upon the revenue authority to prove the correctness of such inquires which could be done by giving opportunity to the applicant for cross-examination of those persons from whom the inquiries were made. He submitted that the applicant had specifically sought for the opportunity of cross-examination of the transport companies and Ganga Enterprises, Calcutta but the same has been denied. He submitted that without giving opportunity of the cross-examination, the inquires made on the back of the applicant cannot be relied upon.

7. Sri K.M. Sahai, learned Standing Counsel submitted that since the dealer claimed the dispatch of the goods to outside the State of U.P. to its commission

agent for sale, the burden lies upon the dealer to prove its case u/s 6A of the Central Sales Tax Act. He further submitted that both Ganga Enterprises, Calcutta and transport companies were the agents of the applicant and therefore, in order to prove the correctness of the movement of goods from Allahabad to Calcutta and receipt of the goods by Ganga Enterprises, Calcutta and the further sale at Calcutta has to be proved by the applicant while the applicant had failed to prove its case.

8. Heard learned Counsel for the parties. I have perused the order of the Tribunal and authorities below.

9. It is settled principle of law that if the Revenue wants to rely upon any inquiry or any document which is collected on the back of the dealer, the burden lies upon the revenue authority to prove the correctness of such inquiries and genuineness of such document. In the present case, there is no dispute that the inquiries from the transport companies and Ganga Enterprises, Calcutta were made on the back of the applicant. Thus, in case the assessing authority wants to rely upon such inquires, the burden lies upon the assessing authority to prove the correctness of such inquiries which could be done by giving the opportunity of cross-examination to the dealer.

10. In the present case, the dealer has disputed the correctness of the inquiries and sought opportunity of cross-examining the transport companies and Ganga Enterprises, Calcutta but the same was not allowed and the adverse inference has been drawn. In this view of the matter, in my view, in case if the Revenue wants to rely upon the inquiries or any statement taken on the back of the dealer from the transport companies and Ganga Enterprises, Calcutta, the burden lies upon the assessing authority to prove its correctness and for that the opportunity of the cross-examination to the applicant must be afforded. Since in the present case, the opportunity of cross-examination has not been given, the orders of the Tribunal and the authorities below are liable to be set aside. The matter is remanded back to the assessing officer to pass the assessment orders afresh. In case, the assessing authority wants to rely upon the inquires or any statement held on the back of the dealer, the opportunity of cross-examination should be given. However, it is open to the revenue authority to ask the dealer to adduce the evidence in support of its claim that the goods had been transported to Ganga Enterprises, Calcutta and the sales were made through the commission agent, in accordance with law. Thereafter, the assessment orders may be passed in accordance with the law after hearing the dealer.

11. In the result, all the three revisions are allowed. The order of the Tribunal and the authorities below are set aside. The matter is remanded back to the assessing authority to pass the assessment orders afresh. The applicant is directed to appear before the assessing officer on any working day before October 12, 2007 along with certified copy of the order. The assessing authority may thereafter fix the date of hearing and decide the matter in accordance with the law. It is made clear that no fresh notice be issued to the dealer.