(2004) 08 AHC CK 0109

In the Allahabad High Court

Case No : Trade Tax Revision No. 916 of 1994

The Commissioner of Trade Tax APPELLANT

Vs

S/S Mohan Coal Traders RESPONDENT

Date of Decision : 27-08-2004

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 9
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 6(2), 8(4)

Citation : (2004) 08 AHC CK 0109

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred as the Act) is directed against the order of Tribunal dated 23.2.1994 for the assessment year 1983-84 under the Central Sales Tax Act.

2. The brief facts of the case are that the dealer opp.party (hereinafter referred as Dealer) entered into an agreement-dated 6.6.83 with Bhutan Coal Mining Corporation Government from Herrsing Railway station to Moradabad city Station. During the Movement of goods from Bhutan to Moradabad it appears that dealer endorsed railway builty at Assam in favour of various parties of Moradabad. Such parties took the delivery of the coal at Moradabad. Applicant has not taken any Form ''C from S.T.O Amroha nor issued to Bhutan party. The assessing authority of Amroha levied the tax on such transaction treating i t as inter state sale within the per view of Section 3 of Central Sales Tax Act. First appeal filed by the dealer was rejected. Tribunal allowed the appeal and deleted the tax assessed. Tribunal has held that the rransaction is not covered u/s 3 of Central Sales Tax Act which apply to the sale by transfer of document during the movement of goods from one State to another State, while in the present case, the movement was from Bhutan to State of U.P. and not from one state to

another state of country.

3. Heard learned counsel for the parties.

4. Learned Standing counsel submitted that since the endorsement of railway receipt was made at Assam during the movement of goods therefore, the transaction was covered u/s 3(b) of Central Sales Tax Act and tax has been rightly assessed treating it as inter state sale.

5. I do not agree with the submission of learned Standing Counsel Section 3 of Central Sales Tax Act reads as follows:

3. When is a sale or purchase of goods said to take place in the course of inter-state trade or commerce- A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the a sale or purchase.

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2. Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

6. Section 3(b) applies to case where the sale was affected by a transfer of document of title to the goods during their movement from one State to another. In the present case admittedly the movement of goods started from Bhutan and not from any State of the country and therefore. Clause (b) of Section 3 is not applicable Moreover, since the movement of goods commenced from "Bhutan''. State of U.P. has no jurisdiction to levy the tax because u/s 9 of Central Sales Tax Act State from which the movement of goods commenced has authority to levy the tax. On the fects and circumstances of present case Proviso is also not applicable

7. Section 9 of Central Sales Tax Act reads as follows:

{9. Levy and collection of tax and penalties:- (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter- State trade or commerce, whether such sales fall within Clause (a) or Clause (b) of Section 3, shall be levied by the Government of India, and the tax so levied shall be collected by that Government in accordance with the provisions of Sub-section (2), in the State (from which the movement of the goods commenced

{Provided that, in the case of a sale of goods during their movement from one

State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within Sub-section (2), of Section 6, the tax shall be levied and collected-

(a) where such subsequent sale has been effect by a registered dealer, in the State from which the registered dealer obtained or, as the case maybe, could have obtained, the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.}

8. Therefore, the levy of tax by the Sales Tax Officer, Amroha in any view of the matter was without jurisdiction.

9. In the result, revision fails and is dismissed.