
(2008) 02 AHC CK 0261
In the Allahabad High Court

Satish Chand Pawan Kumar	Vs	APPELLANT
Commissioner of Trade Tax		RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 19 VST 52

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—This trade tax revision has been filed by Satish Chand Pawan Kumar, Dhanipur Mandi, Aligarh (hereinafter referred to as, "the dealer") u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act"), against the judgment and order of the Trade Tax Tribunal, Ghaziabad, dated January 29, 1999. Initially there was difference of opinion between the two members of the Tribunal's Bench, whereupon it was referred to a third member, who decided in favour of the Department and accordingly the second appeal filed by the Commissioner of Trade Tax was allowed.

2. The dealer is involved in the business of purchase and sale of foodgrains and oil-seeds. According to the dealer, it was making purchases for its account and also as commission agent for principals situate outside U.P. With regard to the assessment year 1988-89, the dealer had shown purchases from local unregistered dealer of Rs. 6,07,927.15 to have been made for and on behalf of its ex-U.P. principals against the orders placed by them. The assessing authority, by order dated March 27, 1992, was not satisfied with the returns of the dealer with regard to the aforementioned transaction alleged to have been made for and on behalf of ex-U.P. principals and accordingly held the said transaction to be inter-State-sale. The assessing officer valued the inter-State sale at Rs. 7 lakhs and accordingly raised demand of tax of Rs. 56,000 at the rate of eight per cent. Aggrieved by the same the dealer, preferred an appeal. The Deputy

Commissioner (Appeals) by judgment and order dated May 26, 1992 allowed the appeal of the dealer and held that these purchases were for and on behalf of ex-U.P. principals and accordingly set aside the demand.

3. Against the same the Commissioner of Trade Tax filed appeal before the Tribunal. The two members of the Tribunal who heard the appeal disagreed. Sri Deu Dayal, Member of the Tribunal vide judgment and order dated October 7, 1997 concurred with the finding of the appellate authority and passed an order for dismissal of the appeal whereas Sri M. Athar the other member of the Bench disagreed with the findings of the appellate authority and affirmed that of the order of assessing officer and passed order dated October 15, 1997 for allowing the second appeal. The matter was referred to third member Sri Mahesh Chandra u/s 10(12)(a) of the Act, who held in favour of the Department vide his order dated April 24, 1998. In the view of the same an order was passed on January 29, 1999 by Sri V.M. Joshi, in-charge member of the Tribunal allowing the appeal of the Department and restoring the assessment order. It is against the said judgment that the present revision has been filed. The following questions of law have been raised in this revision:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in holding that the purchases of Rs. 6,09,927.15 was made by the applicant on its own account and the movement of goods through outside the State of U.P. was in the course of inter-State sales?

(ii) Whether the view of the Tribunals despatching the purchases of foodgrains for Rs. 6,09,927.15 on behalf of the ex-U.P. principals is based on relevant material and is legally justified ?

4. Heard Sri Krishna Agarwal, learned Counsel for the dealer and Sri B. K. Pandey, learned Standing Counsel for the department and also perused the material on record.

5. Sri Krishna Agarwal, learned Counsel for the dealer, has submitted that the account books of the dealer had been accepted by the assessing authority and finding to that effect is recorded by the assessing authority. This fact is not disputed. It is apparent from the assessment order also. The transactions in issue were disbelieved by the assessing officer for two reasons. Firstly, that these purchases had been made against form IIIC(1) wherein dealer had accepted the liability to pay the tax on said purchases and the tax had been subsequently paid also under the U.P. Act and no issue was raised by the dealer with regard to the assessment under the U.P. Act. The other reason given is that the facts relating to transportation and mode of payment also indicate that the said purchases were shown in the own account of the dealer. The assessing authority did not record any other reason nor examined the other material on record placed by the dealer during the assessment. The dealer has filed copy of the stock register, Stati Bahi, Nakal Bahi and the list giving details of dispatches to the principals who were situate outside U.P. It was submitted by Sri Agarwal that the

assessment itself mentions that proprietor of the dealer-firm had appeared before the assessing officer and had produced the accounts book which included the Rokad Khata, Stati Bahi, Moda Bahi, stock register, VIR and IXR. However, all these documents were not considered by the assessing officer and in cursory manner he had rejected the purchases made by the dealer for and on behalf of ex-U.P. principals to be inter-State sales. Sri Agarwal has taken the court to the finding recorded by the appellate authority. From the perusal of the judgment of the appellate authority, the following findings appear.

6. The appellate authority was of the view that the finding recorded by the assessing officer was without any discussion of the material on record and in a cursory manner the finding had been recorded. The appellate authority further recorded that the dealer had maintained Stati Bahi in accordance with the register prescribed by the RFC. It further recorded that the dealer had maintained separate purchase register for purchases made on commission basis and another register for purchases made for its own account. Further the dealer had carried the purchases made for its own account from the Sati Bahi to the register B and the purchases made on commission basis in the register F. It was thus, satisfied that the dealer had separately recorded the purchases made for its account and/or commission basis for ex-U.P. principals separately.

7. Further that the goods purchased on commission basis had been sent to the ex-U.P. principals at the same rate and the account was separately maintained. The expenses incurred in making such purchases and despatches were also separately recorded in the accounts book maintained for purchase and despatch on commission basis whereas these expenses were not recorded in the register maintained for purchases of its own account. It has further recorded that dealer had charged the commission and had not earned any profit. On these findings the appellate authority allowed the appeal and deleted the demand of tax under the Central Act.

8. Coming to the judgment of the Tribunal it may be noted that the third member Mr. Mahesh Chandra has not dealt in detail the material on record while upsetting the finding of the appellate authority. Further from a perusal of the judgment of Sri M. Athar the reasoning given is that basically what was missing from the record was the link between the purchase order, purchases made and their despatches. According to it, the dealer had failed to establish the said link.

9. It has been submitted that even the Tribunal did not consider in detail the account books and the material produced by the dealer, which are admitted by the assessing authority. From the perusal of all the orders, it appears that none of the authorities examined VIR and IXR which are issued by the secretary or staff of the mandi samiti from where the purchases are made and which record as to whether purchases are made for self or on commission basis for principals outside U.P. Further the Tribunal rejected the finding of the appellate authority without any discussion with regard to the expenditure under different heads charged by the dealer and entered in the accounts book relating to the purchases

on commission basis by saying that they did not establish purchases on commission basis. The fact that the dealer had maintained register separately and had recorded the expenses in the purchases made on commission basis clearly showed the intention of the dealer that they had been made for other principals. In the stock register and in the other register, the dealer had entered the name of the parties for whom purchases had been made. Forms VIR and the IXR would have been relevant to determine as to whether at the time of purchases they were made either by the dealer for his own account or for other principals but this has not been examined either by the assessing officer or by the Tribunal. I find that the Tribunal has also not examined the record in true perspective and has simply disbelieved the version of the dealer without any proper justification.

10. As the matter is almost 20 years old, it would be in the interest of neither the dealer nor State to remand the matter back for reconsideration and pass fresh order based upon the relevant material on record. It is quite possible even the material may not be available with the authorities and thus it would be difficult to make necessary verification. Thus, the best finding which is recorded by the appellate authority is being accepted. The revision is accordingly allowed. The impugned order passed by the Tribunal is set aside and that of the appellate authority is maintained. Consequential order as may be necessary may be passed by the Tribunal in accordance with law.

There shall be no order as to costs.