(2011) 08 AHC CK 0163

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1550 of 2003

The Commissioner Trade Tax U.P. Lko. — APPELLANT

Vs

S/S Balaji Udyog — RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 AHC CK 0163

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri B.K. Pandey, learned Counsel for the department and Sri Krishna Agarwal, learned Counsel for Assessee.

2. This trade tax revision filed by the department is directed against the order of the Trade Tax Tribunal dated 5th October, 2003 passed in Second Appeal Nos. 91 of 2002 and 92 of 2002 (Assessment Year 1998-1999) whereby the Tribunal has reduced the best judgment assessment turn over in respect of food-grains from Rs. 50 lacs to Rs. 35 lacs and similarly in respect of Khali, it has been reduced from Rs. 10 lacs to Rs. 8 lacs.

3. Learned Counsel for the department submits that such reduction in the best judgment turn over is based on mere presumptions by the Tribunal without any reference to any relevant material fact, which can justify such reduction. Learned Counsel for the department submits that a surprise raid of the premises was carried out on 23rd June, 1998. A diary was seized which recorded certain uncounted transactions. The stock register was found incomplete. On that basis, best judgment assessment was made. He submits that the Trade Tax Tribunal has completely ignored that only a part of the year had elapsed on the date of seizure. Best judgment assessment has to be made for the entire year having due regard to the total quantity, which has not been disclosed in the account book for the period between 1st April, 1998 to the date of surprise raid i.e. 28th

June, 1998. Reference has also been made to the judgment of this Court in the case of Jai Ambey Trading Company v. Commissioner of Sales Tax reported in 2003 U.P.T.C. 1276, wherein in paragraph-8 this Court has held as follows:

8. From the aforesaid decision it is clear that the suppressed sales of the period as held by the Hon''ble Supreme Court in the case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, provides material for enhancing the turnover for the assessment year. It can be multiplied. The question is as to whether the Tribunal has determined the turnover on relevant material or not. From the perusal of the impugend order it is clear that the Tribunal has found that the applicant had dispatched 61 trucks of wheat which was not recorded in the books of accounts during shop span of one and half months. This itself goes to show that the Assessee was carrying on business on large-scale. Thus, the determination of turnover on the basis of seizure made on 13-5-1985 cannot be said to be arbitrary. The revision lacks merit and it is dismissed as such.

4. Similarly in respect of paddy husk, the Tribunal has recorded that since there is a certificate of G.B. Pant Agriculture and Technology University, Pantnagar, it has to be held that the paddy husk was exempted from tax as no viability of oil being abstracted from paddy husk and therefore, it has to be treated as De-oiled. Learned Counsel for the department submits that such presumption is wholly misconceived. Paddy husk will not be treated to be De-oiled merely because the University has opined that ti will not be financial viability to abstract the oil from such paddy husk.

5. Learned Counsel for the Assessee however, submits that in the facts of the present case reduction of the best judgment assessment turn over has been done by the Tribunal after considering the past records of the Assessee and therefore, may not be interfered with.

6. The second issue canvassed by the learned Standing Counsel is that only because of the certificate issued by the University, the Tribunal was not justified in treating the paddy husk as De-oiled.

7. It is not in dispute that the surprise raid of the premises of the Assessee was carried out on 23rd June, 1998, uncounted transactions were found. Therefore, best judgment assessment was resorted to. The Tribunal has reduced the best judgment assessment turn over as arrived at by the first appellate authority only on mere presumption without taking note of the fact that the turn over for the remaining part of the assessment year had to be multiplied as has been laid down by this Court in the case of Jai Ambey Trading Company (Supra).

8. In view of the aforesaid, the order of the Tribunal to the extent it reduces the best judgment assessment turn over cannot be legally sustained. It is hereby quashed. Let the Tribunal re-determine the best judgment assessment turn over in light of the observations made above and in light of the judgment of this Court in the case of Jai Ambey Trading Company (Supra).

9. Similarly this Court finds that the Tribunal is not justified in treating the paddy husk as De-oiled only on the basis of certificate issued by the University, with reference to financial viability of oil being abstracted from paddy husk. The cost factor cannot be the determining factor for holding that the paddy husk is De-oiled and therefore, the Tribunal is not justified in treating the same as exempt from tax on that ground. In view of the aforesaid, the finding of the Tribunal in that respect is also unsustainable in the eyes of law.

10. The order of the Tribunal dated 5th October, 2003 is hereby set aside. The second appeal Nos. 91 of 2002 and 92 of 2002 (Assessment Year 1998-1999) are restored to their original number. Let the Tribunal decide both the issue afresh after affording opportunity of hearing to the Assessee by means of a reasoned speaking order, preferably within three months from the date a certified ocpy of this order is filed before the Tribunal.

11. The present revision is allowed subject to the observations made above.