(2017) 01 AHC CK 0188

In the Allahabad High Court

Case No : Trade Tax Revision No. 79 of 2016

M/S M.A. Haleem Sons	APPELLANT
Vs	
Commissioner Commertial Tax Lko.	RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 300

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Rakesh Ranjan Agarwal and Suyash Agarwal, Advocates, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J.—The Tribunal for the purposes of deciding the second appeal has relied upon previous order passed by it on 23.5.2011 in Second Appeal No.178 of 2011. Revision No.137 of 2012 (M/S Deepu Coal Depot v. The Commissioner, Commercial Tax) was filed challenging the order dated 23.5.2011. This revision has been dismissed, vide following orders passed on 29.11.2016:-

"Heard Sri Suyash Agrawal, learned counsel for the applicant and Sri B.K. Pandey, learned standing counsel for the respondent.

This revision has been filed challenging the order dated 23.5.2011 in Second Appeal No.178 of 2011 (2005-2006) passed by the Member, Commercial Tax Tribunal, Allahabad Bench, Allahabad (Division Bench).

Briefly stated, the facts of the present case are that the applicant is a registered dealer engage in trading of coal. During the assessment year 2005-06, he imported 10350 MT coal and disclosed average selling rate of Rs.2075.58 per MT coal. On the basis of materials available on record, the Assessing Authority found the disclosed purchase rate to be very low. Consequently, on consideration of materials available on record, he rejected the books of accounts and determined the average selling rate at Rs.4,000/- per MT. He, thus, determined the sales turnover at Rs.4.14 crores and imposed tax @ 4% which comes to Rs.16,56,000/-. The assessee preferred First Appeal before the Appellate Authority which was partly allowed on the basis of instances of selling rates of other dealers of the same locality. On consideration of such instances, the First Appellate Authority determined the selling rate of Rs.2800/- per MT and accordingly it reduced the turnover and tax. Aggrieved with this order, the applicant filed Second Appeal before the Tribunal which was partly allowed by the impugned judgment reducing the selling rate to Rs.2750/- per MT as was determined in the case of M/s M.A. Haleem & Sons. The aforesaid selling rate in the case of M/s M.A. Haleem & Sons was relied by the applicant before the First Appellate Authority. Rejection of books of accounts and best judgment assessment on the facts and circumstances of the present case, are not disputed by learned counsel for the applicant. The Tribunal has itself reduced the selling rate. Under the circumstances, I do not find any infirmity in the impugned order of the Tribunal. Revision lacks merit and therefore deserves to be dismissed.

In view of the aforesaid, the revision is dismissed."

2. Since the Tribunal has relied upon its earlier decision, which has been affirmed by this Court, a different view is not warranted in the facts of the present case.

3. This revision also fails, for the reasons recorded in the order dated 29.11.2016, passed in Revision No.137 of 2012.