**(2007) 01 AHC CK 0158**

**In the Allahabad High Court**

Ratan Hari Rolling Mills Ltd. APPELLANT

Vs

The Commissioner of Trade Tax RESPONDENT

**Date of Decision :** 10-01-2007

**Acts Referred:**
Uttar Pradesh Trade Tax Act, 1948 — Section 11

**Citation :** (2009) 25 VST 299

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 15th March, 2000 relating to the assessment year, 1983-84.

2. The applicant was carrying on the business of manufacture and sales of iron bars and claimed to have maintained books of account in the regular course of business and disclosed gross and net turnover at Rs. 2, 31, 61, 439.63 and Rs. 2,26,47,703.63 respectively. Assessing authority rejected the books of account and estimated the taxable turnover at Rs. 2, 50,00,000/-. Applicant filed appeal before the Deputy Commissioner (Appeals) Trade Tax, Kanpur, which was allowed in part. Deputy Commissioner (Appeals) Trade Tax, Kanpur vide order dated 2nd June, 1988 upheld the rejection of the books of account but has estimated the taxable turnover at Rs. 2,31,50,000/-. Being aggrieved by the order of the Deputy Commissioner (Appeals) Trade Tax, Kanpur, applicant as well as Commissioner of Trade Tax filed appeals before the Tribunal. Tribunal by the impugned order dismissed the appeal of the applicant and has allowed the appeal of the Commissioner of Trade Tax. Tribunal has restored the order of the assessing authority. Tribunal held that at the time of road checking by the STO (SIB) Mobile Squad on 9.12.1983, three kilometer away from the Factory, two thelas bearing No. 257 and 491 were checked in which 5.390 tonne round bars valuing Rs. 21.500/- were found. Along with the goods gate pass and bill were

not available and one Challan No. 630 dated 9.12.1983 was produced. Having doubt about the entry of such goods in the books of account survey was made at 7 O''clock at the factory where Sri A.K. Maheshwari, Factory Manager was present. He admitted that challan No. 630 dated9.12.1983 was not issued from the regular challan book. Regular challan book was found issued upto challan No. 627. The factory gate pass was also not issued for the checked goods while the same was being regularly issued for the clearance of the goods from the factory. It was told by the Factory Manager that in hurry challan was prepared on the loose paper and gate pass was not issued. At the time of survey, books of account was found written upto 6.12.1983 and cash balance as per cash books was Rs. 89,915.35 paise, while on counting a sum of Rs. 10,920/- was found. Tribunal also observed that 10 percent loss was shown as against normal loss of about 7 to 8 percent. Tribunal observed that the first appellate authority has not given any basis for reducing the turnover. Looking to the facts and circumstances of the case, Tribunal found that the estimate of the turnover by the assessing authority was justified.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that in the assessment year, 1981-82 and 1982-83 disclosed turnover at Rs. 19,13,477.52 and Rs. 87,85,884.22 respectively were accepted, while in this year progressive turnover has been disclosed. He submitted that at the time of survey no defect was found in the books of account. He submitted that the total value of the goods checked at the time of road checking on 9.12.1983 was only 21,500/- and looking to the aforesaid amount enhancement made by the first appellate authority was reasonable and the Tribunal has illegally restored the enhancement made by the assessing authority which was about Rs. 23 lacs.

5. Learned Standing Counsel submitted that admittedly, in respect of the impugned goods, which were inspected at the time of road checking, challan from the regular bill book, gate pass and the bills have not been issued. At the time of survey challan from the regular challan book was found issued upto challan No. 627. Therefore, like challan Nos. 630, challan Nos. 628 and 629 must have been issued which were also not found entered in the books of account like challan No. 630 dated 9.12.1983. He further submitted that at the time of survey, books of account were found written only upto 6.12.1983 and substantial difference in the cash was found. He submitted that having regard to the suppression found in one day, the estimate of the suppressed turnover at Rs. 23 lacs was absolutely reasonable and there was no justification on the part of the first appellate authority to reduce the turnover. He submitted that the first appellate authority has reduced the turnover without any basis and without giving any reason in this regard.

6. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

 

7. Admittedly, at the time of road checking on 9.12.1983, two thelas bearing No. 257 and 491 were checked in which 5.390 tonne round bars valuing Rs. 21,500/- were found. Along with the goods one challan No. 630 dated 9.12.1983 was available. When the authority concerned made the survey at the factory at 7 O''clock, Sri A.K. Maheshwari, Factory Manager was present. He admitted that the said challan No. 630 dated 9.12.1983 was not issued from the regular challan book and in respect of such goods, gate passes and bills were also not issued. Regular, challan book was also perused which was found issued upto challan No. 627. Copy of the challan Nos. 628 and 629 were not available. It was explained that in hurry, shall on loose paper was prepared and the gate pass was not issued. Books of account was found written upto 6.12.1983 and the cash balance was Rs. 89,915.35 paise, while on counting a sum of Rs. 10.920/- was found. No proper explanation with regard to non-completion of books of account and the excess cash were furnished. No explanation with regard to two-challan Nos. 628 and 629 were also furnished. On the facts and circumstances, it is absolutely clear that the goods have been cleared from the factory without making entry in the books of account. Not only loose challan No. 630 was issued, but it also appears likewise some other challans must have been issued, which were also not found entered in the books of account. Thus, it is a case of suppression of the sale of not only Rs. 21,500/-, but a case of substantial suppression against other challans also. Intent to indulge in the suppression is also supported by the fact that at the time of survey books of account were not found written up to date. It is settled principle of law that on the basis of the suppression found for one day, suppression for the entire year can be estimated. Thus. I see no reason to interfere with the order of the Tribunal.

8. Perusal of the order of the Deputy Commissioner (Appeals), Trade Tax, Kanpur shows that no proper reason has been given for the reduction of the turnover. Merely because the applicant has disclosed progressive turnover during the year under consideration in comparison to the earlier year is no ground to estimate the suppressed turnover only to the extent of Rs. 5 lacs. In my view, having regard to the facts and circumstances of the case, estimate of the turnover by the assessing authority cannot be said to be arbitrary and without any basis. It may be mentioned here that in the best judgment assessment, there is always element of guesswork but unless the estimate of the turnover is arbitrary and without any basis, it cannot be interfered u/s 11 of the Act in exercise of revisional powers.

9. For the reasons stated above, present revision is devoid of any merit and is, accordingly, dismissed.

 