
(2016) 07 AHC CK 0161

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 48 of 2005

M/s Varshney Packaging Corporation

APPELLANT

Vs

Commissioner, Trade Tax, U.P. Lucknow

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 7(1), 7(3)

Citation : (2016) 9 ADJ 261

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Yashwant Varma, J.—; Heard Sri R.R. Agrawal learned senior counsel for the revisionist and Sri B.D. Pandey, learned Standing Counsel.

2. This revision lays challenge to an order passed by the Trade Tax Tribunal upholding an order made by the assessing authority rejecting the books of accounts of the assessee and consequently coming to hold that tax has been evaded in respect of the sale of jute bags valued at Rs. 20,00,000/-. The disputed tax liability was pegged as Rs. 1,20,000/-. The undisputed facts appear to be that the revisionist, who is a registered dealer under the provisions of the U.P. Trade Tax Act, 1948 Act was engaged in the manufacture of jute bags. Survey of his business premises is stated to have taken place on 29 April 1998 during the course of which a provisional balance sheet relating to the assessment year 1997-98 was seized. In the course of survey, the assessee is stated to have explained the balance sheet to be a rough and provisional statement of accounts and that it did not represent the actual books of accounts which was maintained by the assessee in terms of the provisions of the 1948 Act. It was contended that the correct books of accounts had been maintained and it is on the basis of audited accounts that the tax had been paid for the relevant assessment year.

3. The assessing authority took note of an apparent discrepancy and variance between the rough/provisional balance sheet and audited accounts on the basis of which self assessment, tax was deposited by the revisionist.

4. The Court finds that the order of the assessing authority was based entirely on the rough/provisional balance sheet which is stated to have been seized during the course of survey on 29 April 1998. The first appellate authority found force in the contention of the revisionist that no ground existed for rejection of books of accounts and accordingly proceeded to annul the demand of additional tax. This order was taken by the State Government in revision to the Tribunal which has as noted above chosen to uphold the view taken by the assessing authority.

5. Sri Agrawal learned counsel has submitted that the precondition for formation of opinion as contemplated under Section 7(3) did not exist and therefore, the rejection of books of accounts was clearly illegal. He has further submitted that the self assessed tax which was paid by the revisionist on the basis of the audited accounts was not disputed by the State. It was contended that unless the respondents had come to a conclusion that the audited accounts was not worthy of credence, tax could not have been imposed on the basis of the rough/provisional balance sheet.

6. Learned Standing Counsel on the other hand has contended that great variance was found between the rough/provisional balance sheet and the audited books of accounts. In that view of the matter, it is his submission that the Tribunal has clearly acted in accordance with law in endorsing the view taken by the assessing authority.

7. Admittedly, the issue of rejection of books of accounts by the registered dealer shall stand governed by the provisions of sub section (3) of Section 7 of the 1948 Act. The said provision reads as follows:

"If no return is submitted by the dealer under subsection (1) within the period prescribed in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof:

Provided that before taking action under this subsection dealer shall be given a reasonable opportunity of providing the correctness and completeness of any return submitted by him."

8. A reading of the said provision indicates that the assessing authority is empowered to reject the books of accounts maintained by a registered dealer if it appears to him that the return is either incorrect or incomplete. The provision also empowers the assessing authority to proceed to undertake a best judgment assessment, if no returns were filed. Admittedly, in the present case, the dealer had filed returns. The returns as well as the self assessed tax have been faulted by the respondents solely on the ground that the audited accounts were at

variance with the balance sheet which was found in the business premises during the course of survey. This in the opinion of the Court would not justify the rejection of books of accounts maintained by the dealer for more than one reason.

9. A reading of the order of the assessing authority as well as the Tribunal indicates that no reason whatsoever has been recorded to reject the audited balance sheet which was presented by the assessee and on the basis of which self assessed tax was deposited. In the absence of such a finding, in the opinion of this Court, there did not exist a circumstance which warranted rejection of books of accounts. The audited balance sheet would have to be faulted after a due enquiry and with reference to other contemporaneous materials which were maintained by the dealer. A rejection of the books of account of a dealer cannot be the outcome of a whimsical or capricious exercise of power.

10. More fundamentally, this Court finds that in terms of subsection (3) even if the assessing authority were to arrive at a conclusion that the returns were incorrect and incomplete, it was further obliged to undertake an enquiry to "determine" the turnover of the dealer to the "best of his judgment". When the provision employs the words "determine" and "best of his judgment", it places and casts an obligation upon the assessing authority to undertake an empirical exercise while endeavouring to make a best judgment assessment. While an estimation in the very nature of things would involve a degree of guess work, the statutory leeway afforded to the assessing authority cannot be treated as license to act arbitrarily. The estimation must necessarily have a reasonable nexus to the available material. The Supreme Court as far back as in *State of Kerala v. C. Vellukutty* (1966) 60 ITR 239 pithily explained the concept of a best judgment assessment in the following terms:

"10. Under Section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice or a Judge, but on settled and invariable principles of justice. Though there is an element of guess work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though sub section (2) of Section 12 of the Act provides a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard to the available material."

11. Here, both the assessing authority as well as Tribunal have failed to discharge this statutory obligation which stood placed upon them. All that the two authorities have done is to assess the revisionist on the basis of the rough/provisional balance sheet which was found in the premises during the course of survey. This, in the opinion of the Court, does not comply with the mandatory obligation placed upon the statutory authorities by and under the provisions of

sub section (3) of Section 7 of the 1948 Act.

12. In view of the above, the order of the Tribunal cannot be sustained. The revision shall accordingly shall stand allowed. The order of the Trade Tax Tribunal dated 25 November 2004 passed in Second Appeal No. 87 of 2001 as also that of the assessing authority dated 30.12.1999 are hereby set aside. The matter shall stand remanded to the assessing authority to proceed in the matter afresh, if so permitted in accordance with law.