(2007) 05 AHC CK 0351

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

Madhyashia Brothers — RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21

Citation : (2009) 20 VST 832

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The Commissioner, Trade Tax, has challenged the order dated 23rd of January, I996 passed by the Trade Tax Tribunal, Gorakhpur in second appeal No. 152 of 1992 whereby the Tribunal has allowed the appeal filed by the dealer opp.party for the assessment year 1986-87.

2. The facts of the case in brief are as follows:

3. The dealer opp.party carries on the business of selling Kirana and Masala etc. and it has disclosed a sale of Rs. 8,43,303.38 as export sale to Nepal. On the basis of the custom certificates produced by the dealer opp.party during the course of assessment proceedings the exemption on the aforesaid turnover was granted by the Assessing Officer treating them as export sale. After assessment, on verification, it was found that the custom certificates filed by the dealer opp.party were forged and fabricated documents and they were not issued from the custom office of Nepal. On this basis proceeding u/s 21 of the U.P. Trade Tax Act to assess the escaped turnover was initiated. In the reassessment proceedings the dealer opp.party sought adjournment after adjournment and was accommodated on nine occasions. Even then the dealer opp.party chose not to appear and participate in the reassessment proceedings. The Assessing Officer by the order dated 20th of September, 1991 assessed the escaped turnover rejecting the claim of the dealer opp.party that the sales were export sale as

claimed in the original assessment proceedings, assessed the said turnover as local sales and levied trade tax accordingly. The said assessment order was confirmed by the First Appellate Authority by the order dated 31st of January, 1992. However, the reassessment order has been set aside by the Tribunal by the order under revision. The Tribunal proceeded to decide the appeal on the footing that even if the goods were delivered in India, the same can be treated as export sales if the goods were actually exported outside India and has placed reliance for the above proposition on a Full Bench decision of this Court in M/s.National Carbon Company v. Commissioner of Sales Tax 1969 STC 388.

4. I have carefully considered the aforesaid argument of the learned Counsel for the dealer opp.party. The controversy involved in the present case is squarely covered by the various judgements of this Court Some are as under:

1. CST v. Ganeshi Lal and Sons 1981 U.P.T.C. 128.

2. (2006) 43 STR 217 CTT v. Krishna Trading Company.

3. CTT v. Satyanarain 2006 UPTC 109

5. So far as the decision of the Full Bench of this Court in the case of National Carbon Company (supra) is concerned, it has been noticed in the aforesaid judgements and have been distinguished and it has been held that the said Full Bench Judgement was given in the special facts and circumstance of that case. In the absence of any custom certificate evidencing that the goods were exported outside India and keeping in view the fact that the delivery was effect within the State of U.P., as also in view of the cases referred above, it is difficult to hold such sales are sales in the course of export sales.

6. In this view of the matter, the order of the Tribunal cannot legally sustain. The revision is allowed. The order of the Tribunal under revision is set aside and the second appeal filed by the dealer opp.party before the Trade Tax Tribunal stands dismissed.

7. No order as to costs.