(2017) 02 AHC CK 0197

In the Allahabad High Court

Case No : Trade Tax Revision No. 780 of 2013

M/S S.G. Projects Soyepur APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Citation : (2017) 95 UPTC 331

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Arvind Sikaria, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—This Commercial Tax Revision is by the assessee, relating to the assessment year 2005-2006, in which its Books of Account stands rejected, and a higher tax amount has been held liable to be paid. Following four grounds have been set out by the authorities for the purpose;

(i) it is held that the turnover disclosed in the Books of Account is higher than the turnover disclosed in the return.

(ii) shortage of 4% during transportation of coal has been disbelieved.

(iii) the amount payable towards loading and unloading have been shown lesser than what has actually been incurred; and

(iv) the assessee was found selling the product at a lower rate than what prevailed in the market.

2. Learned counsel for the appellant has relied upon Para-8 of the judgment of this Court in M/s Speed Rollers Pvt. Ltd. v. Commissioner of Trade Tax, U.P., Lucknow, reported in VSTI 2007, Allahabad High Court, 449. So far as shortage/ wastage during the course of transportation is concerned, it is contended that the loss upto 5% is consistently found to be acceptable in such transactions. So

far as loading and unloading are concerned, it is stated that the assessee was actually selling the goods at the railway siding itself and that is why the transportation charges were shown at a lower rate. It is also stated that since this was the first year of business of the assessee, the fact that the coal was sold at a lower rate by it, cannot be ruled out, and it is for the revisionist to decide as to how it conducts its business. For such purpose reliance is placed upo a decision of this Court in M/s Hemraj Udyog, Agra v. Commissioner of Trade Tax U.P. Lucknow, reported in 1997 U.P.T.C.,170.

3. Learned Standing Counsel, on the other hand contends that the authorities had found one instance in which the commodity was found to be delivered at the place of the purchaser and, therefore, the authorities were justify in drawing an inference that the dealer was, in fact, delivering the goods to the purchaser, and it was for reducing its liability to pay tax that a false disclosure has been made in the account books.

4. I have heard Sri Arvind Sikaria, learned counsel for the revisionist and Sri B.K. Pandey, learned Standing Counsel for the State. So far as the first question i.e. Books of Account have been disbelieved for the reason that turnover in the books of account is higher than the amount in return is concerned, it is to be noticed that in a series of judgment of this Court, it is clearly held that Books of Account cannot be rejected merely on the ground that the turnover disclosed in the Books of Account is higher than the turnover disclosed in the return. Para-8 of the judgment in M/s Speed Rollers Pvt. Ltd. (supra), for such purposes is relied upon, which is reproduced:-

"8. It has been repeatedly held by catena of decision that the account books cannot be rejected on the ground where the turnover disclosed in the books of account is higher than the turnover disclosed in the return. (Kailash Stationery Stores v. CST, reported in 1987 UPTC, 115, Chander Bhan Neta Nand v. CST, reported in 1987 ATJ, 761, Matrumal Dhanna Lal Oil Mill v. CST reported in 1986 TNC, Vol.-1, 78, Indian Steel Traders v. CST, reported in 1986 ATJ 418, CST v. Kanpur Glass House, reported in 1986 STR, 148, CST v. Agrawal Bros., reported in (1985) 13 STL, 43 (Pat.), CST v. Durga Galla Bhandar, reported in 1984 ATJ, 332, CST v. Ashok Kumar Santosh Kumar, reported in STI,1983 All. H.C., 50, Pawarooram Gaya Prasad v. CST, reported in 1982 UPTC, 438, Mathura Prasad Shyam Lal v. CST, reported in 1982 UPTC, 782, Eastern Tube Co. v. CST, reported in 1980 UPTC,132, Sesh Mani Raj Mani, reported in 1980 UPTC, 1019, Janki Dass Laxmi Narain v. CST, reported in 1980 UPTC, 343, CST v. Star Paper Mills, reported in 1980 UPTC, 808".

5. In view of the law laid down on the subject, there is no difficulty in holding that the authorities were not justified in discarding the Books of Account only because the figures reflected in the return were lower than what was disclosed in the Books of Account.

6. So for as wastage/shortage of transportation at the rate of 4% is concerned,

learned Standing Counsel submits that if the coal is brought to the premises of the dealer, then the wastage upto 4% or 5% can be considered but not where coal is sold at the railway side itself. This argument of the learned standing counsel, however, is not liable to be sustained, inasmuch as once the assessee is found to be transporting coal from long distance, some reasonable percentage of the product may be lost during transportation/ loading/ unloading. The Tribunal has only allowed 2% for such purposes. There is no basis for the Tribunal to determine or arrived at a conclusion that losses upto 4% could not have occurred. The assessing authority and the Tribunal cannot fix any figure for loss caused during the transportation on surmises. There was nothing on record for the revenue to hold that the figures disclosed by the assessee were abnormally high or that it was otherwise inconceivable. In the absence of any other specific material, the Tribunal was not justified in discarding figures of loss due to transportation at 4% in the facts of the present case.

7. Turning to the third issue with regard to the loading and unloading figures disclosed by the assessee being lower, I find that except for a solitary instances there was no material before the authority to doubt that assessee had not sold coal at the railway side itself. In case there was one transaction in which the stand of the assessee was found wrong, the authorities could have examined the matter with greater caution, but in the absence of any evidence, it was not open for the Tribunal to have discarded the entire entries shown in the account, according to which sale of coal had taken place at the railway side itself. It is, otherwise, for the dealer to decide as to in what manner it is going to sell its product.

8. The last ground relied upon by the Tribunal to discard the books of account is that the assessee has sold goods at a rate lesser than what was the market rate. In that regard, the observation made by this Court in M/s Hemraj Udyog, Agra (supra) would be apposite. Para-7 of the judgment is reproduced:-

"7. It is settled law that it is not the business of the taxing officers to guide the businessmen about the manner in which the later should conduct his business. A businessman is not expected to earn more so as to able to pay higher income tax nor can the sales tax officer force a trader to sell his goods at a particular price. It is for the dealer to chose at what price he will sell the goods and show much of the goods he will sell and how much he will consume for himself or donate. If the assessing officer feels that a particular trader is behaving in a manner which is different from the other traders in the line the only course open to him is to raise an eye of suspicion and make an investigation. But if he does not investigate or if after investigation he does not find anything adverse to the assessee he cannot reject the dealer''s results simply on suspicion or conjecture. Such view have been expressed by the Courts for a long time and the members of the Tribunal must have known this basic concept of tax jurisprudence. Such view were recently repeated by this Court in the case of Saurashtra Chemicals (Supra). It is painful that a higher judicial body like the Sales Tax Tribunal should uphold such perverse enhancement in the turnover.

9. There is nothing on record to indicate that the assessee has deliberately disclosed a lesser figure in the books of account and that Coal was actually sold at a higher rate. The revenue has, otherwise, not investigated the transaction so as to suggest that the price of coal was, otherwise, higher. In such circumstances, the books of account, could not have been rejected merely for the reason that the commodity was sold at the lower side.

10. In view of the discussions aforesaid, the reference is answered by holding that the Tribunal was not justified in discarding the revisionist''s books of account for the reasons noticed. The Tribunal shall proceed afresh in accordance with law.

