(2009) 09 AHC CK 0055

In the Allahabad High Court

The Commissioner Trade Tax APPELLANT

Vs

Nishat Fragrances RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 12B

Citation : (2009) 09 AHC CK 0055

Hon'ble Judges : Satya Poot Mehrotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra, J.—Having regard to the averments made in the affidavit accompanying the Delay Condonation Application, namely, Civil Misc. Delay Condonation Application No. 214740 of 2007, I am satisfied that sufficient cause has been made out for condoning the delay in filing the Revision.

2. The aforementioned application is accordingly allowed.

3. The delay in filing the Revision is condoned. Registry is directed to give appropriate number to the Revision.

4. Having condoned the delay in filing the Revision, the Court is proceeding to consider the Revision on merits.

5. The present Revision has been filed against the judgment and order dated 7.2.2007 passed by the Trade Tax Tribunal, Agra (Camp Kanpur) whereby Second Appeal No. 423 of 2005 filed by the Department/Applicant has been dismissed.

6. The relevant assessment year is 2001-02. During the relevant assessment year, the opposite party/dealer was carrying on the business of manufacturing Sandal Wood Oil and the sale thereof. It appears that the opposite party/dealer claimed certain transactions as stock transfer by the opposite party/dealer from Kannauj to the Head Office of the opposite party/dealer at Hyderabad. However, in regard to such transfer, Form ''F'' was not filed by the opposite party/dealer.

Consequently, the Assessing Officer passed the assessment order dated 5.2.2004 treating the said stock transfer as interstate sale. The turnover in regard to the said transaction was determined at Rs. 18,95,061.40, and the tax under the Central Sales Tax Act amounting to Rs. 2,27,407/- was imposed.

7. The opposite party/dealer filed an Appeal being Appeal No. 611 of 2004 before the First Appellate Authority. The opposite party/dealer submitted Form ''F'' in respect of the aforesaid stock transfer by the opposite party/dealer from Kannauj to the Head Office at Hyderabad. By the judgment and order dated 31.3.2004, the First Appellate Authority accepted the said Form ''F'' submitted by the opposite party/dealer as additional evidence u/s 12B of the U.P. Trade Tax Act. The First Appellate Authority in the said judgment and order dated 31.3.2004 pointed out that the Assessing Officer in his report had stated that the said Form ''F'' deserved to be accepted.

8. In view of the filing of the said Form ''F'', the First Appellate Authority in the said judgment and order dated 31.3.2004 declared the opposite party/dealer as exempted from payment of any tax under the Central Sales Tax Act and set-aside the liability for payment of tax under the Central Sales Tax Act as imposed by the assessment order dated 5.2.2004.

9. The Department filed Second Appeal being Second Appeal No. 423 of 2005 before the Trade Tax Tribunal. As noted above, by the judgment and order dated 7.2.2007 passed by Trade Tax Tribunal, the said Second Appeal filed by the Department was dismissed.

10. Thereupon, the Department has filed the present Revision before this Court.

11. I have heard the learned Standing Counsel appearing for the Department/ Applicant, and perused the record.

12. Learned Standing Counsel appearing for the Applicant submits that the First Appellate Authority erred in accepting the said Form ''F'' submitted by the opposite party/dealer as additional evidence u/s 12B of the U.P. Trade Tax Act.

13. I have considered the submission made by the learned Standing Counsel, and I find myself unable to accept the same. Section 12B of the U.P. Trade Tax Act,1948 provides as follows;

12B. Additional evidence on appeal.- The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the Appellate Authority or the Tribunal except where the evidence sought to be adduced is evidence, which the Assessing Authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the Assessing Authority.

14. The conditions in which the additional evidence can be accepted before the

Appellate Authority or the Tribunal are:

(a) where the evidence sought to be adduced is evidence, which the Assessing Authority had wrongly refused to admit.

or (b) where the evidence sought to be adduced is evidence, which after exercise of due diligence (i) was not within his knowledge or (ii) could not be produced by him before the assessing authority.

15. The First Appellate Authority in the said judgment and order dated 31.3.2004 has considered the circumstances in which the opposite party/dealer could not produce Form ''F'' before the Assessing Officer before the assessment order was made by the Assessing Officer on 5.2.2004 or within the extended period up to 30th June 2004. Form ''F'' was filed before the First Appellate Authority when the same was received from the Head Office of the opposite party/dealer.

16. In the circumstances, I am of the opinion that the present case is fully covered by the conditions laid down in Section 12B of the U.P. Trade Tax Act for acceptance of the additional evidence.

17. In view of the above, the Revision filed by the Applicant lacks merits, and the same is liable to be dismissed.

18. The Revision is accordingly dismissed.

