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**(2008) 01 AHC CK 0239**  
**In the Allahabad High Court**

Chandan Brick Field

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

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**Date of Decision :** 03-01-2008

**Acts Referred:**

Uttar Pradesh Trade Tax Act, 1948 — Section 11

**Citation :** (2009) 19 VST 345

**Hon'ble Judges :** Vikram Nath, J

**Bench :** Single Bench

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## Judgement

Vikram Nath, J.—This trade tax revision u/s 11(1) of the U. P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") has been filed by the dealer, M/s. Chandan Brick Field, Allahabad, assailing the judgment and order of the Trade Tax Tribunal, Bench-I, Allahabad dated September 23, 1998. The following questions of law have been sought to be raised in this revision:

- (1) Whether, on the facts and in the circumstances of the case, the rejection of books of account is based on relevant considerations ?
- (2) Whether the estimate of the turnover is legally justified and is based on material ?
- (3) Whether the Tribunal is legally justified in taking firing period at 100 days while 94 days has been admitted and in estimating production at 9,50,000 bricks as against the disclosed production of 9,10,000 bricks ?
- (4) Whether the estimate of average selling rate at Rs. 405 per thousand bricks is based on any material and is legally justified, inasmuch as the sales are completely verifiable ?

2. The dispute relates to the assessment year 1987-88. The dealer is a brick-kiln involved in manufacture and sale of bricks. With regard to the assessment year in question the dealer disclosed a firing period of 94 days, the average selling rate at Rs. 295 and on this basis it filed its return. The assessing officer issued a

show-cause notice calling upon the dealer to verify and submit its explanation with regard to the issues mentioned in the notice. The dealer submitted his reply to the assessing officer, who being not satisfied with the explanation of the dealer, rejected the account books and determined the total firing period as 104 days, the selling rate at Rs. 450 per thousand bricks and the production capacity as one lac in eight days. It accordingly determined total turnover at Rs. 2,25,000 and imposed tax of Rs. 94,800 vide assessment order dated February 13, 1992. The dealer filed an appeal, which was partly allowed by the Assistant Commissioner (Judicial), Allahabad vide judgment dated October 8, 1992. The only relief granted by the appellate authority was that the production capacity was fixed to be one lac bricks in ten days instead of eight days as determined by the assessing officer. Accordingly the turnover was held to be Rs. 1,77,530 with the tax liability of Rs. 15,623.

3. Aggrieved by the order of the appellate authority, the dealer preferred second appeal which was further partly allowed by the Tribunal vide judgment dated September 23, 1998. The relief granted by the Tribunal was that the firing period was reduced from 104 days to 100 days. Accordingly the turnover was determined at Rs. 1,60,000 with the tax liability of Rs. 14,080. Aggrieved by the same the present revision has been filed.

4. I have heard Sri Pawan Agrawal, learned Counsel for the dealer and Sri Nimai Das, learned Standing Counsel representing the Department.

5. Sri Agrawal has basically urged three points. Firstly, that the rejection of account books by the assessing officer as affirmed by the appellate authority and the Tribunal was not justified for the reasons that the account books had been rejected only on the ground that the dealer had not maintained the profit and loss account, cash book and ledger, even though the dealer had maintained the account books and other essential books required under the law. This according to Sri Agrawal could not have been a ground for rejection of account books as u/s 12 of the Act the only requirement for a manufacturer is to maintain a true and correct account showing the value of the goods sold and bought by him, and maintain the stock books with regard to the raw materials as well as the products obtained at every stage of production. He has placed reliance upon a judgment of this Court in the case of Vivek Coal Depot, Chandausi, Varanasi v. Commissioner of Trade Tax, U.P. Lucknow reported in [2007] 6 VST 84 : [2007] 35 NTN 208.

6. The next submission is that the selling rate which was disclosed by the dealer in his return was supported by the cash memo produced by him and as long as the cash memo has not been rejected there was no justification for altering the selling rate declared by the dealer. In support of this contention he has relied upon a judgment of this Court in the case of Khanna Brick Works, Simli, Bijnor v. Commissioner of Sales Tax reported in [2001] 18 NTN 90.

7. The third submission is that the Tribunal apparently erred in fixing the firing

period as 100 days whereas in fact from a reading of the judgment of the Tribunal it appears that the Tribunal had accepted the firing period declared by the dealer and had wrongly under some misconception noted it as 100 instead of 94 days. The submission is that the Tribunal ought to have held the firing period as 94 days, which was the declared figure and computation be made accordingly.

8. On the other hand Sri Nimai Das, learned Standing Counsel, has urged that all the three authorities have recorded a concurrent finding of fact with regard to the rejection of account books, determination of selling rate as also the firing period and, therefore, no interference is called for in revisional jurisdiction. It has been further submitted by Sri Das that the rejection of the account books was not only on the ground that the dealer had not maintained the profit and loss account, cash memos and ledgers but there were other reasons also for rejecting account books as would be apparent from the order of the assessing officer. He further submitted that the dealer had not filed any evidence in support of the selling rate disclosed by him to show that it was the prevalent market rate and, therefore, once the account books were rejected the assessment had to be made by the authority. However, with regard to the period of firing days as having been mentioned as 100 in the order of the Tribunal no explanation could be given by the learned Standing Counsel.

9. Having considered the submissions and having perused the judgment of all the authorities I find that the rejection of the account books was not only on the ground that complete account books had not been maintained but was based on other reasons also such as the dealer not producing any account books at the time of surveys, and it was also noted that the stock found at the time of surveys vis-a-vis the sales and the firing period disclosed were also not comparable. Merely because the Tribunal has mentioned that non-maintaining of other account books could lead to the rejection of account books it cannot be said that rejection of account books was bad. There were other reasons also. The Tribunal has only affirmed the findings of the lower authorities. The authority relied upon by the learned Standing Counsel in the case of Vivek Coal Depot [2007] 6 VST 84 (All); [2007] 35 NTN 208 therefore, does not help the dealer inasmuch as in the said case rejection of account books was only on account of non-maintenance of other account books such as profit and loss account, cash books and ledgers.

10. The next submission with regard to the selling rate also does not have any merit inasmuch as once the account books were rejected even the cash memo submitted by the dealer stood rejected and, therefore, assessment with regard to the selling rate has to be made. The decision relied upon by the applicant in the case of Khanna Brick Works [2001] 18 NTN 90 is clearly distinguishable inasmuch as in that case the cash memo maintained by the assessee had not been disbelieved. This submission, therefore, also fails.

11. Now coming to the last submission with regard to the firing period from a perusal of the judgment of the Tribunal it is clear that the Tribunal had proceeded

on the reasoning that merely because the account books had been rejected it was not necessary to reject all the facts declared by the dealer which apparently means that the Tribunal wanted to accept the firing period declared by the dealer in his return. This reasoning of the Tribunal is mentioned at two places. Therefore, while dealing with that issue if the Tribunal had proceeded on this basis then the number of firing days as declared by the dealer ought to have been accepted. There was no question of finding any midway solution. The firing period as declared by the dealer was 94 and, therefore, it appears that the Tribunal by omission or by mistake mentioned the declared firing period as 100 instead of 94. Even the learned Standing Counsel could not explain the figure of 100 having been mentioned by the Tribunal after accepting the firing period declared by the dealer. Thus the firing period declared by the dealer is accepted. In view of the reasoning of the Tribunal it is held that the total firing period of the relevant assessment year was only 94. Thus the revision deserves to be allowed on question No. 3 alone.

12. The revision thus stands partly allowed to the extent as indicated above. The order of the Tribunal accordingly stands modified. The Tribunal will redetermine or recompute the turnover treating the firing period as 94 days and pass appropriate orders. There shall, however, be no order as to costs.