
(1973) 08 AHC CK 0005
In the Allahabad High Court
Case No : Sales Tax Reference No. 77 of 1972.

Devi Charan Sri Mohan Dass

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 06-08-1973

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(4)

Citation : (1974) 33 STC 547

Hon'ble Judges : R.L. Gulati, J;A. Banerji, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.L. Gulati, J.—This is a reference in compliance with the order of this court u/s 11(4) of the U.P. Sales Tax Act. The revising authority has referred the following three questions:

(1) Whether the account books maintained by the applicant answer the requirements of Rule 72(2) of the U.P. Sales Tax Rules?

(2) Whether there was any material for rejecting the system of maintaining the manufacturing accounts followed ever since by the applicant and generally by all other manufacturers of utensils at Mirzapur and making a best judgment assessment?

(3) Whether even assuming that account books suffer from technical defects, there was any material for enhancement of the applicant's turnover from Rs. 2,52,796.71 to the round figure of Rs. 2,60,000 or that of utensils from Rs. 43,375.34 to Rs. 50,579.03?

2. The three questions referred by the revising authority and reproduced above are those which were suggested by the assessee in his application u/s 11(4) of the Act. But this court by its order dated 16th April, 1971, called for a reference on the following question only:

Whether, on the facts and in the circumstances of the case, there was any material for enhancing the assessee's turnover from Rs. 2,52,796.71 to the round figure of Rs. 2,60,000.00 and thereafter for adding the difference between the said two figures to the figure of Rs. 43,375.34, which was shown by the assessee as his turnover of the sales of utensils?

3. It appears that the revising authority did not care to properly scrutinize the order of this court. Otherwise also the statement of the case drawn by him is confused and is not satisfactory at all.

4. The assessee carries on the business of manufacture and sale of utensils at Mirzapur. For the assessment year 1963-64, which is the year in dispute, he admitted taxable turnover of Rs. 2,52,796.71, consisting of the following items:

1. Sale of non-ferrous metals ...	Rs. 2,01,462.46	2. Sale of utensils ...	Rs. 43,375.34	3. Sale of aluminium ...	Rs. 7,958.91	-----	Total	Rs. 2,52,796.71	-----
-----------------------------------	-----------------	-------------------------	---------------	--------------------------	--------------	-------	-------	-----------------	-------

5. The assessee had also shown purchases of utensils worth Rs. 2,10,729.59 as purchasing commission agent on behalf of the U.P. principals. No tax was admitted on these purchases. The Sales Tax Officer rejected the assessee's books of account. He accepted the turnover of aluminium, but enhanced the turnover of utensils and non-ferrous metals. He also levied tax on the purchases made by the assessee as commission agent. On appeal, the appellate authority held that the assessee's account books had wrongly been rejected. The books were found by him to have been maintained properly and the omission to maintain the manufacturing account as required by Rule 72(1) was only of a technical nature, inasmuch as a book called "mahanti bahi" maintained by the assessee corresponded more or less to the manufacturing account. He also upheld the assessee's contention that he was not liable to any tax in respect of the business done by him as a commission agent. He accordingly deleted all the additions made by the Sales Tax Officer and accepted the assessee's return. The Commissioner of Sales Tax went up in revision. Sri Basudeo Lal Srivastava, Additional Revising Authority, Sales Tax, Varanasi, upheld the assessee's claim with regard to the business of commission agency on which no sales tax was payable. He, however, passed a curious order relating to the determination of the turnover liable to tax. He did not find any defect in the account books except that the manufacturing accounts had not been maintained in accordance with Rule 72(2). He also upheld the view of the appellate authority that this was merely a technical defect. He then discussed various items of sales and found them to be reasonable. Yet he enhanced the turnover by about Rs. 8,000 and added the same to the turnover of utensils. This is what he has stated in his revisional order:

I have heard the parties and considered the matter on record. The State representative has pressed that in the absence of manufacturing account the assessee's account books could never be accepted. The learned counsel for the

assessee has pressed that the mahanti bahi served the purpose of manufacturing account. At the same time it was conceded that mahanti bahi could not be held to be a manufacturing account as required under Rule 72(2). That is correct, but as would appear from the judgment of the appellate authority, want of manufacturing account was considered to be a technical defect. In this connection, it has been pointed out that the assessee had purchased non-ferrous metals worth Rs. 2,24,568.05, out of which sales for Rs. 2,01,462.46 was made. It has been found that non-ferrous metals worth Rs. 23,000 were utilised for manufacturing utensils and after incurring an expense of about Rs. 10,000, their sales for Rs. 43,375.34 could not be called unreasonable. This sale for Rs. 2,01,462.46 must also be covering the profit. I think in such circumstances and the fact that the account books suffer from technical defects only and the turnover of aluminium scraps had been accepted, the turnover of Rs. 2,52,796.71 could at the most be enhanced to Rs. 2,60,000 in a round figure and the amount of excess of Rs. 2,52,796.71 should be added in the turnover of utensils shown at Rs. 43,375.34.

6. Rule 72 of the U.P. Sales Tax Rules prescribes the manner in which accounts should be maintained. It reads:

72. Accounts how to be maintained. -- (1) Every dealer liable to pay tax under the Act, and every person licensed u/s 3-E shall maintain a true and correct account of all his purchases, sales and stocks showing quantity and value for verification of the accuracy of his turnover.

(2) A manufacturer liable to pay tax under the Act shall maintain stock books in respect of raw materials as well as products at the various points of production.

7. The revising authority seems to be of the view that the account books have necessarily to be rejected and the turnover to be enhanced, if an assessee, who is a manufacturer, does not maintain stock book in accordance with Rule 72(2), even if his accounts are otherwise found to have been properly maintained and the turnover correctly shown in the return. This is a patently erroneous view. The Sales Tax Act is primarily concerned with the turnover. The turnover has to be ascertained from the books of accounts maintained by an assessee. The mercantile community follows various systems of account keeping. The Sales Tax Act does not insist that any particular system of accounting should be followed. All that is necessary is that the accounts should be maintained in the ordinary course of business and in accordance with a recognised system of account keeping. Indeed, Rule 72 does not prescribe any system of accounting. It merely prescribes what information should be available in the account books. If the accounts maintained by an assessee are found to be kept in the ordinary course of business and are open to verification, they have to be accepted. On the other hand, if the accounts are defective and are not susceptible to verification and there are circumstances to show that the assessee has not correctly recorded his turnover, Rule 72 may be pressed into aid to reject the accounts and to make proper estimate of the turnover. But, in the absence of a finding that the

accounts are defective and the turnover has not been correctly recorded, mere non-compliance of Rule 72 will not lead to the inevitable consequence of the rejection of accounts and enhancement of the turnover. There is no provision in the Sales Tax Act which requires the accounts to be maintained in a prescribed manner. Indeed, Rule 72 itself does not say that if it is not complied with, the accounts shall be rejected and a best judgment assessment will be made.

8. In the instant case, the revising authority has recorded a categorical finding that the sales under the different heads were reasonable and there was no defect in the assessee's account books and further that the omission to maintain manufacturing account in accordance with Rule 72(2) was merely a technical defect. In such circumstances, it was not open to the revising authority to reject the accounts and to enhance the turnover. Curiously, the enhancement has been made in the turnover of utensils, which has been held by the revising authority to be reasonable. The enhancement in the circumstances is absolutely arbitrary and without any material.

9. We, accordingly, answer the question, on which this court called for the reference, in the negative in favour of the assessee and against the department. The assessee is entitled to the costs which we assess at Rs. 100.