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SLP(C)No. 6219 OF 1999
ITEM No.2

Court No.10

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.6219/1999

(From the judgement and order dated 15/07/1998 in STR 439/90
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

COMMNR.,SALES TAX, U.P.

Petitioner (s)

VERSUS

M/S.KUMAON TRACTORS & MOTORS

Respondent (s)

(With Appln(s). for bringing LRs on record,c/delay in filing
SLP and with prayer for interim relief and Office Report)
(For Final Disposal)
With

SLP(C)No.6907/1999, (with appln. for c/delay in filing SLP and
bringing LRs on record and with prayer for interim relief and
Office Report) (For final disposal)

SLP (C) No.9180/1999 (with appln .for c/delay in filing SLP and
bringing LRs on record and with prayer for interim relief and
Office Report) (For final disposal)

Date : 25/07/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s)

Mr.Sunil Gupta,Adv.,
Mr.R.C. Verma,Adv.

For Respondent (s)

Mr.Dhruv Agarwal,Adv.,
Mr.Satish Vig,Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
I.A.2 - application for substitution is granted.
Delay condoned.
Leave granted.
Heard the learned counsel for the parties.
The appeals are allowed, impugned judgment and order
passed by the High Court is quashed and set aside and the
the orders passed by the tribunal are restored.

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(Vijay Kumar Sharma)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4688 OF 2001@@
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(Arising out of SLP (C) No. 6219/1999)

Commissiner of Sales Tax,U.P. .. Appellant

Versus

M/s.Kumaon Tractors & Motors .. Respondent

WITH

CIVIL APPEAL NOs.4689 and 4690 OF 2001@@
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(Arising out of SLP (c) Nos.6907/1999 and 9180/1999)

O R D E R@@
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I.A. No. 2 - application for substitution is granted.

Delay condoned.

Heard the learned counsel for the parties.

The Commissioner of Sales Tax, U.P. Lucknow has challenged the order dated 15.7.1998 passed by the High Court of Judicature at Allahabad in Sales Tax Revision Nos. 438, 439, 440 and 441 of 1990. By the impugned judgment and order the High Court set aside the order dated 21.12.1989 passed by the Sales Tax Tribunal, Bareilly Bench, Bareilly and held that the assessee was not the dealer, but was only entitled to receive commission on all sales in the State.

At the time of hearing of these appeals, learned counsel for the appellant submitted that the High Court exceeded its jurisdiction under Section 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Trade Tax Act") by interfering with the concurrent finding of facts arrived by the authorities below. Learned counsel pointed out that the authorities passed the order by relying upon the admission made by the assessee that the assessee was a dealer and purchaser of the tractors and that it supplied tractors to the purchasers at Nainital. Learned counsel for the appellant for this purpose pointed out the final order passed by the Sales Tax Authorities, U.P. wherein it has been pointed out that ;

1. The Madras Company instead of making the said supply directly to the customers has made it to the dealer and Form 'C' has been given by the dealer.

2. The said purchase has been shown in the account books of the dealer as purchase and on that basis the bills were received from Madras company, therefore, Sales Tax

Officer held that the Said disputed supply made by the Madras company as having been made directly to the dealer.

3. In its statement before the authorities the dealer has admitted that the bills have been issued by the Madras company in their name and Central Sales Tax has been realised by the Madras company at the rate of 3 per cent.

4. The dealer also declared its inability to prove that disputed supply has been in fact made by the company directly to the customer and not to it.

5. In its statement before the authorities the dealer told that goods which were sent by the Madras company directly to the customer of Uttar Pradesh yet on those goods their firm issued bills of sale but stated that it was done under mistake.

It is the submission of the learned counsel for the appellant that on the basis of these facts proved before the authorities if the authorities have arrived at the conclusion that the assessee was liable to pay sales tax as a dealer, it cannot be said that there was any question of law involved which was required to be determined by the High Court.

As against this, learned counsel for the respondent-assessee submitted that from the facts stated above, there was a mixed question of law and facts involved and, therefore, the High Court rightly interfered with and relied upon the certificate issued by the purchaser of tractors.

From the facts discussed by the assessing authorities, it is apparent that the authorities arrived at a finding of fact that the assessee was a dealer by considering its books of accounts, bills issued by it and also Form 'C' submitted by the assessee. The aforesaid documentary evidence produced by the assessee itself would reveal that the assessee was dealer in tractors. The explanation given by the assessee that it was unaware of the law could hardly be accepted as there was no question of law involved in issuing bills, in preparing account books and submitting Form 'C'. In any set of circumstances, it cannot be said that the order passed by the Sales Tax Tribunal affirming the orders passed by the authorities below was in any way illegal or erroneous. The High Court materially erred in relying upon the certificates dated 17th October 1981 and 16th April 1983 issued by the Uttar Pradesh Seeds and Tarai Development Corporation Limited for holding that the assessee was not the dealer, but was only entitled to have commission on such sales. It appears that the High Court ignored the provisions of Section 11 of the Trade Tax Act which confers limited jurisdiction to interfere with the order of the Tribunal only on the question of law, that too the said question of law is required to be precisely stated and formulated. Instead of deciding the question of law, the High Court simpliciter reappraised the evidence and ignored the material documents maintained and produced by the assessee, that is, books of accounts, bills and Form 'C' submitted by it. In this view of the matter, the impugned order cannot be sustained.

In the result, the appeals are allowed, the impugned judgment and order passed by the High Court is quashed and set aside and the orders passed by the Tribunal are restored.

.....J.

(M.B. SHAH)

New Delhi;
July 25, 2001.

.....J.
(R.P. SETHI)