(1987) 02 AHC CK 0026

In the Allahabad High Court

Case No : Sales Tax Revision No. 658 of 1986

Govind Ram Ratan Kumar APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 25-02-1987

Acts Referred:

Citation : (1988) 68 STC 352

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Vineet Saran, for the Appellant; Standing Counsel, for the Respondent

Judgement

Om Prakash, J.—This is a revision for the assessment year 1981-82, by the assessee carrying on business of brick kiln against the Tribunal''s order dated 3rd May, 1985.

2. The books of account of the assessee were rejected on the ground that surveys were conducted on several dates but except the challan and cash memos no other books were shown at the time of survey. From the fact that the books were not produced at the time of survey without any cogent explanation, inference was drawn by the Tribunal that the assessee did not maintain the books day-to-day or in ordinary course of business, and therefore, the turnover of the assessee was estimated. I agree with the inference drawn by the Tribunal that the books were not maintained by the assessee day-to-day or in ordinary course of business. Ordinarily, when the activities of manufacturing, drilling ,extracting the bricks, etc., were going on at the time of the surveys, the assessee should have kept the entire record relating to manufacture of bricks at the kiln. No explanation was given as to why the manufacturing account was not available at the kiln and for what reason the same was removed from the kiln. This happened at the time of all the surveys. From this nothing but the only inference that can be drawn, is that the books are posted by the assessee at his convenience and not day-to-day and, therefore, they were rightly rejected.

3. Then coming to the quantum, Learned Counsel for the assessee argued that in the last year''s assessment, the capacity of the kiln was taken at 5,00,000 but this year that has been increased without giving any cogent reason for that. I agree with the assessee that unless cogent reasons are given for increasing the capacity, the capacity of 5,00,000 taken in the last year should have been taken in this year also. At the time of survey, information was given by the person available at the kiln that the firing was started about 10 days before. The survey was conducted on 12th December, 1981. Even if this version is believed, firing period would commence on 2nd December, 1981, but the assessing officer took the starting period as 28th November, 1981. Looking to all these circumstances, I think that the turnover of bricks could reasonably be determined at 4,00,000. Consequently, proportionate reduction is allowable in coal and the purchases of excess coal consumed from unregistered dealers can be restricted to Rs. 15,000.

4. In the result, the revision is partly allowed. Let a copy of this order be sent to the Tribunal to pass an order u/s 11(8) of the Act determining the turnover of bricks at 4,00,000 instead of 4,35,000 and determining the purchases of excess coal consumed from the unregistered dealers at Rs, 15,000. No order as to costs.