(2004) 03 AHC CK 0005

In the Allahabad High Court

Vishambhar Nath Ravindra Kumar APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 10
Penal Code, 1860 (IPC) — Section 193, 196

Citation : (2007) 11 VST 29

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—This revision is directed against the order dated July 8, 1991 passed by the Trade Tax Tribunal, Agra, in Appeal No. 487 of 1987 for the assessment year 1982-83.

The applicant is a partnership firm and engaged in the business of foodgrains and oil-seeds. For the assessment year 1982-83 the applicant disclosed his taxable sale at Rs. 4,46,527.74 and the taxable purchase at Rs. 27,491.16. The Sales Tax Officer determined the taxable turnover at Rs. 6,19,210.62 and imposed tax of Rs. 24,768.42 after rejecting the books of account on the basis of survey conducted at another dealer''s place, namely, M/s. Chakko Atta Chakki and loss of one form XXXI. This order was confirmed by the first appellate authority and with a slight modification by the Tribunal. The Tribunal has maintained rejecting of books of account but has reduced the turnover.

2. Heard learned Counsel for the parties and perused the record.

The applicant, as it was contended before the authorities below, submitted that its books of account have been wrongly rejected by the authorities below. A diary was found at the business place of the third person, namely, Chakko Atta Chakki by the Sales Tax Officer (S.I.B). It contained transactions with the applicant. It was argued that the entries in the diary cannot be taken into account unless and until opportunity to cross examine the third party is given. Reliance has been placed on a number of decisions including Shukla Traders v. Commissioner of

Sales Tax [1992] UPTC 1052. Enterprising Traders v. Commissioner of Sales Tax [1987] UPTC 247 and Raja Ram Ram Prakash v. Commissioner of Sales Tax [1987] UPTC 398.

3. In the facts of the present case, a notice was issued for appearance to M/s. Chakko Atta Chakki, who was asked to be present for cross-examination. The notice was duly served upon the third party. The third party despite of service of notice did not appear. The Tribunal has taken a view that the third party has colluded with the present applicant. In view of that it was not necessary to summon the third party any further.

4. Rule 75 of the U.P. Sales Tax Rules, 1948 reads as under:

Rule 75. Power to summon witnesses.--The Sales Tax Officer, Assistant Commissioner (Executive), Deputy Commissioner, Additional Commissioner, Commissioner, Assistant Commissioner (Judicial) and President and Members of the Tribunal, as the case may be, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses;

and any proceeding before any of the officers aforesaid shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

5. A perusal of the above rule makes it apparently clear that the Sales Tax Officer has got the same powers as are vested in a court under the Code of Civil Procedure, 1908 (for short, "C.P.C") when trying the suit in respect of enforcing of attendance of any person and examining him on oath and, as such, power can be exercised for compelling the production of documents. In the present case the third party, namely, Chakko Atta Chakki did not appear even after service of notice. It was imperative on the part of the Sales Tax Officer to invoke the provision of Order XVI, C.P.C. Order XVI, Rules 10,11 and 12 of C.P.C., provide procedure where the witness fail to comply with the summons, the court can attach the property of such witness and fine not exceeding Rs. 500 may be imposed under Order XII, Rule 16, C.P.C. The Sales Tax Officer should have invoked the provisions for compelling the attendance of M/s. Chakko Atta Chakki.

6. In view of the fact that these powers were not exercised by the assessing authority there is no option for me except to remand the case to afford proper opportunity of hearing to the applicant and for compelling attendance of the third party, namely, M/s. Chakko Atta Chakki.

7. In view of the above the revision is allowed in part. The order of the Tribunal

is set aside and the matter is remanded to the Tribunal for re-consideration of the matter. The Tribunal itself may exercise the power under Order XVI of the CPC or may remand the matter to the Sales Tax Officer concerned.

