
(2006) 02 AHC CK 0011

In the Allahabad High Court

Case No : Trade Tax Revision No's. 69 and 70 of 2000

The Commissioner, Trade Tax

APPELLANT

Vs

S/s Arora Brothers

RESPONDENT

Date of Decision : 22-02-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10B, 11, 30, 30(1), 8(1)

Citation : (2006) 02 AHC CK 0011

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : C.S.C, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "the Act") are directed against the order of Tribunal dated 05.10.1999 relating to assessment years 1995-96 both under the U.P. Trade Tax Act as well as under the Central Sales Tax Act.

2. Dealer Opposite Party (hereinafter referred to as "the Dealer") was carrying on the business of Craft Papers. During the year under consideration, dealer claimed to have made sales of Craft Papers at Rs. 1,00,69.425 against Form 3-B and admitted liability of tax @ 2.5%. Under the Central Sales Tax Act, dealer had made inter-State sales for Rs. 60,396/- claimed to have made against Form-C and admitted liability of tax @ 4%, The Assessing Authority passed two ex-parte orders both under the U.P. Trade Tax Act as well as under the Central Sales Tax. Dealer moved two applications u/s 30 for setting aside the ex-parte orders. Both the applications u/s 30 were allowed and the ex-parte assessment orders were set aside, thereafter, fresh assessment orders were passed. The Deputy Commissioner (Executive) initiated a proceeding u/s 10-B of the Act on the ground that the orders dated 06.05.1998 passed by the Assessing Authority on the application u/s 30 were improper and erroneous on the ground that the dealer could not fulfill the condition of deposit of admitted tax. According to the

Deputy Commissioner (Executive). Trade Tax dealer could not furnish Form 3-B for Rs. 1,20,850/- and hence, said amount was liable to tax at the higher rate of tax. According to the Deputy Commissioner (Executive). Trade Tax before moving the application u/s 30. higher rate of tax on the amount of Rs. 1,20,850/- should be deposited. Likewise, under the Central Sales Tax Act. dealer could not furnish Form-C for the amount of Rs. 60396.- and thus, tax @ 10% should have been deposited which was not deposited before filing the application u/s 30 of the Act, The Deputy Commissioner (Executive), accordingly set aside the orders dated 06.5.1998 passed on the application u/s 10-B of the Act. Dealer filed two appeals before the Tribunal. Tribunal allowed both the appeals by the impugned orders. The Tribunal held that u/s 30 of the Act. tax admitted by the dealer were required to be deposited and not the amount of tax due under the Act. It is held that under the U.P. Trade Tax Act, dealer admitted tax liability at Rs. 2,51,982/- while a sum of Rs. 2,53,989/- was deposited before moving the applications u/s 30 of the Act and under the Central Sales Tax Act. tax liability was admitted at Rs. 2,416/- and the same amount was also deposited.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that since the Forms were not furnished, dealer was liable to deposit tax at the higher rate. Since the dealer could not deposit the tax at a higher rate on the turnover, for which. Forms could not be furnished, admitted tax was not properly deposited and the Deputy Commissioner (Executive) has rightly set aside the orders passed u/s 30 of the Act. In support of his contention, he relied upon the decisions of this Court in the cases of Commissioner of Sales Tax U. P. v. S/S Mateshwari Trading Co. reported in 1984 UPTC 358. Learned Counsel for the dealer submitted that Section 30 is a beneficial Section and it provided the deposit of tax admitted by the dealer and not the amount of tax due under the Act. He submitted that for the purposes of Section 30 tax admitted by the dealer rightly or wrongly, should be considered as admitted tax. He further submitted that the dealer had a right to furnish Forms, in assessment proceedings and even before the Appellate Authority and therefore, in case of non furnishing of Form 3-B and Form-C, it was not obligatory on the part of the dealer to deposit the tax at the higher rate for maintainability of the application u/s 30 of the Act. He submitted that the Tribunal found as a fact that whatever the tax has been admitted, the same were duly deposited both under the U. P. as well as under the Central Sales Tax Act, therefore, both the revisions filed by the Commissioner of Trade Tax are devoid of any merit and are liable to be dismissed. In support of his contention, he relied upon the decisions of this Court in the cases of Prayag Narain, Shahjahanpur v. Sales Tax Officer, Shahjahanpur reported in 1981 UPTC 1164 and Jakhodia Engineering Works, Kanpur v. Commissioner of Sales Tax reported in UPTC 1993 30.

5. Having heard learned Counsel for the parties and have perused the order of the Tribunal and the authorities below.

6. Section 30 of the Act reads as follows:

30- (Power to set aside an order of assessment or an order in appeal)-(1)- In any case in which an (order of assessment or penalty) is passed ex-parte, the dealer may apply to the Assessing Authority within thirty days of the service of order to set aside such order and re-open the case, and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and re-open the case for hearing.

Provided that no such application for setting aside an ex-parte assessment order shall be entrusted unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the dealer to be due.

7. The provision to Section 30 provides that any application shall be entertained unless it is complete by satisfactory proof of "payment of amount of tax admitted by the dealer to be due". Section 30 is a beneficial provision and is to be interpreted liberally to achieve the object of the provisions. The "amount of tax admitted by the dealer to be due" means, tax admitted by the dealer and not amounts to tax due under the Act as required u/s 9 of the Act. Moreover, dealer has a right to furnish Forms during the course of assessment proceedings and even before the Appellate Authority. In case, if an ex-parte order is being passed, dealer could not get an opportunity to submit Form and documents, thus, it cannot be said that the dealer was required to deposit the tax at higher rate, in case of non furnishing of Forms for maintainability of application u/s 30 of the Act. If such requirement is made u/s 30 of the Act, it may lead to unreasonable result and frustrate the purpose of beneficial provisions. The object of Section 30 of the Act is to provide remedy to the dealer to get ex-parte order recalled and to avail opportunity of hearing. Thus, in my opinion, for maintainability of application u/s 30 of the Act under the proviso, tax admitted by the dealer is, only required to be deposited. The said tax is not the tax, which according to the Assessing Authority is due. The question of liability of tax under the Act is to be determined during the course of assessment proceedings and not at the stage of maintainability of the application u/s 30 of the Act.

8. In the case of *Hind Metal Works v. Commissioner of Sales Tax, U.P.* reported in 1980 UPTC 1261 the expression amounts of tax admitted by the dealer" came up for consideration before this Court. This Court held that a bonafide dispute in regard to rate of tax applicable to a particular turnover to be decided in the assessment proceedings and not u/s 30 of the Act

9. The aforesaid decision has been followed by this Court in the case of *Prayag Narain, Shahjahanpur v. Sales Tax Officer, Shahjahanpur* reported in 1981 UPTC 1164 wherein, it has been held that in case, the petitioner has deposited the tax admitted by him. the requirement of proviso to Sub-section (1) of Section 30 of the Act is fulfilled.

10. In the case of *Jakhodia Engineering Works, Kanpur v. Commissioner of Sales*

Tax reported in 1993 UPTC 30 this Court held that the admitted tax cannot be equated to assessed tax.

11. The decision in the case of Commissioner of Sales Tax I. P. v. S/S Mateshwari Trading Co. (supra), cited by learned Standing Counsel relates to Section 8(1) and not to Section 30 of the Act, and therefore, it is not applicable.

12. For the reasons stated above, order of the Tribunal is up held.

13. In the result, both the aforesaid revisions fail, and are, accordingly, dismissed.