
(2002) 04 AHC CK 0015
In the Allahabad High Court
Case No : Trade Tax Revision No. 75 of 2000

Taj Trading Co.

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10, 9

Citation : (2003) 129 STC 357

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : M. Maglik, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.

The present revision has been preferred u/s 11(1) of the U.P. Trade Tax Act, 1948 against an order dated August 19, 1999 passed in Second Appeal No. 193 of 1998 (1995-96) whereby the appeal filed on behalf of the Revenue has been allowed and the order passed by the first appellate authority dated March 7, 1998 had been set aside and the order dated December 18, 1997 of assessing officer was restored.

1. Heard Sri M, Manglik, learned counsel for the revisionist and Sri B.K. Pandey, learned Standing Counsel for the respondent.

2. The brief facts necessary for adjudication of the present revision are that the applicant/revisionist is a dealer carries on business of purchase and sale of biri, match box, torch cells, agarbatti, etc. During the assessment year 1995-96 the applicant disclosed total sale at Rs. 53,91,059 and taxable sale as nil. The assessing officer on the basis of certain cash memos bearing Nos. 143 and 147 showing sale of 22 bundles of match boxes observed that previously though the aforesaid cash memos of sale of certain match boxes were shown but after cutting over it the sale of torch cells were shown in the account books, therefore,

the assessing officer treated the revisionist as an importer of match boxes and determined the taxable turnover of sale of match boxes at Rs. 3,00,000 imposing tax of Rs. 30,000 (annexure 1 to the revision). In the first appeal preferred u/s 9 of "the Act" before the Deputy Commissioner (Appeals) the revisionist was declared non-taxable and assessing officer was directed to refund the amount of tax deposited in excess (annexure 2). The second appeal preferred by the Revenue u/s 10 of "the Act" before Trade Tax Tribunal was allowed by order dated August 19, 1999.

3. In the present facts and circumstances, the following question has been referred :

"Whether, on the facts and in the circumstances of the instant case, the Trade Tax Tribunal was justified in reversing the order of the first appellate authority without assigning any good reason ?"

4. Learned counsel for the applicant/revisionist has invited attention of this Court to the following judgments :

(i) In *Arvind General Stores v. Commissioner of Sales Tax* 1984 UPTC 1007 it was held that simply when book version has been rejected and the turnover of the cosmetics had been estimated, no inference could be drawn that the assessee had suppressed the taxable purchases and has imported the cosmetic goods. Wherein, there is no material to show that the purchase has been suppressed therefore no inference could be drawn that the assessee was an importer. In this light it was contended on behalf of the revisionist that no purchase was found to be made on form 31 or against form "C" or suppressed and presumption of out of U.P. purchase was erroneously made.

(ii) In *Commissioner of Sales Tax, U.P. v. Mala Ram* 1987 UPTC 471 this Court has held that if the assessee has failed to establish that the purchases were made locally, the department is not absolved of the responsibility to bring material on record to establish the import and no such attempt ever appeared to have been made by the department thereafter the revision filed, by revenue was dismissed by this Court. In the present case, according to the revisionist, also even though the assessee has failed to establish that the sale of 22 bundles of match boxes in question were shown in the account books, the department is not absolved of the responsibility to bring material on record whereby import may be established and in the present matter also no such attempt was made by the department therefore, the revisionist urged that no assessment could be made on the basis of presumption.

(iii) In *Commissioner of Sales Tax v. Basant Lal and Sons* 1993 UPTC 313 this Court has held that when there was no report on record to show that the assessee was having goods and stock which were not supported by purchase vouchers of a dealer situated in the State and no paper was found to show that the assessee has made purchases from outside the State or the assessee brought goods from outside the State, therefore, purchase from a dealer situated

outside the State could not be presumed to have been made.

(iv) In *N. Sukumaran v. State of Kerala* reported in [1999] 113 STC 38 (Ker) division Bench of that court has held that unless there are good reasons, the Tribunal should not disturb the findings of the first appellate authority. In the light of above observations it was contended on behalf of the revisionist that the Tribunal has not pointed out any serious error to reverse the decision of the Deputy Commissioner (Appeals), Trade Tax, Moradabad, therefore, the impugned order passed by the Tribunal is liable to be set aside.

(v) In another case of *Lanco Packers v. State of Tamil Nadu* [1999] 113 STC 40 the same principle of law has been followed. The honourable division Bench has relied on the principle of law by the honourable Supreme Court reported in *S.V.R. Mudaliar (Dead) by Lrs. and Others Vs. Rajabu F. Buhari (Mrs) (Dead) by Lrs. and Others*, . The relevant observations made in paragraphs 14 and 15 are reproduced as hereunder:

Paragraph 14:

".....though the appellate court is within its right to take a different view on a question of fact, that should be done after adverting to the reasons given by the trial Judge in arriving at the finding in question.....an appellate court should interfere with the judgment under appeal not because it is not right, but when it is shown to be wrong, as observed by three-Judge Bench of this Court in *The Dollar Company, Madras Vs. Collector of Madras*,"

Paragraph 15:

".....the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in *Rani Hemant Kumari v. Maharaja Jagadhindra Nath* (1906) 10 CWN 630 wherein, while regarding the appellate judgment of the High Court of Judicature at Fort William as "careful and able", it was stated that it did not "come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge".

5. I find that observations made in the above cases are protecting the cause of the applicant/revisionist because without stating as to how the order of the first appellate authority went wrong and in the absence of proof or reasons recorded the presumption that the applicant has been involved in the sales of imported goods does not seem to be justified, therefore, the impugned order of the Tribunal is set aside and matter is remanded to the Tribunal to pass afresh order within eight weeks expeditiously in view of the observations made above. The revision is allowed and questions are answered accordingly. A copy of this order shall be produced by the revisionist before the Tribunal.

6. A certified copy of this order may be furnished to the learned counsel for the revisionist on payment of usual charges.