(2008) 01 AHC CK 0233

In the Allahabad High Court

Singh Int Udyog APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 03-01-2008

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

Citation : (2008) 01 AHC CK 0233

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vikram Nath, J.—These two trade tax revisions have been filed by the dealer Singh Int Udyog, Allahabad, u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") assailing the judgment and order dated September 14, 1988 passed by the Trade Tax Tribunal Bench III, Allahabad dismissing second appeals filed by the dealer relating to assessment years 1980-81 and 1981-82.

2. The following questions of law have been sought to be raised in Trade Tax Revision No. 9 of 2008 relating to assessment year 1981-82.

(i) Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in confirming the estimate of the taxable turnover at Rs. 3,10,250 relating to bricks, coal and sand ?

(ii) Whether the estimate of the firing period at 68 days and production at 11,40,000 bricks are based on any material and are legally correct?

(iii) Whether there is any material to hold that the applicant has done any activity of Pathai, Bharai, sale of bricks during the year under consideration?

(iv) Whether the estimate of the average selling rate at Rs. 225 is based on any material while in a number of kilns much less selling rate has been estimated inasmuch as the applicant''s kiln is situated in a village?

3. Further the following questions of law have been sought to be raised in Trade Tax Revision No. 170 of 2008 relating to the assessment year 1980-81.

(i) Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in confirming the order of the first appellate authority estimating the production of bricks at 12,00,000 during the year under consideration and taxable turnover at Rs. 2,46,400 relating to bricks, coal purchased and sand?

(ii) Whether there is any material on record to infer the production of bricks, production, nikoshi and sales of bricks during the year under consideration?

(iii) whether the estimate of selling rate at Rs. 160 per thousand bricks is based on any material and is legally justified.

4. The dealer is a brick kiln involved in manufacturing and selling of bricks. For the assessment year 1980-81 based upon two surveys dated March 28, 1980 and April 15, 1981 the assessing officer, after rejecting the account books of the dealer, determined the turnover at Rs. 2,76,600 with total tax liability Rs. 21,374. Further with regard to the assessment year 1981-82 the assessing officer based on the same survey reports, after rejecting the account books, determined the total turnover at Rs. 4,82,000 with total tax liability as Rs. 36,920. Against both the assessment years the dealer preferred appeal which was partly allowed by the Assistant Commissioner (Judicial), Allahabad vide order dated February 5, 1992. It reduced the tax liability to the tune of Rs. 302 for the assessment year 1980-81 and Rs. 11,180 for the assessment year 1981-82.

5. Aggrieved by the same, the dealer preferred two second appeals, which have been dismissed by the Tribunal vide judgment and order dated September 14, 1998, against which the present revisions have been filed.

6. I have heard Sri Krishna Agarwal, learned Counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel representing the department.

7. With regard to assessment year 1980-81 the submission of Sri Agarwal is that the assessment has been made on the basis of two survey reports which did not relate to the relevant assessment year. According to him no survey was made during the assessment year 1980-81. Further according to him the dealer had declared that no manufacturing activity had taken place during the said assessment year and the opening stock of only 1,000 bricks was sold as such turnover did not fall within the taxable limit.

8. From the perusal of the judgments of the Tribunal and the other authorities, it is clear that the first survey was made on March 28, 1980 which was relevant for the assessment year 1979-80 and the other survey was made on April 15, 1981 which was relevant for assessment year 1981-82. The assessment has been made only on the basis that in the survey dated March 28, 1980 it was found that though the brick kiln was closed, the chambers of the brick kiln were filled with un-baked bricks. Again in the survey dated April 15, 1981 it was noted that

the fire was going on and 3/4 of the chambers of brick kiln were found filled. The second survey was made after more than a year.

9. The basis for holding that manufacturing activity had taken place in the assessment year 1980-81 was only that the dealer must have fired during the relevant assessment year. On presumption only no turnover could be assessed. Further no finding is recorded that any sale had been made by the dealer during the relevant assessment year. Thus, the order for assessment for the assessment year 1980-81 is based purely on assumption and on surveys not relevant to the assessment year. Thus, the assessment for the assessment year 1980-81 cannot be sustained and the revision deserves to be allowed on the question No. (ii). It is accordingly, set aside and the dealer is held to be not liable to pay any tax for the said year. Tax, if any, deposited may be refunded.

10. Now coming to the assessment year 1981-82, the assessment has been made after rejecting the account books on the ground that the dealer had declared that he closed the brick kiln with effect from May 1, 1981, for which intimation was given after about a year, in March, 1982. This appears to be highly suspicious and all the authorities have rejected the stand of the dealer. The brick kiln was found to be functional on April 15, 1981 at the time of survey and the closure aspect having been found to be bogus, account books have been rightly rejected. Further at the time of survey sufficient quantity of coal was also found along with manufactured bricks and the work of Pathai and Bharai were also found to be going on and therefore, the finding recorded is based upon survey report and disbelieving the stand taken by the dealer appears to be correct and does not call for any interference in revisional jurisdiction. Thus the revision with regard to assessment year 1981-82 being devoid of merit is liable to be dismissed. It is, accordingly, dismissed.

11. Both the revisions are decided as above. There shall however be no order as to costs.

