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(2009) 09 AHC CK 0146

In the Allahabad High Court

The Commissioner Trade Tax — APPELLANT

Vs

Har Govind Das and Sons — RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)

Citation : (2009) 09 AHC CK 0146

Hon'ble Judges : Satya Poot Mehrotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra, J.—Having regard to the averments made in the affidavit accompanying the Delay Condonation Application, namely, Civil Misc. Delay Condonation Application No. 214672 of 2007, I am satisfied that sufficient cause shown has been made out for condoning the delay in filing the Revision.

2. The aforementioned Delay Condonation Application is accordingly allowed.

3. The delay in filing the Revision is condoned.

4. Registry is directed to give appropriate number to the Revision.

5. Having condoned the delay in filing the Revision, the Court is proceeding to consider the Revision on merits.

6. The present Revision has been filed u/s 11 (1) of the U.P. Trade Tax Act against the Judgment and Order dated 6.12.2006 passed by the Trade Tax Tribunal, Kanpur in Second Appeal No. 181 of 2001 regarding assessment year 1998-99 (Central) filed by the opposite party-dealer and Second Appeal No. 252 of 2001 regarding assessment year 1998-99 (Central) filed by the Commissioner Trade Tax, U.P. Lucknow.

7. By the said Judgment and Order dated 6.12.2006, the Second Appeal filed by the opposite party-dealer has been partly allowed while the aforesaid Second

Appeal filed by the Commissioner Trade Tax, U.P. Lucknow has been dismissed by the Tribunal.

8. It appears that the opposite party-dealer carried on the business of purchase/ manufacture and sale of perfumes and aromatic oils etc.

9. By the Order dated 30.3.2001, the Assessing Officer rejected the Account Books of the opposite party-dealer and the turn-over declared by the opposite party-dealer, and made Best Judgment Assessment in respect of the opposite party-dealer for the assessment year 1998-99 (Central). The turnover was determined as Rs. 2,24,62,600.00, and the tax was determined as Rs. 13,39,494.00.

10. In the determination of turnover, the amount regarding evaded sales of perfumes was shown to be Rs. 40,00,000.00 under the Central Sales Tax Act, whereupon tax of Rs. 6,00,000.00 has been assessed.

11. The opposite party-dealer filed an Appeal being Appeal No. 325 of 2001 (Central).

12. By the Judgment and Order dated 24.8.2001 passed by the First Appellate Authority, the quantum of the evaded sales of perfumes under the Central Sales Tax Act was reduced by Rs. 33,00,000.00 to an amount of Rs. 7,00,000.00, and the amount of tax was accordingly reduced by Rs. 4,95,000.00

13. Thereupon, two Second Appeals, as noted above, were filed.

14. By the aforesaid Judgment and Order dated 6.12.2006, the Tribunal has further reduced the quantum in respect of the evaded sales of perfumes to Rs. 1,00,000.00 under the Central Sales Tax Act, and has accordingly reduced the tax liability by Rs. 90,000.00.

15. Thereupon, the Department has filed the present Revision.

16. I have heard the learned Standing Counsel appearing for the applicant, and perused the record.

17. The Tribunal in reducing the quantum in respect of the evaded sales of perfumes under the Central Sales Tax Act, has relied upon the previous assessment orders in respect of the opposite party-dealer wherein the version of the opposite party-dealer was accepted at the stage of assessment itself.

18. The Tribunal has further referred to the nature of the business of the opposite party-dealer in the assessment year in question as well as the other assessment years.

19. The Tribunal has further relied upon a decision of this Court in Fancy Ansar Store v. Commissioner of Sales Tax 1989 U.P.T.C.535. In the said decision this Court has laid-down as under (Paragraph 3 of the said U.P.T.C.):

On a consideration of the rival submissions made by the counsel for the parties

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and the authorities cited on either side as stated above, I find that no doubt it is not possible to lay down circumstances for each case because they would vary from case to case as to the estimate of the turnover which has to be made on the facts of each case, yet there are various circumstances which have to be taken into account. For instances, turnover of earlier years, volume of the business of the prevailing year, the extent and nature of the suppression found, all have to be taken into consideration by the assessing authority while making an estimate of suppressed turnover. The same obviously has not been done by the Tribunal in the present case.

20. It will, thus, be seen that the Tribunal in the present case has passed the Order dated 6.12.2006 after taking into account various relevant factors and has reduced the quantum in respect of the evaded sales of perfumes under the Central Sales Tax Act to Rs. 1,00,000.00.

21. The findings recorded by the Tribunal are findings of fact based on consideration of the relevant material on record.

22. No question of law is involved in the present Revision.

23. The Revision is, therefore, liable to be dismissed, and the same is accordingly dismissed.

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