(2006) 11 AHC CK 0040

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

S/s Gaya Prasad Anil Kumar — RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:
Central Sales Tax Act, 1956 — Section 14

Citation : (2007) 1 AWC 792

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as ''Act'') is directed against the order of Tribunal dated 16.09.1998 relating to assessment year 1981-82, by which, the Tribunal has rejected the application u/s 22 of the Act.

2. The dealer was carrying on the business of Oil-seed in its own account as well as in Commission Agency. During the year under consideration, dealer claimed to have made purchases of Mahua-seeds for Rs. 20,50,771.43 as a Commission Agent on behalf of manufacturer Principal holding Recognition Certificate u/s 4-B of the Act. Dealer furnished Form 3-B obtained from the manufacturer Principal and claimed liability of tax on the aforesaid purchases @ 2%. The Assessing Authority in original assessment order dated 28.11.1983, allowed the claim and levied tax @ 2% on the aforesaid turnover of Rs. 20,50,771.43. In the order dated 25.9.1986 u/s 21, the Assessing Authority levied tax on the aforesaid purchases @ 4% on the ground that the dealer was not holding Recognition Certificate and thus, was not entitled for the benefit of concessional rate of tax u/s 4-B of the Act. The Assessing Authority held that the dealer was not entitled to claim the benefit of concessional rate of tax on the basis of Form 3-B. First Appeal filed by the dealer was allowed. The Appellate Authority held that the aforesaid turnover was liable to tax @ 2% relying upon the decision of this Court in the case of Commissioner of Sales Tax v. Maha Luxmi Industries reported in

(1980) UPTC 679. The Commissioner of Trade Fax filed appeal before the Tribunal. The Tribunal by the impugned order dated 20.8.91, rejected the appeal. The Commissioner of Trade Tax filed application u/s 22 of the Act for rectification of the order dated 20.8.1991 on the ground that the Division Bench of Allahabad High Court in the case of Agarwal Brothers v. Commissioner of Sales Tax, U.P. reported in 1990 STJ 454 held that the Commission Agent was not entitled for the benefit of concessional rate of tax u/s 4-B of the Act. The said application has been rejected by the impugned order on the ground that the Appellate Authority was based on a consideration of the entire facts and circumstances and there was no mistake apparent on the face of record.

3. Heard learned Counsel for the parties.

4. I do not find any error in the order of the Tribunal. The perusal of order dated 20.8.1991 reveals that the provisions of Section 4-B (1) and sub Clause (a-1) of the Act, were considered and thereafter, the benefit of concessional rate of tax has been allowed. The issue had been adjudicated and an opinion had been formed u/s 22 of the Act there is no power to review and only a mistake apparent on the face of record can be rectified. Rectification of such mistake which requires argument and investigation of the fact is outside the purview of Section 22 of the Act. It may be mentioned here that the application u/s 22 of the Act was moved on the basis of Division Bench decision of this Court in the case of Agarwal Brothers v. Commissioner of Sales Tax, U.P. (supra). The said decision is not applicable in the present case. The decision in the case of Agarwal Brothers v. Commissioner of Sales Tax, U.P. (supra), was relating to the period prior to 1.5.197. In the same decision, it has been held that after 01.5.1977 Sub-section (a-1) of the Act has been added in Section 4-B of the Act granting benefit of concessional rate of tax to the Commission Agent in respect of declared goods. Mahua-seeds is a declared goods u/s 14 of the Central Sales Tax Act, thus, the Commission Agent was entitled for the benefit of exemption of concessional rate of tax u/s 4-B (1) and (a-1) of the Act.

5. On the reasons stated above, the present revision is devoid of any merit and is liable to be dismissed.

6. In the result, revision fails and is, accordingly, dismissed.