(2012) 05 AHC CK 0268

In the Allahabad High Court

Case No : Trade Tax Revision No. 124 of 2004

Wishwa Mittar Bajaj and Sons APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

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

Citation : (2013) 58 VST 492

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : M.M. Dewan, for the Appellant; Madhurima Bhargava, for the Respondent

Judgement

Satish Chandra, J.—The present revision u/s 11(1) of the U.P. Trade Tax Act, 1948, has been preferred against the judgment and order dated December 17, 2003 passed by the Trade Tax Tribunal, Lucknow in Second Appeal No. 273 of 2001, for the assessment year 1998-99 (penalty). The brief facts of the case are that the revisionist is a partnership firm, who engaged in the business of executing civil contracts. The firm is duly registered under the U.P. Trade Tax Act, 1948 and the Central Sales Tax Act, 1956. The revisionist had opted for compounding scheme for the payment of composition fee in lieu of trade tax u/s 7D of the U.P. Trade Tax Act, for civil contractors for the assessment years 1996-97 to 1999-2000. The compounding scheme was also accepted by the assessing authority for the assessment year under consideration, i.e., 1998-99 as he has passed the assessment order u/s 7D of the U.P. Trade Tax Act on March 24, 2001 and levied the composition fee at one per cent, as provided in the official circular letter dated July 23, 1996.

2. During the assessment year under consideration, the revisionist made purchases for the various materials from the U.P. as well as from outside the U.P. From the outside U.P., the goods were purchased for Rs. 13,46,945.46. The assessing officer after giving the notice, opined that 57 forms for import of the

goods were not shown at the check-posts and no inspection or verification was held at the check-posts. The revisionist has also not informed the Department about the use of the said declaration forms. So, it is the violation of section 28A. Finally, he levied a penalty of Rs. 5,38,778 u/s 15A(1)(o) of the Trade Tax Act. The same was confirmed not only by the first appellate authority but also by the Tribunal. Being aggrieved, the revisionist has filed the present revision.

3. This court vide an interim order dated April 8, 2004 has granted the stay on the penalty of amount.

4. With this background, Sri M.M. Dewan, learned counsel for the revisionist submits that the goods imported from outside the U.P. were exclusively used in the completion of contracts and the materials were not re-sold. He submits that the compounding scheme was accepted by the revisionist as well as the by the Department, and assessment orders were passed u/s 7D of the Act for the previous and subsequent assessment years. No penalty was levied for the previous or subsequent years. So, similar treatment will have to be given for the assessment year under consideration.

5. For the assessment year under consideration, the revisionist itself has voluntarily disclosed the imported items from outside the U.P. and the same were accepted by the assessing officer.

6. At the cost of repetition, learned counsel again submits that for all the years, orders were passed u/s 7D of the Act and the Department has accepted the application of the revisionist under compounding scheme, which shows that figures of these purchases were never doubted by the assessing authority otherwise the assessing officer would have rejected these purchases and passed best judgment assessment orders u/s 7(D) of the Act or rule 41(8) of the U.P. Trade Tax Rules, 1948. For this purpose, he has relied on the following cases:

(1) Commissioner of Sales Tax v. Jageshwar Dayal Khandsari, Dev Kali, Powayan, Shahjahanpur [1985] UPTC 615;

(2) Gulmarg Chemicals and Scientific Works, Aligarh v. Commissioner of Sales Tax, U.P., Lucknow [1997] 105 STC 144 (All) : [1996] UPTC 973;

(3) Prakash Pipes and Industries, New Delhi v. Commissioner of Sales Tax, U.P., Lucknow [1997] UPTC 328;

(4) Satlaj Oil Mills, Dehradun v. Commissioner of Sales Tax [1997] 11 NTN 930;

(5) Garg Associates Pvt. Ltd. Ghaziabad v. Commissioner of Sales Tax [1993] UPTC 79.

7. Lastly, he made a request that the penalty may kindly be cancelled.

8. On the other, hand, Ms. Madhurima Bhargava, learned Standing Counsel justified the impugned order by mentioning that the assessee has used total 57 forms but the same were neither shown at the check-posts nor in the

Department for the purposes of verification. The revisionist has not given any information to the Department pertaining to the import of the goods. She further submits that in form XXXI, the dates are different as mentioned in the bills or in the other documents. The revisionist is bound to inform the Department within 24 hours pertaining to the import of the goods from outside the U.P. Thus, the petitioner has violated the provision of section 28A of the Act. Lastly, he submits that the information was either given belated or not at all. So, the verification was not possible.

9. After hearing both the parties, it appears that the revisionist has opted the compounding scheme. The assessment order, for the assessment year under consideration, was passed u/s 7D of the Trade Tax Act. The similar assessments were passed for the previous and subsequent assessment years. It is vital to note that books of accounts were never rejected. The penalty was imposed on the amount shown by the revisionist for the purchases. The same was not disturbed by the assessing officer. The only charge is that forms XXXI were not produced at the check-posts. The revisionist has also not informed the Department within the prescribed time but fact remains that how the officers at the check-posts had allowed to cross the goods of the revisionist without proper paper or verification of forms XXXI. Nowhere, it is mentioned that the Department has taken any action against the said officers. Similarly, when the revisionist has not informed the Department within the prescribed time, then how the Department has issued form XXXI time to time without getting the verification of the previous forms. From the orders of the lower authorities, it appears that the revisionist has given the information pertaining to the import of the goods but belated for which penalty cannot be sustained as there is no concealment/mala fide intention as per the ratio laid down in the case of Commissioner of Sales Tax, U.P. Vs. Sanjiv Fabrics, . Moreover, failure to furnish the form XXXI in time is a mistake of technical in nature for which no penalty can be imposed as per the ratio laid down in the case of Commissioner of Income Tax Vs. Manager, State Bank of Patiala, .

10. Nowhere, it is mentioned that the revisionist has concealed the imported goods or resale the same. When it is so, then no penalty can be levied. From the record, it appears that the assessee never intended to cause any loss to the Revenue or any element of evasion was established. So, the mere breach of provision of section 28A would not be sufficient for levy of penalty u/s 15A(1)(o) of the Act. In view of above, the revision succeeds and is allowed. The impugned orders passed by the lower authorities as well as the Tribunal are set aside. The levy of penalty is cancelled. The revisionist will get the relief accordingly. No cost.