(2012) 05 AHC CK 0301

In the Allahabad High Court

Case No : Trade Tax Revision No. 144 of 2004

Ramji Lal Kashmeeri Lal APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 30

Citation : (2013) 58 VST 497

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : M.M. Dewan, for the Appellant;

Judgement

Satish Chandra, J.—This revision has been filed u/s 11(1) of the U.P. Trade Tax Act, 1948, against the judgment and order dated January 20, 2004 passed by the Trade Tax Tribunal, Faizabad in Second Appeal No. 106 of 2003 for the assessment year 2001-02. The brief facts of the case are that the revisionist firm is a sole proprietorship firm of Sri Kashmeeri Lal Agarwal, which was engaged in the trading of food-grains, oil-seeds, etc. On September 14, 2001, special inspection team of the Department at the site of railway goods godown, Varanasi Cantt. had conducted an enquiry pertaining to loading and unloading contractors. During enquiry, one diary from Sri Haridwar Yadav was seized, wherein some transactions of wheat relating to Sri Santosh Kumar Agarwal, Sultanpur were found recorded.

2. Sri Santosh Kumar Agarwal is the son of Sri Kashmeeri Lal Agarwal, the sole proprietor of the revisionist-firm. So, the Assessing Officer has passed an assessment order u/s 30 read with rule 41(8) of the Trade Tax Act and made a demand accordingly, which was not upheld by the appellate authority. However, in the second appeal, the Tribunal has remanded the matter back to the Assessing Officer. Not being satisfied, the revisionist has filed the present revision.

3. This court vide an interim order dated April 29, 2004 has granted the stay for the recovery of the tax, until the decision of the revision.

4. With this background, Sri M.M. Dewan, learned counsel for the revisionist, submits that Sri Santosh Kumar Agarwal is the son of Sri Kashmeeri Lal Agarwal, but had no connection with the firm. He also submits that Sri Haridwar Yadav from whose possession diary was seized, has stated in his affidavit that the transactions of loading and unloading in his diary were neither related to Sri Santosh Kumar Agarwal nor to the revisionist-firm. The said transactions were related to other firms, namely, M/s. Brihaspati Trading Company, M/s. Nitesh Trading Company and M/s. Sonal Trading Company.

5. The learned counsel further agitated that a certificate was issued by the Chief Goods Superintendent, Varanasi Railway Station which clarified that neither any goods were loaded by Sri Santosh Kumar Agarwal or by the revisionist-firm during the period January 1, 2001 to December 31, 2001 from Varanasi Cantt. railway station nor any indent was placed by them. On the strength of the certificate, he submits that the assessing authority could not hold that goods were loaded. But the Assessing Officer has wrongly assessed these transactions in the hands of the revisionist-firm only on the basis of presumption. According to him, no addition can be sustained on the basis of presumption and the Tribunal has committed an error by remanding the matter to the Assessing Officer.

6. For the purpose, he relied on the ratio laid down in a number of cases like Din Dayal Raghubir Chand v. Commissioner of Sales Tax [1987] UPTC 985 and Hind Vastra Bhandar Vs. Commissioner, Sales Tax, where it was observed that in a similar situation, matter cannot be remanded in the absence of any substantial evidence/material. Lastly, he made a request that the impugned order may kindly be set aside by upholding the order of the first appellate authority.

7. On the other hand, Ms. Madhurima Bhargava, learned standing counsel has justified the order passed by the Tribunal.

8. After hearing both the parties, it appears that a diary was seized from Sri Haridwar Yadav, where a reference of Sri Santosh Kumar Agarwal son of Sri Kashmeeri Lal Agarwal was found. The firm is the sole proprietorship of Sri Kashmeeri Lal Agarwal. Prima facie, it appears that the said information needs to be examined. The subsequent affidavit filed by Sri Haridwari Lal may be an after-thought and the same will have to be examined. For this purpose, gate-pass 6R and 9R which were issued from the mandi samiti are very vital piece of evidence to determine the identity of the purchaser of the wheat. Moreover, it is not clear from the record that Sri Santosh Kumar Agarwal is doing what business.

9. There is nothing wrong when the Tribunal asked the Assessing Officer to examine the same. No question of law is emerging from the impugned order passed by the Tribunal.

10. Hence, there is no reason to interfere with the impugned order passed by the Tribunal. The same is hereby sustained along with the reasons mentioned therein. The interim order dated April 29, 2004 is discharged. The Assessing Officer is directed to dispose of the case within a period of six months, as it is too old. In the result, the revision is dismissed.