
(2006) 08 AHC CK 0288
In the Allahabad High Court

Ajanta Raj Dairy	Vs	APPELLANT
Commissioner, Trade Tax		RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 21 VST 230

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of the U. P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") are directed against the order of Tribunal dated February 4, 1999 relating to the assessment year 1991-92 both under the U. P. Trade Tax Act.

2. Revision No. 213 of 1999 is filed by the applicant and Revision No. 1067 of 1999 is filed by the Commissioner of Trade Tax.

3. The applicant was carrying on the business of manufacture and sale of deshi ghee and skimmed milk powder for the year under consideration. The applicant had shown total purchases at Rs. 7,41,63,865.66 and taxable purchases of deshi ghee at Rs. 79,915. The total sales of deshi ghee and milk powder were Rs. 8,35,35,931.82 and taxable sales within the State of U. P. were Rs. 32,12,234. The assessing authority rejected the books of account and estimated the taxable purchases at Rs. 79,915 and taxable sales were Rs. 1,89,74,679. First appeal filed by the dealer was rejected. The Tribunal allowed the appeal in part and estimated the suppressed sales of deshi ghee at Rs. 50,40,000 and suppressed sales of milk powder at Rs. 8,27,000. Sales turnover had been estimated on the basis of purchase found at the time of survey dated August 27, 1992. Out of the documents, which relate to the period February 14, 1991 to March 1, 1991 suppression of production of deshi ghee to the extent of 2,736.53 kg., per day was detected. The assessing authority estimated the suppressed production for 114 days. The Tribunal, however, estimated the production taking the period for

75 days and average production for 1,500 kg. per day. Order of the Tribunal has been upheld by this Court in Revision No. 858 of 1996 vide order dated December 1, 1991 (sic). On the basis of order of the Tribunal, in which, concealment of turnover has been upheld, the assessing authority levied the penalty u/s 15A(1)(c) at Rs. 8,80,000 which has been upheld in first appeal. The Tribunal allowed the appeal in part and reduced the penalty to Rs. 4,40,025 which comes to 100 per cent of the concealed turnover estimated by the Tribunal.

4. Heard learned Counsel for the parties.

5. Learned Counsel for the applicant submitted that the enhancement of the turnover has been made by way of best judgment assessment. He submitted that in respect of the entries made in the seized purchase, it was contended that they related to non-saleable goods and not of final product, but after rejecting the explanation of the applicant, it was treated as the concealed production of deshi ghee and milk powder. It has been further submitted that as against the suppression found for 17 days, concealed production for 75 days, was estimated by way of best judgment assessment. He submitted that the penalty sustained by the Tribunal is unjustified and in any view of the matter, levy of penalty at 100 per cent is excessive and arbitrary. Learned Standing Counsel submitted that the dealer was found suppressing a huge production. Therefore, penalty levied at 200 per cent by the assessing authority is wholly justified and liable to be restored.

6. I have perused the order of the Tribunal and the authorities below. In my opinion, on the facts and circumstances of the case, levy of penalty u/s 15A(1)(c) is justified. The loose purchase slips which were seized at the time of survey dated August 21, 1992 reveal entries relating to production of deshi ghee and milk powder which were not found entered in the books of account. Therefore, a specific concealment was found in the present case. The only question that remains is the quantum of penalty. Admittedly, this is the first year of business. The specific concealment was found for 17 days and on the basis of concealment of 17 days, concealment for 75 days had been estimated. The Tribunal found that levy of penalty at 200 per cent was not justified, but has not given any basis for levy of 100 per cent penalty. On the facts and circumstances of the case, in my view, the minimum penalty at 50 per cent of the concealed turnover which comes to Rs. 2,20,012.50 is reasonable and is sustained.

7. In the result, revision filed by the applicant is allowed in part and the revision filed by the Commissioner, Trade Tax, U. P., is dismissed.