
(2007) 10 AHC CK 0030
In the Allahabad High Court

Bagatimpex (Pvt.) Ltd.

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 12(2), 4A, 9

Citation : (2009) 20 VST 401

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Judgement

Bharati Sapru, J.—Heard Sri Nikhil Agrawal for the revisionist and Sri B.K. Pandey, learned Standing Counsel for the State.

2. This revision has been filed by the assessee against an order of the Trade Tax Tribunal, Ghaziabad Bench I, Ghaziabad dated July 18, 2000.

3. The assessee is a private limited company, which is carrying on the business of manufacture of mentha oil. This revision relates to the assessment year 1991-92 under the U.P. Trade Tax Act, 1948.

4. For the assessment year 1991-92, the assessee had disclosed a net taxable turnover at Rs. 18,750 on which the admitted tax was Rs. 937.50. This was on account of the fact that the unit of the assessee was exempted u/s 4A of the U.P. Trade Tax Act, 1948. The assessing authority rejected the account books of the assessee and determined net taxable turnover at Rs. 57,18,750.70.

5. Aggrieved by the order of assessment dated July 18, 1995, the assessee filed an appeal u/s 9 of the U.P. Trade Tax Act, 1948 before the Deputy Commissioner (Appeals), Trade Tax, Ghaziabad. The Deputy Commissioner (Appeals) by his order dated September 18, 1995 allowed the appeal of the assessee and accepted his books of account.

6. Aggrieved by the appellate order, the C.T.T., filed an appeal u/s 10 of the U.P. Trade Tax Act before the Trade Tax Tribunal, Ghaziabad. There are three main

grounds in the appeal filed by the department. The first ground of the appeal was that during the survey made on September 19, 1991 at the premises of the assessee, 75 Kg. of mentha oil was found less in the document/registers of the assessee. The difference between the documents exhibited at item Nos. 7 and 8 had not been explained by the assessee.

7. The second ground in the appeal was that a cash amount of Rs. 5,000 was found with the manager of the assessee which was accounted in the sundry/petty cash register and the third ground which was with regard to sale of mentha oil in form H being accepted by the Trade Tax Tribunal, the controversy is now confined to the first two grounds.

8. Learned Counsel for the revisionist has fairly conceded before this Court that in view of the judgment of the honourable Supreme Court in the case of Commissioner of Sales Tax v. Girja Shanker Awanish Kumar reported in [1997] 104 STC 130 : [1997] UPTC 213 it is no longer open to him not to agree that in so far as the maintenance of the entries and production of books were concerned. The assessee had not complied with the provisions of Section 12(2) of the U.P. Trade Tax Act in so far as maintenance of the stage wise production of mentha oil was concerned.

9. Learned Counsel for the revisionist has however argued that 75Kg. of mentha oil which was found in pre-packed stage could not be said to have been demonstrative of the fact that the assessee was trying to evade tax because that 75Kg. of mentha oil was in a pre-packed stage. He has argued that movement of mentha oil is impossible unless it is packed and it would have to enter in the RG-I register. He has also argued that the finding of mentha oil could not lead the department to come to a conclusion that there was any suppression of production or that the assessee was indulging in activities in order to evade imposition of sales tax and therefore it was also unjustified on the part of the department to enhance turnover on the basis of such finding.

10. Learned Counsel for the revisionist has argued that the first appellate court has examined the matter relating to the discoveries of 75 Kg. of mentha oil in detail and has recorded finding that this mentha oil was in pre-packed stage.

11. Learned Counsel for the revisionist has argued that this finding of fact has not been set aside by the Tribunal specifically but simply the Tribunal has come to its own conclusion without any basis and without there being material on record that the assessee had actually indulged in purchases which would either shown or which would amount to suppression of production figures.

12. Learned Counsel for the assessee has argued that the order of the Tribunal by which the Tribunal has enhanced the turnover of the assessee is without any basis and is also contrary to the order of assessment passed by the assessing authority, who has, at the first instance, recorded in his order of assessment that, "kachha mal", i.e., purchases of raw materials made by the assessee were in order.

13. Learned Counsel for the revisionist has therefore argued that while passing final order of assessment, the Tribunal has added and enhanced a sum of Rs. 5 lakhs towards the purchases which is not justified at all and therefore the order of the Tribunal is vitiated on this account because the Tribunal has ignored the material evidence, which is already on record.

14. In support of the second ground with regard to the cash found in the sundry account, learned Counsel for the revisionist has argued that cash was also explained by the assessee as being petty cash and on the basis of such a petty amount, no adverse inference for determination of tax could have been made against the assessee. He has argued that such petty cash was not the result of sales transaction so as to bring an adverse inference from it for escapement of tax.

15. In reply to the argument made by the learned Counsel for the assessee, the learned Standing Counsel has argued that the order of the Tribunal is justified and he has argued that in fact the Tribunal has taken a proper view of the matter while making the enhancement because the Tribunal has scaled down enhancement amount made by the assessing officer on the basis of material, which was found on the date of inspection and it is for this reason, whereas the assessing officer has enhanced tax to the extent of approximate turnover of 57 lakhs the Tribunal has brought it down to much less and has made a reasonable enhancement in the turnover.

16. Having heard learned Counsel for the parties at length and having perused the material on record, the position which emerges now, is that the assessing officer has himself recorded that the purchases of the mentha oil which were made by the assessee were in order. The first appellate authority has accepted the contention of the assessee but the Tribunal has enhanced the entire turnover of the petitioner without taking into consideration the fact that purchases of the raw material was found to be in order. Therefore the computation of enhancement made by the Tribunal stands vitiated.

17. In view of the above, I am of the opinion that the Tribunal ought to have taken this fact into consideration while computing the enhancement, if any, for the assessment year in question.

18. In so far as the second ground is concerned, which was being heard by the Tribunal, i.e., discovery of Rs. 5,000 petty cash, I am of the opinion that the said petty cash could not have led the Tribunal to believe that the assessee had indulged in suppression of sales of this amount in order to evade tax and escape the assessment. Such an assumption could not have been drawn by the Tribunal unless there is any cogent evidence to believe that such petty cash being used to suppress sales.

19. In view of the above facts and circumstances, I am of the opinion that on both the grounds, I leave it open to the Tribunal to reconsider the entire matter on remand without being influenced by the observations made in this judgment.

The matter is remanded to the Tribunal for reconsideration within a period of three months from the date of production of a certified copy of this order by the dealer before the Tribunal. Any amount as deposited by the assessee in pursuance of the interim order dated October 10, 2000, shall remain in deposit with the department until final decision by the Tribunal.

The revision is allowed as above. No order as to costs.