(1976) 04 AHC CK 0022

In the Allahabad High Court

Case No : S.T.R. No. 442 of 1972

THE COMMISSIONER SALES-TAX, U.P., LUCKNOW — APPELLANT

Vs

M/S. GULAB CHAND PHOOL CHAND. — RESPONDENT

Date of Decision : 02-04-1976

Acts Referred:

Citation : (1976) 5 CTR 173

Hon'ble Judges : C. S. P. Singh, J

Bench : Division Bench

Judgement

C. S. P. Singh, J. - The Additional Judge (Revisions), Sales Tax, U.P., Lucknow has u/s 11(3) of Act referred to following question for our opinion :

"Whether on the facts and the circumstances of the case from the finding of suppression of turnover in U.P. by the Appellate Court, a presumption of suppression of inter-State sales could also be raised ?"

2. The dealer in the assessment year 1965-66 disclosed a turnover of Rs. 55,460/- in respect of U.P. sales. The Sales Tax Officer did not accept the returned figure and rejected the account books. It appears that the turnover has been finally fixed for this year in respect of U.P. Sales at Rs. 1,10,000/-. In respect of inter-State sales, the dealer disclosed a turnover of Rs. 49,578/- which was enhanced to Rs. 55,000/-. On appeal, the Appellate Assistant Commissioner held that the Sales Tax Officer had not been able to produce any evidence to see that the dealer had made any sales than those included in the turnover disclosed by him. In view of this finding, he deleted the enhancement. The State filed a revision against the appellate order. The Revisional Authority has held that the more fact that the account books in respect of U.P. sales had been rejected could not lead to the inference that the turnover in respect of inter State was also incorrect. It found that the purchases in inter-State sales were against "C" Form and there was no evidence on behalf of the Department to show that any other sales were made. Counsel for the Department has contended on the basis of the decision in the case of G. L. Varshney vs.

Commissioner Sales Tax, U.P. (S.T.R. No. 153 of 1969 decided on 10-3-70) that inasmuch as account books of the dealer had been rejected in respect of U.P. Sales, a presumption arises that the accounts in respect of inter-State sales were also not reliable, and this being so, the onus of showing that the account maintained by the dealer in respect of inter-State sales were reliable rested on the dealer. It was contended that this being so, the mere fact that the Department did not lead evidence to show that the turnover of the dealer was not correct loses force. We are of the view that on the findings recorded by the Judge (Revisions) it is not necessary to enter into this controversy. A fair reading of the revisional order shows that the revising authority has accepted the turnover of inter-State sales on the ground that they were supported by "C" Form. The presumption, if any, is a rebuttable presumption, and although the Judge (Revisions) does not say in so many words that the presumption stood rebutted, the fact that he confirmed the order of the Appellate Assistant Commissioner and accepted the turnover in respect of inter-State Sales on the ground of it being supported by "C" form is indicative of the fact that he upheld the contention of the dealer that the turnover as returned was correct. The Standing Counsel also contended that the Judge (Revisions) committed a factual error in holding that the turnover in respect of inter-State sales was supported by "C" Form as this was not the case. This being a reference and no question regarding the correctness of this finding having been referred to us, it is not possible to go into this controversy. In view of the interpretation put on the order of the Judge (Revisions), the question referred to us appears to be academic. Even if an answer is returned in favour of the Commissioner, no useful purpose will be served.

3. We accordingly return the question unanswered. As none has appeared in opposition, there shall be no order as to costs.

