(2007) 09 AHC CK 0217

In the Allahabad High Court

Speed Rollers Pvt. Ltd. APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 13-09-2007

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

Citation : (2009) 20 VST 88

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated December 19, 2006 relating to the assessment year 2000-01.

2. The applicant was engaged in the business of manufacture and sale of iron and steel. The applicant claimed to have maintained the books of account in the regular course of business. The assessing authority rejected the books of account on the ground that on three occasions, Trade Tax Officer, Mobile Squad had seized the goods and against the seizure of the goods, penalties have been levied. The assessing authority had also rejected the books of account on the ground that there was a difference in the return version and book version. Gross and net turnover as per books of account were higher than the return version. The applicant explained that due to the mistake of the accountant lesser turnover was disclosed in the monthly returns. The explanation of the applicant was not accepted. The assessing authority by way of best judgment assessment enhanced the turnover and estimated the suppressed sales of iron and steel at Rs. 35 lacs. First appeal filed by the applicant was dismissed. The applicant further filed second appeal before the Tribunal. The Tribunal by the impugned order has confirmed the rejection of books of account and the estimate of suppressed sales at Rs. 35 lacs. The Tribunal, however, on the other aspects has remanded back the matter to the assessing authority, which is not in dispute in

the present revision.

3. Heard Sri Ashok Kumar, learned Counsel for the applicant and Sri Nimai Das, learned Standing Counsel.

4. Learned Counsel for the applicant submitted that so far as seizure of the goods and levy of the penalties are concerned, Tribunal has held that the penalties against the seizure of the goods were quashed and no adverse inference against such seizure was drawn. He submitted that the only ground taken for the rejection of books of account is the difference in the return version and book version and on the said ground alone upheld the estimate of suppressed sales at Rs. 35 lacs. He submitted that the estimate of turnover disclosed as per books of account was higher than the turnover disclosed in the returns. It was explained that due to the mistake of the accountant, lesser turnover was disclosed in the return. Since as per books of account higher turnover has been disclosed, it cannot be said to be a case of suppression of turnover. He submitted that no defect was found in the books of account and inasmuch as no case of claiming of wrong exemption has been made out. In this view of the matter books of account and disclosed turnover are liable to be accepted. Learned Standing Counsel relied upon the order of the Tribunal.

5. Having heard learned Counsel for the parties, I have perused the order of 5 the Tribunal and the authorities below.

6. I find substance in the argument of learned Counsel for the applicant. Admittedly, as per books of account, higher turnover had been shown than the turnover disclosed in the return both gross as well as net turnover. There appears to be no reason to disbelieve the explanation that by the mistake of accountant, lesser turnover had been disclosed in the return. In any view of the matter, above facts does not lead to the inference of suppression of the turnover. The assessing authority had not pointed out any defect in the books of account.

7. In view of the above, I do not find any justification for the rejection of books of account and for estimating the suppressed sales at Rs. 35 lacs.

8. It has been repeatedly held by catena of decisions that the account books cannot be rejected on the ground where the turnover disclosed in the books of account is higher than the turnover disclosed in the return. Kailash Stationers Stores v. Commissioner of Sales Tax reported in [1987] UPTC 115, Chander Bhan Neta Nand Arhati v. Commissioner of Sales Tax reported in [1987] ATJ 761, Matrumal Dhanna Lal Oil Mills v. Commissioner of Sales Tax reported in [1986] 1 TNC 78, Indian Steel Traders v. Commissioner of Sales Tax reported in [1986] ATJ 418, Commissioner of Sales Tax v. Kanpur Glass House reported in [1986] STR 148, Commissioner of Sales Tax v. Agarwal Brothers reported in [1985] 13 STL 81 (All), Commissioner of Sales Tax v. Durga Galla Bhandar reported in [1984] ATJ 332, Commissioner of Sales Tax v. Ashok Kumar Santhosh Kumar reported in [1983] STI 50 (All), Pawarooram Gaya Prasad v. Commissioner of Sales Tax reported in [1982] UPTC 438, Mathura Prashad Shyamlal v.

Commissioner of Sales Tax reported in [1982] UPTC 782, Eastern Tube Company v. Commissioner of Sales Tax reported in [1980] UPTC 132, Sesh Mani Raj Mani v. Commissioner of Sales Tax reported in [1980] UPTC 1019, Janki Dass Laxmi Narain v. Commissioner of Sales Tax reported in [1980] UPTC 343 and Commissioner of Sales Tax v. Star Paper Mills Ltd. reported in [1980] UPTC 808.

In the result, revision is allowed. Order of the Tribunal is set aside so far as the rejection of books of account and the estimate of suppressed sales at Rs. 35 lacs is concerned. The Tribunal is directed to pass appropriate order u/s 11(8) of the Act.