(2011) 08 AHC CK 0277

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 45 of 2007

Sangam Vikram Parts — APPELLANT

Vs

Commissioner, Trade Tax, U.P., Lucknow — RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 2(ee), 4

Citation : (2012) 47 VST 149

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Kunwar Saksena, for the Appellant; B.K. Pandey, for the Respondent

Judgement

Arun Tandon, J.—Heard Sri Kunwar Saksena, learned counsel for the revisionist and Sri B.K. Pandey, learned standing counsel for the State Department. This trade tax revision filed by the assessee is directed against the order of the Trade Tax Tribunal dated December 8, 2006 passed in Second Appeal No. 250 of 2006 (assessment year 2003-04).

2. Facts in short leading to the filing of the present trade tax revision are as follows :

A survey was conducted at the place of business of the assessee by the Trade Tax Department on October 14, 2003. At the time of survey, various infirmities including sale of auto parts by the assessee through estimate books other than cash memos, etc., were found. The assessee did not produce any accounts books at the time of survey.

3. Having regard to the seized documents, the discrepancies noticed in the sale and the mode and manner of preparation of records by the assessee, proceedings u/s 41(8) of the Trade Tax Act were initiated. The proceedings culminated in an order dated April 30, 2004, wherein it was estimated that the assessee had entered in undisclosed sales to the tune of Rs. 10 lacs. On the said non-disclosure, sales tax at the rate of 12 per cent was levied.

4. Not being satisfied with the order so passed, the assessee filed first appeal being Appeal No. 1074 of 2004 (assessment year 2003-04) before the Joint Commissioner (Appeal) III, Trade Tax, Allahabad. The appeal was allowed under order dated February 4, 2006. Not being satisfied with the order so passed, the Department filed Second Appeal No. 250 of 2006, which was allowed by the Trade Tax Tribunal under judgment and order dated December 8, 2006. Hence the present trade tax revision.

5. The Tribunal under the impugned order has recorded that from the records as were available, it was established beyond doubt that at the time of survey, i.e., on October 14, 2003, the assessee was found making sales through a book titled "estimate" and not by cash memos. Explanation furnished for the same was not accepted. It was further found that the assessee had not maintained the necessary records. The plea that the assessee had made purchases from registered dealer outside the State of Uttar Pradesh would not be substantiated by any material evidence. The Tribunal having regard to section 12A of the Trade Tax Act and the presumption which flows therefrom, came to a conclusion that it was for the assessee to have disclosed all information with regard to the purchase made. The assessee has failed to do so, therefore, in the facts of the case, the levy of tax treating the assessee to be a "manufacturer" within the meaning of section 2(ee) of the Trade Tax Act was justified. Accordingly, second appeal has been allowed.

6. Challenging the order so passed, Sri Kunwar Saksena, learned counsel for the assessee, contends that both the assessing authority as well as the Tribunal have held that in respect of estimated sales of Rs. 1,20,000, the goods had been made with reference to the goods purchased by the assessee from an unregistered dealer. Such purchase from unregistered dealer cannot be taken to be the first sale within the State of Uttar Pradesh, so as to bring the assessee within the meaning of "manufacturer" provided u/s 2(ee) of the Trade Tax Act. He submits that the assessee was not himself a manufacturer nor was it the case of the Department that the assessee had imported these goods from outside the State of Uttar Pradesh. He therefore, states that the imposition of tax at the rate of 12 per cent applicable to manufacturer is legally not justified. An attempt was made to plead before this court that since the purchase register was produced, the authorities were not justified in recording a finding on the presumptions that undisclosed sales of Rs. 1,20,000, had been made of goods were not purchased from unregistered dealer.

7. Sri B.K. Pandey, learned counsel for the Department, disputes the correctness of the contention so raised on behalf of the assessee. He submits that cogent reasons have been recorded by both the assessing authority as well as by the Tribunal in not accepting the account books produced by the assessee including the purchase register. It is only after rejection of the books that the Department has proceeded to estimate the undisclosed sales at Rs. 10,00,000. It was for the assessee to establish from records/cogent evidence as to from where such goods

sold by him had been purchased. He has failed to produce any such evidences.

8. Thus, presumption u/s 12A of the Trade Tax Act has rightly been drawn for treating the assessee to be covered within the meaning of word "manufacturer" as contemplated u/s 2(ee) of the U.P. Trade Tax Act. He submits that in the facts of the present case, the Tribunal is legally justified in allowing the appeal. Reference is made to the judgment in the case of Kashmiri Lal Kanti Prasad, Moradabad v. Commissioner of Sales Tax, U.P. reported in [1984] 9 ATJ 17 specifically paragraph 12.

9. I have considered the submissions made by the learned counsel for the parties and have examined the record of the present trade tax revision.

10. According to the assessee, he was making purchase from registered dealers within the State of Uttar Pradesh and that all purchases so made were recorded in the relevant purchase register, which was produced at the time of survey.

11. In order to appreciate the controversy raised, it would be worthwhile to reproduce section 2(ee) and section 12A of the U.P. Trade Tax Act, 1948, which read as follows:

2. (ee) ''manufacturer'' in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes,-

(i) a dealer who sells bicycle in completely knocked down form;

(ii) a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act other than sales exempted under sections 4, 4A and 4AAA].

12A Burden of proof--[(1)] in any assessment proceedings, when any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him and in particular, the burden of proving the existence of circumstances bringing the case within any of the exceptions, exemptions or reliefs mentioned in section 3A, section 3D, section 4, section 4A, section 4B or section 7D shall lie upon him and the assessing authority shall presume the absence of such circumstances.

12. From a bare reading of section 2(ee) of the Act, it would be apparently clear that the dealer who sells goods in the State of Uttar Pradesh after their manufacture for the first time becomes liable to pay tax and to be treated as manufacturer for the purpose.

13. Section 12A casts an obligation upon the dealer to disclose the information which is in his exclusive possession and for the purpose it has been provided that if such information, which is in his exclusive possession of the dealer is not disclosed, the assessing authority shall presume the absence of such circumstances.

14. This court in the case of Kashmiri Lal Kanti Prasad reported in [1984] 9 ATJ 17, in paragraph 12 has laid down as follows :

12. The learned Additional Chief Standing Counsel has relied upon a decision of Division Bench of this court in the case of Lajja Ram Mahesh Dutt. v. Commissioner of Sales Tax [1974] UPTC 472. In that case, the fact to be determined was whether the match boxes sold by the assessee which were admittedly manufactured outside the State of Uttar Pradesh, were imported by the assessee. The Bench held that this fact being within the special knowledge of the assessee the burden of proving it would lie upon him. The Bench has also observed that in view of the provisions of section 12A the burden of proving a fact which is especially within the knowledge of the assessee, is upon the assessee.

15. It is therefore, now well established that the burden to prove the fact, in specific knowledge of the assessee is upon the assessee himself.

16. From the records of the present trade tax revision, it is apparently clear that except for alleging that all purchases have been made by the assessee from a registered dealer within the State of Uttar Pradesh, he failed to provide the said fact. The finding so recorded is based on appreciation of evidence brought on record. From the conclusions drawn by the assessee and the Tribunal on appreciation of records, it is established that the purchases could not be shown to have been made from a registered dealer within the State of Uttar Pradesh. The authorities have rightly proceeded to hold that in the facts of the present case the assessee was liable to pay tax at the rate of 12 per cent having regard to the provisions of section 2(ee) of the U.P. Trade Tax Act/the assessee had taken a categorical stand before the authorities that the goods had been purchased from registered dealer within the State, which stand he could not establish. The assessee cannot now turn around and contend before this court that the assessee be treated to have purchased the goods from an unregistered dealer within the State of Uttar Pradesh. Therefore, sales made by the assessee may not be taken to be the first sale within the State of Uttar Pradesh after "manufacture", within the definition of section 2(ee) of the U.P. Trade Tax Act.

17. I am of the considered opinion that the pleas raised on behalf of the assessee have no force. The Tribunal is justified in allowing the appeal. The liability fastened upon the assessee after treating him to be the manufacturer with reference to section 2(ee) of the U.P. Trade Tax Act because of his having failed to have established that goods have been purchased from registered dealer within the State of Uttar Pradesh, as was contended by him. No interference in revisional jurisdiction u/s 11(1) of the U.P. Trade Tax Act is warranted. The present trade tax revision lacks merit and is accordingly dismissed.

