

**(2009) 01 AHC CK 0172**

**Allahabad High Court**

**Case No:** None

Commissioner, Trade Tax

APPELLANT

Vs

Sarsadi Lal Enterprises Ltd.

RESPONDENT

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**Date of Decision:** Jan. 30, 2009

**Citation:** (2010) 28 VST 333

**Hon'ble Judges:** Prakash Krishna, J

**Bench:** Single Bench

**Final Decision:** Partly Allowed

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### **Judgement**

Prakash Krishna, J.

These two revisions have been filed by the Commissioner, Trade Tax, U. P., Lucknow, against a common order dated May 24, 2000 passed by the Tribunal in two connected Second Appeal Nos. 87 and 88 of 2000 relating to the assessment years 1996-97 and 1997-98 (Central).

2. The dealer-opposite party carries on the business of manufacture and sale of sugar, sheera, Indian-made foreign liquor, denatured spirit, etc. There is no dispute with regard to the production and sale of the dealer-opposite party. The dispute is only with regard to rejection of stock transfer of Indian-made foreign liquor. For the assessment year 1996-97 the assessing authority rejected the claim of stock transfer to the tune of Rs. 1,27,04,079.49. Similarly, for the assessment year 1997-98 the assessing authority rejected the claim of stock transfer with regard to Rs. 8,16,12,510. The case of the dealer was that it transferred the Indian-made foreign liquor to its depots situate in Punjab and Rajasthan. The assessing authority rejected the claim of the stock transfer on the ground that the said goods were moved outside the State of U. P. in pursuance of a prior contract with M/s. B. D. A. Ltd., Bombay. A contract was entered into with the said party on August 9, 1996, according to the dealer. The assessment order was challenged in appeal. The first appellate authority was of the view that under the excise law of Punjab and Rajasthan, import of Indian-made foreign liquor was prohibited in the States of

Punjab and Rajasthan. The dealer-opposite party had opened their depots in these places and goods were transferred from Pilkhani Distillery to these places. The first appellate authority remanded the matter back for fresh consideration to the assessing authority with certain directions to examine the aforesaid claim of the dealer-opposite party in the light of the agreement and other material on the record, by the order dated January 11, 2000, in respect of these two years. On further appeals to the Tribunal, at the instance of the dealer, the Tribunal allowed the second appeals as it was of the view that the order of remand was not justified as the first appellate authority itself has recorded all the necessary findings and found that it was a case of stock transfer. In the revision the following questions of law have been sought to be raised:

(i) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal has rightly accepted the dealer's declared transactions of the stock transfer despite the fact that there was sufficient evidence available on record to establish the impugned transactions to be related with the inter-State sales ?

(ii) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal has properly utilized the material available on record ?

3. The contention of the learned Counsel for the Department is that in the survey dated September 24, 1997 conducted at M/s. Pilkhani Distillery certain incriminating materials were found. The document (exhibits 1 to 7) seized at the time of survey conducted at Pilkhani Distillery establishes that it was not a case of stock transfer as the goods were moved from manufacturing unit to Rajasthan and Punjab (outside the State of U. P.) in pursuance of the orders placed by its purchasers. He further submits that the assessing authority on making an analysis of the agreement entered into with M/s. B. D. A. Ltd. Bombay reached the conclusion after taking into consideration the transfer invoices, G. R., etc., that the claim of stock transfer, as set out by the dealer-opposite party, is not established. It, on the contrary, is inter-State transfer. The first appellate authority directed the assessing authority to consider the matter afresh with certain directions. The Tribunal has wrongly assumed that it was found by the first appellate authority that the transaction in question is a stock transfer, which in fact is incorrect. He further submits that at the most the Tribunal should have asked the first appellate authority to decide the appeal itself instead of remanding the matter to the assessing authority. The Tribunal could not have allowed the appeal directly.

4. Sri Bharatji Agrawal, learned senior counsel, on the other hand, supports the impugned order and submits that on the facts it is established that the transactions in question are nothing but stock transfers and the matter, if so required by the court, be remanded to the Tribunal for reconsideration.

5. Considered the respective submissions of the counsel for the parties and perused the record.

6. The assessing authority rejected the claim of the dealer-opposite party with regard to stock transfer, is not in dispute. The said portion of the assessment order was found unsatisfactory by the first appellate authority who remanded the matter back for fresh consideration in the light of the arguments put forward by the dealer-opposite party.

7. A bare perusal of the order of the first appellate authority would show that it has not recorded any finding on its own. It has simply noticed various contentions raised before it. Without taking into consideration the facts as mentioned in the assessment order or the case of the Department, it passed the remand order. The fact remains that the first appellate authority has not applied its mind to the respective stands of the parties. Whether the goods were moved to the depots of the dealer situate outside the State of U. P. in pursuance of the direction/order of M/s. B. D. A. Ltd., Bombay was not examined by the first appellate authority, the matter was remanded to the assessing officer instead. The Tribunal by misinterpreting and misreading the order of the first appellate authority wrongly assumed that the transaction in question was accepted as stock transfer by the first appellate authority. It thus proceeded to decide the appeal on presumptions and assumptions unwarranted by law. The order of the Tribunal is vitiated on this score. The learned standing counsel is right in making the submission that the scope and effect of the said agreement which is no longer in dispute between the parties has not been examined either by the first appellate authority or by the Tribunal.

8. Sri Bharatji Agrawal, learned senior advocate, with all vehemence at his command could not dispute the above position. It is axiomatic that the Tribunal proceeded to decide the appeal by assuming non-existent facts and thus committed a serious error of law which is a case of miscarriage to justice.

9. At this stage, the learned senior counsel for the dealer submits that the matter may be remanded to the Tribunal for fresh consideration instead of remanding the matter to the assessing officer. He submits that the Tribunal being the last fact-finding authority can re-examine the matter.

10. There appears to be no difficulty in holding that the Tribunal is the last fact-finding authority. But, on the facts of the present case, it would not be appropriate to remand the matter to the Tribunal as the matter was not examined at all by the first appellate authority. The assessing officer has already considered the matter and reached a definite conclusion. The said conclusion of the assessing officer is based on material on record or not can very well be examined by the first appellate authority whose power is coextensive with that of the assessing authority. The relevant materials are already on the record and what inference should be drawn is the only issue which requires consideration.

11. In the totality of the facts and circumstances of the case, the interest of justice would be subserved if the first appellate authority is asked to decide the appeals

afresh in the light of the material already on record and the observations made above instead of directing the assessing authority to redo.

12. Having noticed the facts as mentioned in the three orders of the authorities below, this Court is of the opinion that this case merited different treatment at the hands of the Tribunal. The facts of this case illustrate a disquieting feature as to how the Tribunal committed grave miscarriage of justice in allowing the appeal straightaway filed by the dealer-opposite party. The things were not as they have been made out by the Tribunal which has resulted in not only grave error of law but even gross miscarriage of justice. The questions raised in the revision are, therefore, decided in favour of the Department by holding that the Tribunal was not right in accepting the dealer's declared transaction as stock transfer.

13. In view of the above discussions, the common order of the Tribunal is set aside and the order of the first appellate authority is modified to the extent that it shall hear and decide the appeals itself afresh in the light of the observations made above, in accordance with law.

14. The revisions succeed and are allowed in part, as indicated above.

15. No order as to costs.