(1989) 02 AHC CK 0076

In the Allahabad High Court

Case No : Sales Tax Revision No. 202 of 1989

Vedbir Singh Bhattewale APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)
Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)
Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)

Citation : (1990) 77 STC 240

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agrawal, for the Appellant; V.M. Sahai, for the Respondent

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This revision is directed against the order dated 7th December, 1988, passed by the Sales Tax Tribunal, Ghaziabad, relating to the assessment year 1983-84.

2. According to the facts alleged by the applicant, the assessing authority passed an assessment order on 31st December, 1987, fixing the liability of tax jointly on Vedbir Singh and Mukesh Kumar for the said assessment year. The assessee feeling aggrieved against the order passed by the assessing authority filed an appeal u/s 9 of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act"), before the Assistant Commissioner (Judicial), Sales Tax, Bulandshahr, along with an application for waiver of the condition of deposit of 20 per cent of the assessed tax for the entertainment of the appeal. The said application was rejected. Thereupon the assessee feeling aggrieved filed a second appeal u/s 10 of the Act before the Tribunal which by the impugned order allowed the appeal in part and directed the applicant to deposit 10 per cent of the assessed amount.

3. I have heard Sri Rakesh Ranjan Agrawal, learned counsel for the applicant,

and Sri V.M. Sahai, learned counsel appearing for the Commissioner of Sales Tax. Learned counsel for the applicant contended that in view of the decision in Atma Ram Misra Vs. Commissioner of Sales Tax, , the applicant was entitled to the waiver of 20 per cent but the Tribunal has refused to follow the law laid down by this Court in Atma Ram Misra''s case [1990] 77 STC 232 ; 1987 UPTC 547 , on the ground that the said case was not applicable to the facts of the present case. A perusal of the order of the Tribunal indicate that the Tribunal has refused to apply the principle laid down in the case of Atma Ram Misra Vs. Commissioner of Sales Tax, , on the ground that in that case the purchases were made from the ex-U.P. wherein in the present case the purchases have been made by the applicant within U.P. The contention of the learned counsel for the applicant is that the distinction drawn by the Tribunal is erroneous. The only criteria for grant of waiver of 20 per cent of the assessed tax in Atma Ram Misra Vs. Commissioner of Sales Tax, , is that the assessee should not have filed any return or admitted any liability of tax. The Tribunal has nowhere recorded that the assessee either filed any return or admitted any tax liability. In view of the said fact I am of the opinion that the view taken by the Tribunal is erroneous and the order of the Tribunal deserves to be quashed.

4. In the result the revision succeeds and is allowed. The order dated 7th December, 1988, passed by the Tribunal is set aside and the Assistant Commissioner (Judicial), Sales Tax, Ghaziabad, is directed to register the appeal of the applicant for the assessment year 1983-84, without asking the applicant to deposit 10 per cent of the admitted tax as fixed by the Tribunal and dispose of the appeal according to law on merit. The parties shall bear their own costs.

5. A copy of this order be sent to the Tribunal concerned as contemplated u/s 11(8) of the Act.

6. Let a copy of this order be supplied to the learned counsel for the applicant within forty-eight hours on payment of usual charges.