(2012) 01 AHC CK 0115

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1358 of 2004

Polytech Paints APPELLANT

Vs

Commissioner of Trade Tax, U.P., Lucknow RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 47 VST 261

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant;

Judgement

Bharati Sapru, J.—Heard learned counsel for the revisionist and learned standing counsel for the State. This revision has been filed by M/s. Polytech Paints being aggrieved by an order passed by the Tribunal for the assessment year 1997-98 whereby the Tribunal has imposed an additional tax of Rs. 73,516 upon the assessee.

2. The facts of the case are that the assessee was engaged in the business of manufacture and sale of low price paints and varnish. The assessee was registered under the provisions of the U.P. Trade Tax Act, 1948 as well as under the Central Sales Tax Act, 1956. The case of the assessee is that the assessee''s books of account were accepted for the assessment year 1997-98 and thereafter 1998-99 and the tax return was increasing progressively.

3. However, in the assessment year 1999-2000 a survey was conducted on October 25, 1999 at the business premises of the assessee and during the survey the books of account of the assessee were found to be incomplete for the period August 2, 1999 onwards to October 25, 1999. According to the assessee, despite this finding at the time of survey, when its annual return had taken into account all the materials that have been discovered during the survey and disclosed its turnover for the year in question at Rs. 18,72,080 and tax at Rs. 1,63,180. However, the books of account of the assessee were rejected by the

assessing authority who estimated the turnover of the assessee at Rs. 1,00,74,719 and tax at Rs. 10,06,877.72. The assessee filed an appeal against this assessment order and the first appellate authority reduced the tax liability to Rs. 4,57,500. Against this order in the first appeal, the assessee filed the second appeal and the second appellate authority has further reduced the tax to Rs. 2,36,695.

4. The learned counsel for the assessee has argued that there was no reason for the authorities to disbelieve the accounts as filed by the assessee because in any case the assessee was showing progressive returns and for the assessment year in question also the assessee has shown a progressive return. Therefore, from this alone it could be inferred that there had been any escapement of tax by the assessee and the Department had wrongly estimated the higher turnover on the basis of the survey dated October 25, 1999.

5. The learned counsel for the Department argued that the period for which the accounts were not maintained was the period which was around the festival of Diwali in which season the sales of oil paints were higher and the Tribunal has taken cognizance of this fact. He has argued that the assessment made by the Department was made on the basis of the material which was seized and that the final estimate made by the Tribunal was just and reasonable and had to be paid by the assessee. The Tribunal has recorded that difference in the assessment of the seized material was only of Rs. 5,000 between the assessee and the Department. Value of the material which was seized according to the Department was Rs. 2,92,000 and according to the assessee was Rs. 2,87,348 and the assessment has also been made on the same basis.

6. Thus, learned counsel for the State has contended that it could not be said that the Tribunal has not taken into consideration the assessee''s assessment and in the circumstances has made light enhancement on the turnover on the basis of the value of the material seized on the date of survey.

7. Having heard learned counsel from both the sides and having perused the order of the Tribunal, I am of the opinion, that the order of the Tribunal is just and reasonable and the fact that the Tribunal has not made a wild guess while making the assessment but rather has made the assessment on the basis of the value of the materials found during the survey. The assessee has neither denied the survey nor has denied at any stage that certain materials were seized having the value of Rs. 2,92,000.

8. It is also not denied by the assessee that for a certain period between the month of August and October the accounts were not duly maintained, the reason being that their accountant was unwell. Nevertheless, it is not denied by them that for that period accounts were not maintained. Such being the case, the attention made by the Tribunal in the assessment of the Tribunal as well as the enhancement in the tax is justified in the facts and circumstances of the case.

9. The order of the Tribunal is confirmed as it is. The revision is dismissed.