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(2017) 03 AHC CK 0091

In the Allahabad High Court

Case No : Sale/Trade Tax Revision No. 491 of 2011

M/s. Virendra Kumar Trading Co. APPELLANT

Vs

Commissioner of Commercial Tax RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21

Citation : (2017) 95 UPTC 400

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Shubham Agrawal, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—Assessee is a registered works contractor and for the assessment year 2002-2003, had been assessed to tax by the authorities under the U.P. Trade Tax Act. The assessment proceedings were concluded. Assessee claimed benefit for purchase of bricks valued at Rs. 26,73,000/- but the assessing authority allowed benefit of purchases only to the extent of Rs. 23 lacs. To that extent, the assessee felt aggrieved and preferred an appeal, which was allowed and relief in respect of the remaining amount was also granted. It appears that the authorities of the State came in possession of material to suspect the aforesaid transactions and, therefore, proceedings for reassessment, after 4 years, were sought to be initiated. The authority, who gave permission to initiate assessment proceedings, vide order dated 9.1.2009, provided that the assessing authority may verify the books of account of M/s. Bhawani Brick Field, Daurala, who had denied having sold these bricks to the revisionist, which apparently had formed the basis for initiating reassessment proceedings. The authority called for the records of M/s. Bhawani Brick Field, Daurala, but such records were not produced. In such circumstances, assessing authority proceeded further with reassessment under Section 21 of the Act, and found that the purchase of the bricks, to the extent of Rs. 20,25,000/- was not genuine and to that extent, the revisionist''s claim has been dis-believed. Such order has been affirmed in appeal by the Tribunal, which has given rise of filing of the present revision by the revisionist.

2. Sri Shubham Agrawal, learned counsel appearing for the revisionist, contends that there was no basis for the State authorities to proceed with reassessment exercise, inasmuch as it was only based on suspicion or surmises. Learned counsel further submits that burden of proof in reassessment proceedings was upon the department, which has not been discharged. Learned counsel further contends that the stand of the seller M/s. Bhawani Brick Field, Daurala, had itself not been accepted by the same assessing authority, therefore, the stand of the seller, having not been accepted by the department itself, could not have formed a valid basis to initiate reassessment proceedings.

3. Learned Standing Counsel, on the other hand, submits that the authorities were justified in proceeding to initiate reassessment proceedings inasmuch as the transaction of purchase of bricks was found to be factually incorrect, inasmuch the alleged seller has denied having sold such bricks and, therefore, no interference, in the matter is called far.

4. It transpires from the record that the assessee had claimed purchases of bricks in 3 lots i.e. on 10.5.2002, 23.7.2002 and 18.10.2002. The claim of the assessee was accepted in its entirety by the first appellate authority in assessment proceedings. However, the seller M/s. Bhawani Brick Field, Daurala, in its statement made before the authority, denied having sold any bricks after 1.10.2002 and it was contended that whatever bricks were made till 30.9.2002 alone were sold till 30.9.2002 and thereafter no bricks were sold. It was for this reason that the transaction of purchase of bricks, by the assessee, on 18.10.2002, was doubted leading to the reassessment proceedings. This disclosure by the seller apparently was the sole basis for initiating reassessment proceedings.

5. The assessee has brought on record an assessment order passed in respect of the seller M/s. Bhawani Brick Field, Daurala for the assessment year 2002-2003 in which the specific case of seller that it be not producted any bricks after 30.9.2002 nor had sold any bricks after that, had been specifically disbelieved. The same assessing authority found that even after alleged closure of brick kiln on 30.9.2002 there were about 18 lacs and 46 thousand bricks lying with the seller and these bricks had been sold. The seller has been held liable to payment of tax in respect of such bricks. The bricks which are said to have been purchased by the applicant on 18.10.2002, falls within the total bricks available with the seller.

6. The order of assessment passed against M/s. Bhawani Brick Field, Daurala is by the same assessing authority and has not been denied. The Tribunal has not considered this aspect of the matter and has merely shifted the burden upon the

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assessee to prove purchase of such bricks. A further finding has been returned that this burden has not been discharged by the assessee.

7. In the facts and circumstances of the present case, this Court finds that for reassessment proceedings, once the basis to discard the figures disclosed by the assessee had not been accepted by the department itself, the authorities were not justified in relying upon disclosure made by M/s. Bhawani Brick Field, Daurala, after its stand was specifically disbelieved by the department itself. Even otherwise, it is settled that in reassessment proceedings, the onus to establish that the disclosure was incorrect, was upon the department, and it could not have been shifted upon the assessee. The onus was otherwise not discharged by the department.

8. In such circumstances, the order passed by the Tribunal in reassessment proceeding is not liable to be sustained. This is particularly so as to order sanctioning reassessment after 4 years had otherwise not been complied with. The question formulated for consideration, in this revision is, therefore, answered by holding that in the facts and circumstances of the present case, the onus to prove that tax had escaped assessment could not have been initiated upon the assessee, and the Tribunal was not justified in relying upon the disclosure of the seller M/s. Bhawani Brick Field, Daurala when such disclosure was specifically rejected by the department itself. The question stands answered in favour of the assessee.

9. Revision accordingly stands disposed of.

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