(2006) 02 AHC CK 0037

In the Allahabad High Court

Case No : Trade Tax Revision No. 1066 of 1999

The Commissioner, Trade Tax APPELLANT

Vs

Adhunik Electricals RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 11(8), 18, 18(1), 18(2)

Citation : (2006) 02 AHC CK 0037

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 6th March, 1999 relating to the assessment year 1996-97.

2. Dealer/opposite party (hereinafter referred, to as "Dealer") was engaged in the business of manufacture and sale of fans. The business was started in the month of November, 1996, thus the period for the assessment is from November, 1996 to 31st March. 1997. Dealer had disclosed taxable turnover at Rs. 8600/-. All the authorities below have rejected the books of account and enhanced the turnover. Tribunal has fixed the turnover at Rs. 90,000/- and declared non-taxable being total turnover below the taxable limit.

3. Heard learned Standing Counsel. Despite service of notice, no one appears on behalf of the dealer.

4. Learned Standing Counsel submitted that the business was started in the month of November, 1996 and the assessment was for the period of five months and therefore, the provision of Section 18(2) of the Act was applicable and the provision of Section 3(2) of the Act does not apply and the turnover at Rs. 90,000/- fixed by the Tribunal is liable to tax. I find, substance in the argument

of the learned Standing Counsel. Admittedly, the business has been started from November 1996 and the period for assessment is for five months from November, 1996 to March, 1997, thus the provision of Section 18(2) of the Act is applicable and Section 3(2) of the Act is not applicable. Section 3(1), (2) and Section 18(2) of the Act reads as follows:

Section 3. Liability to tax under the Act.

(1) subject to the provisions of this Act, every dealer shall for each assessment year pay a tax at the rates provided by or u/s 3-A or Section 3-D on his turnover of sales or purchases or both, as the case may be, which shall be determined in such manner as may be prescribed.

(2) No dealer shall, except as otherwise provided in Section 18, be liable to tax under Sub-section (1) if, during the assessment year, the aggregate of his turnover of ---

(a) purchases of goods notified u/s 3-D,

(b) purchases liable to tax under any other provision of this Act,

(c) Sale of goods notified u/s 3-D where such goods have not been purchased within the State.

(d) Sales of all goods (except those notified u/s 3-D), whether such sale is made by the dealer directly or through his branch, depot or agent inside the State in the course of inter-State trade or commerce or outside the State,

is less than one lakh rupees in the case of manufacturers and one lakh fifty thousand rupees in the case of other dealers, or such larger amount as the State Government may, by notification in the Gazette, specify in that behalf either in respect of all dealers in any goods or in respect of particular class of such dealers.

Section 18. Assessment of reconstituted or new firms, and changes of partnership.-

(2) Every dealer commencing business during the course of an assessment year whose average estimated monthly turnover for the remainder for the year is not less than one twelfth of rupees one lakh in case of manufacturers or one lakh fifty thousand in case of other dealers or of such larger amount as may be notified under Sub-section (2) of Section 3, or whose turnover during such period is liable to tax under Sub-section (3) of Section 3 shall, within 30 days from the expiry of the month in which business was commenced, give notice of the fact to the assessing authority, and shall submit a statement of his turnover at such intervals, within such period in such form and verified in such manner as may be prescribed.

5. Section 18(2) of the Act provides that if average estimated monthly turnover for the remainder for the year is not less than one twelfth of rupees one lakh in case of manufacturers, dealer shall give notice of the fact to the assessing

authority, and shall submit a statement of his turnover at such intervals, within such period in such form and verified in such manner as may be prescribed. Section 18(4) of the Act says that if no return is submitted by a dealer under Sub-sections (1) or (2) within the period fixed therefore, or if any return submitted by him appears to be incorrect or incomplete, the assessing authority, shall, after such enquiry as it deems necessary, determine to the best of its judgment the turnover of the dealer and may assess the tax, if any payable. Section 3(2) of the Act says that no dealer shall, except as otherwise provided in Section 18, be liable to tax under Sub-section (1). Thus, if the goods is covered u/s 18(2) of the Act, provision of Section 3(2) of the Act does not apply and the benefit of exemption limit cannot be allowed to the dealer and the dealer is liable to tax u/s 3(1) of the Act.

6. As stated above, in the present case, provision of Section 18(2) and 18(4) of the act are applicable and. therefore, the benefit of exemption limit of Rupees one lakh as provided u/s 3(2) of the Act is not applicable to the dealer and the dealer is liable to tax on the entire turnover u/s 3(1) of the Act. In the circumstances, order of the Tribunal is erroneous and is liable to be set aside. It is held that the dealer is liable to tax on the amount of Rs. 90,000/- fixed by the Tribunal.

7. In the result, revision is allowed. Order of the Tribunal is set aside. Tribunal is directed to pass appropriate orders u/s 11(8) of the Act.