(2006) 11 AHC CK 0111

In the Allahabad High Court

The Commissioner, Trade Tax APPELLANT

Vs

S/S Birla Jute and Industries Ltd. RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2006) 11 AHC CK 0111

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

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 1st September, 1997 relating to the assessment year 1989-90.

2. Brief facts of the case are that the dealer/opposite party (hereinafter referred to as "dealer") is a Limited Company and was carrying on the business of manufacture and sales of Cement. The manufacturing unit of the dealer was situated at Satna, Madhya Pradesh. Dealer had a sale depot at Allahabad and used to receive Cement by way of stock transfer from its unit and affected the sale within the State of U.P. After passing original assessment order u/s 7 of the Act, assessing authority initiated proceeding u/s 21 of the Act on the basis of the information received from Trade Tax Officer, Sector-VI, Aligarh for the supply of 1000 bags of Cement for Rs. 7, 56,262.80 paise to Executive Engineer Uppar Ganga Division-III, Aligarh while dealer had disclosed the sales ,to the said Department only to the extent of Rs. 75,626.28 paise. Since the information could not be verified from the books of account the assessing authority has passed an order u/s 21 of the Act and levied the tax on the amount of Rs. 7,56,262.80 paise at Rs. 83, 188.91 paise. Being aggrieved by the order passed u/s 21 of the Act, dealer filed appeal before the Deputy Commissioner (Appeals), Trade Tax, Allahabad. It appears that before the Deputy Commissioner (Appeals) Trade Tax, Allahabad, dealer had furnished certificate obtained from the said

Department certifying the supply of only 1000 bags of Cement for Rs. 75,626.28 paise. Appellate authority allowed the appeal and remanded back the case to the assessing officer to pass order afresh after considering the certificate filed by the dealer. In the remand proceeding, assessing authority found that the certificate filed by the dealer was correct and the supply was only to the extent of Rs. 75,626.28 paise and information was verifiable. The assessing authority, however, examined the books of account of the dealer and was of the view that looking to the value shown in the Form 31, expenses etc, the disclosed sales were much less. It appears that on this issue, explanation was sought by the assessing authority from the dealer, but proper reply was not filed. Assessing authority passed the assessment order u/s 21 of the Act and estimated the turnover by way of best judgment assessment at Rs. 8, 25,00,000/- find levied tax at Rs. 90, 75,000/-. Being aggrieved by the order, dealer filed appeal before the Deputy Commissioner (Appeal), Trade Tax. Allahabad. Deputy Commissioner (Appeals), Trade Tax, Allahabad vide order dated 20th November, 1996 allowed the appeal and set aside the order passed by the assessing authority and remanded back the case to the assessing officer. Deputy Commissioner (Appeals), Trade Tax, Allahabad vide its order held that the dealer has not given reply on all the points raised by the assessing officer and dealer claimed that proper opportunity was not given by the assessing officer. In this view of the matter, the matter was remanded back to the assessing officer. Being aggrieved by the order of the Deputy Commissioner (Appeals), Trade Tax, Allahabad, dealer filed appeal before the Tribunal. In the appeal, dealer has challenged the order of the first appellant authority remanding back the case to the assessing officer. It was contended before the Tribunal that on the basis of the information received for the supply of Cement for Rs. 7,56,262.80 paise, proceeding u/s 21 of the Act was initiated and the tax was subsequently levied u/s 21 of the Act and first appellate authority allowed the appeal, remanded back the case to the assessing officer and in the remand proceeding, said information has been got verified. He submitted that the goods were sold on the value fixed by the Company, which included all the expenses etc., and, therefore, the view of the assessing officer that the sale price was less than the price shown in Form 31 and the expenses is not justified. Tribunal by the impugned order, allowed the appeal and set aside the order passed u/s 21 of the Act and held that the information received for the supply of Cement for Rs. 7,56,262.80 paise was got verified. Tribunal further held that there is no basis for taking the view that the turnover was less than the value shown in Form 31 and other expenses.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the first appellate authority has remanded back the case to the assessing officer on the ground that dealer could not furnish the reply on all the points and proper opportunity was not given by the assessing officer to the dealer to make the submissions. He submitted that without setting aside the ground taken by the first appellate authority for reminding back the case to the assessing officer and without adjudicating the

issue, namely, whether the remand was justified or not, order u/s 21 of the Act was set aside. He submitted that in the circumstances, it was not open to the Tribunal to adjudicate the issue on merit.

5. Sri Bharat Ji Agrawal, learned Senior Advocate submitted that the Tribunal is the Court of fact and can decide the issue on merit. He submitted that it is not necessary to adjudicate the issue whether the remand of the case was justified or not.

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

7. I find substance in the argument of the learned Standing Counsel. Before the Tribunal, dealer had challenged the order of the first appellate authority giving reasons for the remand of the case. Prime issue for consideration before the Tribunal was whether on the facts and circumstances of the case, remand of the case was justified or not, therefore, it was the duty of the Tribunal to adjudicate the primary question, namely, whether the remand of the case by the first appellate authority was justified or not, before proceeding with the merit of the case. In a ease where the matter is remanded by the first appellate authority without adjudicating the issue finally and if such order is under challenge in appeal before the Tribunal, the Tribunal first, should decide whether the remand of the case was justified or not. In case, if the Tribunal come to the conclusion that the remand of the case was not justified, Tribunal should normally direct the first appellate authority to decide the appeal on merit finally and only in rare cases should decide the issue on merit finally at its stage after giving the rea an for the same. Deciding appeal on merit and adjudicating the issues involved in first appeal amounts to surpassing the forum of first appeal and taking over the power/right of the first appellate authority to adjudicate the issue involved in appeal,

8. Perusal of the order of the Tribunal reveals that the Tribunal has failed to adjudicate the prime issue, namely, whether the remand of the case by the first appellate authority was justified or not, therefore, the order of the Tribunal is vitiated and liable to be set aside. I do not find any substance in the argument of the learned Counsel for the dealer that it was not necessary for the Tribunal to adjudicate the issue whether the remand of the case was justified or not as held above. In my view, Tribunal was under the obligation to decide the prime issue, namely, whether the remand of the case was justified or not

9. In the result, revision is allowed. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the appeal afresh in the light of the observations made above.

