(2007) 06 UK CK 0056

In the Uttarakhand High Court

Case No : Trade Tax Revision (TTR) 53 of 2006 and New No. of

Commissioner Commercial Tax APPELLANT

Vs

R.K. Industries RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 13A(4)

Citation : (2007) 06 UK CK 0056

Hon'ble Judges : P.C.Verma, J;B.C.Kandpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Trade Tax Revision, u/s 11(1) of the Trtax Act, has been preferred against the judgment and order dated 29-9-2005, passed by the Trade Tax Tribunal, Uttaranchal Haldwani in S.A. No. 58/2003 (97-98).

2. The revision has been admitted by this Court on the following substantial question of law:

Whether the Trade Tax Tribunal has erred in law in holding that there was no justification on the part of the Assessing Authority in not accepting dealers declared turnover even after detection if 84 quintals of rice polish being not shown in the stock register on 02-07-1997?

3. Brief facts giving rise to this revision are that the assessee is involved in production of Rice, Rice-bran, Bhosi etc. On 2-7-97 the Special Investigating Branch of the Revenue Department inspected truck No. U.P.-26/8024 and found that 230 bags of Rice Bran were being transported by the truck. Out of these, 168 bags of Rice Bran were purchased by M/s Anil Modi Industries Bisalpur, Pilibhit from the respondent/dealer. These goods were not accompanied/covered by any bill proforma, challan and were being transported without any prescribed form or challan. The matter was further inquired into and it was found that on 1-7-97 the total paddy stock with the respondent/dealer was to the tune of 161

quintals. This statement was given by the respondent at the time of inspection of another truck No. UTF/9296 on 1.7.97. It was impossible to get 168 bags of Rice Bran (84 quintals) out of total paddy of 161 quintals, particularly when the dealer has shown a recovery of 7% with respect to Rice Bran from the Paddy. It was found that the dealer had suppressed the turnover and was manufacturing rice, rice bran etc without showing the paddy in its accounts. On 2.7.97 the dealer sold 168 bags of Rice Bran (84 quintals) to aforesaid M/S Anil Modi Industries, Bisalpur Pilibhit vide Challan No. 1477/ dated 2.7.97 which was sent with aforesaid Truck No. U.P. 26/8024. The dealer had mentioned in his notice that he had no concern with the Rice Bran whereas the driver of the aforesaid truck had stated that the dealer had loaded these 160 bags of Rice Police in the Truck. The Assessing Officer directed the assessee to deposit balance tax of Rs. 1,44,128/-. Feeling aggrieved, the dealer preferred appeal before the Deputy Commissioner (Appeal), dismissed the appeal. Thereafter, the dealer filed second appeal before the Trade Tax Tribunal, Uttaranchal Haldwani Bench, who vide impugned judgment and order dated 29-9-2005 allowed the appeal and reduced the tax to the tune of Rs. 78,255/-.

4. Being aggrieved by the impugned judgment and order passed by the Tribunal, the Revenue Department has preferred this revision before this Court.

5. None has appeared on behalf of the dealer. We have heard Sri K.P. Upadhyaya, learned Addl. Standing Counsel on behalf of the revisionist and perused the record.

6. The Trade Tax Tribunal in its impugned judgment has specifically mentioned that the penalty imposed u/s 13A(4) of the Act on the inspection made on 1.7.97 with regard to 125 bags of paddy has been quashed at the first appellate stage and the Revenue Department has not been able to show that against the quashing order appeal has been preferred or that order has been reversed by the Tribunal. There is no dispute relating to the certificate obtained from Mandi Parishad for the purchase of 146 bags of paddy and there remains nothing on the record to establish the evasion of tax on the purchase and sale transaction. So far as the detection of 84 quintals of Rice Bran is concerned, the Revenue Department had issued challan for the same. The Assessing Officer did not shown the cause in his order that why the purchaser has not shown the transaction of 84 quintals of Rice Bran. On the other hand the dealer has filed his reply and stated therein that the above sale was made from the stock of rice polish already available with him. It was also detected that the dealer had maintained two stock registers, one for superfine rice and common rice and the Assessing Officer was not justified to hold that the stock register of superfine rice was kept with the object to evade the tax. The Assessing Officer could did not find that the entries of common rice and superfine rice were made in both the registers, rather the entries of both these items were made in their relevant registers separately. In the facts and circumstances of the case, the Assessing Officer had no material available before him to increase the turnover of the

assessee and impose tax. The Trade Tax Tribunal was justified in holding that there was no justification on the part of the Assessing Officer in not accepting dealer4s declared turnover and thereby reducing the tax imposed by the Revenue Department. The substantial question of law framed in this revision petition is decided in favour of the dealer and against the Department.

7. The revision lacks merit and is hereby dismissed. The impugned judgment and order passed by the Tribunal is confirmed. No order as to costs.

