(1988) 05 AHC CK 0010

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 1254 and 1255 of 1987

Commissioner, Sales Tax — APPELLANT

Vs

Jain Shudh Vanaspati Ltd. — RESPONDENT

Date of Decision : 02-05-1988

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1989) 72 STC 62

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Kunwar Saxena, for the Appellant; Vijai Bahuguna, for the Respondent

Final Decision : Dismissed

Judgement

Anshuman Singh, J.—These two revisions u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as "the Act") have been preferred against the order dated July 31, 1987 passed by the Sales Tax Tribunal, Ghaziabad Bench, relating to assessment year 1973-74 (U.P. and Central). Since both the revisions arise out of a common order, they are being disposed of by a common judgment.

2. The facts giving rise to the instant revisions are that the assessee is a manufacturer of vanaspati ghee and soap, etc., carrying on its business at Ghaziabad. During the assessment year in question the assessee disclosed its taxable sales in U.P. at Rs. 5,10,23,821.27 and in Central at Rs. 20,90,377.85. The account books of the assessee were rejected by the assessing authority and its taxable turnover in U.P. was determined at Rs. 5,72,23,821.77 and in Central at Rs. 53,26,865.06. The assessee feeling aggrieved, filed appeal u/s 9 of the Act before the Deputy Commissioner (Appeals) who by order dated June 30, 1980 allowed the appeal and remanded the case back to the assessing authority. The assessee feeling aggrieved against the aforesaid order filed second appeals u/s 10 of the Act before the Tribunal which by the impugned order allowed the appeals and accepted the disclosed turnover of the assessee under the U.P. as

well as Central. The Revenue feeling aggrieved, has come to this Court in the instant revisions.

3. I have heard Sri Kunwar Saxena, State representative appearing for the Commissioner of Sales Tax, U.P. and Sri Vijai Bahuguna, learned counsel appearing for the opposite party-assessee. It has been urged on behalf of the Commissioner, Sales Tax that the Tribunal committed an error in accepting the books of account of the assessee. For appreciating the said argument it is necessary to refer to the grounds on which the books of account were rejected by the assessing authority, which are as follows :

1. The assessee had not produced the excise register and other excise records on the ground that they were burnt by fire which occurred in the assessee''s factory on 21st May, 1977.

2. The assessee had not kept manufacturing accounts or registers relating to consumption of vitamins and other raw materials.

3. The production shown was not commensurate with the disclosed consumption of vitamins, hydrogen, tin containers, oil and other raw materials.

4. There was difference in the statement of sales, etc., given on different dates.

5. In the seized papers relating to two dealers, M/s. Ram Rikh Dass Roop Chand, Lucknow and Gopal Dass s/o Lal Man of Kanpur, it had come to light that the assessee had received premium (or money) from such purchasers.

4. The grounds on which the books of account of the assessee were rejected by the assessing authority did not find favour with the Tribunal inasmuch as the Tribunal recorded categorical and positive finding of fact that the said grounds were not sufficient for rejecting the books of account. The explanation offered by the assessee regarding the grounds on which the books of account of the assessee were rejected by the assessing authority has been accepted by the Tribunal. The Tribunal being the last fact finding authority is fully empowered to scrutinise the evidence on record and arrive at its own conclusion. It is true that the conclusion must be based on material evidence on record and should not be conjectural but in the instant case the Tribunal has given cogent and valid reasons which are fully supported by evidence and has arrived at a right conclusion that the grounds on which the books of account were rejected by the assessing authority were not valid in view of the explanation offered by the assessee.

5. The most significant feature of the case is that the Deputy Commissioner (Appeals) has observed in the order while remanding the case that (1) there is no material on record to show that the assessee had concealed its production or sales ; and (2) the department has not been able to adduce evidence from which any inference relating to suppression or concealment of sales can be inferred. The very purpose of maintaining the account books by manufacturers as contemplated u/s 12(2) of the Act is to verify the correct production of the

commodities produced by them. The primary object underlining the maintenance of these documents is that the dealer should not be permitted to suppress or conceal the sale and production. It is with this object that the legislature introduced Section 12(2) in the Act that the manufacturers should maintain proper manufacturing account so that the production can be ascertained. In the instant case it has been alleged on behalf of the assessee-opposite party that on 21st May, 1977 fire had broken out in the store of the factory for which an F.I.R. was lodged and the R.G. 1 register was destroyed in the said fire. The fact of breaking fire has not been disputed by the department. It was further contended on behalf of the assessee that R.T. 12 and R.T. 5 (reports) escaped destruction as the same were kept by the assessee at the Delhi head office and the same could be used for verifying the books of account. Not only this the assessee made a specific request to the department that R.T. 12 and R.T. 5 may be verified from the periodical reports submitted by the assessee to the excise department but the assessing authority instead of verifying the same held that the assessee did not maintain manufacturing account as required by Section 12(2) of the Act.

6. Much emphasis has been placed on behalf of the applicant-Commissioner of Sales Tax that an information was received by the department to the effect that the assessee had received certain amounts from two customers, namely, M/s. Ram Rikh Dass Roop Chand, Lucknow and Gopal Dass son of Lal Man, Kanpur, over and above the sale price of vegetable ghee sold to them. The seizure of the account books of the said firms also revealed that the said firms had paid premium (extra money) to the assessee-company and this circumstance is a very strong circumstance against the assessee which warranted the enhancement of the turnover of the assessee by the assessing authority. An affidavit of Sri Raj Kumar, secretary of the assessee-company, was filed before the assessing authority that the assessee had not received any premium (extra money) from any party and this affidavit was not controverted by the department. Not only this the assessee requested the Assistant Commissioner-assessing authority to summon the aforesaid party and give it an opportunity to cross-examine the aforesaid party so that it could prove that no premium (extra money) was received by the assessee and the entries made in the Bahi khatas of the aforesaid two customers of Kanpur and Lucknow were incorrect. Despite repeated requests of the assessee the assessing authority did not supply the copy of statement of Narendra Kumar, partner of the firm M/s. Ram Rikh Dass Roop Chand, Lucknow, nor the assessing authority gave any opportunity to the assessee to cross-examine the aforesaid persons. It is well-settled that a dealer''s turnover cannot be enhanced on the basis of the entries found in the records of third party until and unless the dealer is given an opportunity of cross-examining the third party. In the instant case the said opportunity in spite of repeated requests, has been denied to the assessee.

7. The most redeeming feature of the instant case is that even the Tribunal gave an opportunity to the department to produce the aforesaid persons and to give an opportunity to the assessee to cross-examine them but the department

informed the Tribunal that the parties were not traceable. These facts clearly indicate that the Tribunal was wholly justified in not relying on the entries alleged to have been found in the books of account of the third party. Even if the argument of the Revenue is accepted that the Tribunal was not justified in accepting the disclosed turnover of the assessee, in view of categorical findings of the Deputy Commissioner (Appeals) that there is no material on record to show that the assessee had concealed its production or sales and that the department has not been able to adduce evidence from which any inference relating to suppression or concealment of sales can be inferred, no further investigation was required in the matter by the assessing authority. It is also pertinent to mention that the said findings have not been challenged by the Revenue inasmuch no appeal was preferred by the Revenue before the Tribunal. It was the assessee who went in appeal before the Tribunal and the findings recorded by the Deputy Commissioner (Appeals) themselves did not warrant any remand and consequently the Tribunal was wholly justified in accepting the disclosed turnover of the assessee under the U.P. as well as Central.

8. In the result the revisions fail and are accordingly rejected. However, there will be no order as to costs.