(2007) 08 AHC CK 0014

In the Allahabad High Court

Hira Lal Vinod Kumar APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 17 VST 149

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") are directed against the order of the Tribunal dated September 7, 2001 relating to the assessment years 1985-86, 1986-87 and 1987-88.

2. The applicant was registered dealer and was engaged in the business of manufacture and sales of metal ingot. For the assessment years 1985-86, 1986-87 and 1987-88 the applicant had disclosed taxable turnover at Rs. 19,71,005, Rs. 49,99,637 and Rs. 32,28,127.24. The assessing authority rejected the books of account and by way of best judgment assessment, estimated the taxable turnover at Rs. 21,05,000, Rs. 52,00,000 and Rs. 36,00,000, respectively. The books of account have been rejected mainly on the ground that the applicant being manufacturer, had not maintained any manufacturing account as required u/s 12(2) of the Act. Being aggrieved by the assessment orders, the applicant filed appeals before the Deputy Commissioner (Appeals). The Deputy Commissioner (Appeals) vide order dated November 22,1990 allowed all the three appeals and accepted the books of account and disclosed turnover. The Deputy Commissioner (Appeals) held that the dealer had furnished the details of the raw material used and the goods manufactured in which no defect was found. The first appellate authority also considered the case of the applicant that it was not possible to maintain the books of account at

every stage of production because there are number of stages. It has also been held that the books of account have been accepted in the previous years. Being aggrieved by the order of the first appellate authority, the Commissioner of Trade Tax filed appeals before the Tribunal. The Tribunal by the impugned order allowed all the appeals and restored the order of the assessing authority. The Tribunal relying upon the decision of the apex court in the case of Commissioner of Sales Tax v. Girja Shanker Awanish Kumar reported in [1997] 104 STC 130 : [1997] UPTC 213 has held that non-maintenance of manufacturing account u/s 12(2) of the Act was a technical defect and it leads to the best judgment assessment, accordingly, The Tribunal has restored the order of the assessing authority estimating the turnover by way of best judgment assessment.

3. Heard learned Counsel for the parties.3

4. Learned Counsel for the applicant submitted that the applicant had maintained books of account in the same form as have been maintained in the previous years and the books of account has been accepted in the previous years. He further submitted that the details of the raw material consumed and the goods manufactured have also been furnished and no defect has been found, therefore, the acceptance of the books of account and disclosed turnover by the first appellate authority is wholly justified.

5. Learned Standing counsel relied upon the decision of the apex court in the case of Commissioner of Sales Tax v. Girja Shanker Awanish Kumar [1997] 104 STC 130 : [1997] UPTC 213 and submitted that the estimate of the turnover by way of best judgment assessment is not illegal.

6. Having heard the learned Counsel for the parties, I have gone through 6 the order of the Tribunal and the authorities below.

7. Admittedly, the applicant has not maintained the manufacturing account in accordance with Section 12(2) of the Act. Merely because in the previous years for non-maintenance of manufacturing account, books of account has been accepted the claim of the applicant for acceptance of the books of account cannot be accepted in the years under consideration. The apex court held as follows (pages 131 and 132):

The keeping of a stock register, especially in the case of a manufacturer, is of great importance. It is a means of verifying the assessee''s accounts by having a quantitative tally. Section 12(2) of the Act mandates the dealer to maintain stock books in respect of raw materials as well as products obtained at every stage of production. If such a stock book is not maintained, it leads to the conclusion that the account books are not reliable or that particulars are not properly verifiable. If the account books are rejected, the turnover has to be determined to the best of judgment of the assessing authority concerned. We are unable to uphold the view that a defect in non-maintenance of stock register is only technical and so the turnover disclosed in the account books should be accepted. On the facts of a particular case, it is for the assessing authority to consider along with other materials disclosed in the case, to what extent the account books can be relied on for determining the turnover. In normal circumstances, the rejection of account books calls for the estimation of the turnover to the best of judgment of the assessing authority. Having upheld that the account books of the assessee were liable to be rejected, the learned judge of the High Court was wrong in holding that the defect is of a technical nature and the account books should be accepted. We set aside the decision of the High Court and direct that the estimated turnover of the dealer as upheld in appeal, shall stand restored. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

8. In view of than above, I do not find any merit in the present revisions and are liable to be dismissed.

9. In the result, all the three revisions fail and are, accordingly, dismissed.

