

Reserved Judgment

Case :- SALES/TRADE TAX REVISION No. - 976 of 2013

Revisionist :- Mahesh Coal Traders

Opposite Party :- Commissioner Commercial Tax

Counsel for Revisionist :- Kunwar Saksena,Suyash Agarawl

Counsel for Opposite Party :- C.S.C.

AND

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Hon'ble Alok Mathur,J.

1. Heard Mr. Rakesh Ranjan, Senior Advocate assisted by Sri Ankur Agarwal, learned counsel for the revisionist as well as Mr. B.K. Pandey, learned counsel for the State.

2. By means of this revision the order of the Commercial Tax Tribunal dated 23.11.2013 has been assailed, whereby the appeal preferred by the revenue was rejected and the appeal preferred by the assessee was substantially allowed.

3. The counsel for the revisionist has submitted that the revisionist carries on business in Coal and is registered under section 17 of the U.P. Value Added Tax Act. He had purchased Coal from outside Uttar Pradesh only against Form 38 which was transported to the assessee's place of business on a railway racks. The freight amount was paid by the assessee to the Railways by means of bank draft, and after taking delivery of the

Coal at the railway site, it was mostly sold to the brick kiln owners who carted away coal from the railway site itself on trucks wholly arranged by them. It was only in the rare case that unsold stock was transferred from the railway site to the applicant's own godown.

4. For the assessment year 2008–09 the assessee filed returns, however the Assessing Authority rejected the books of accounts and assessed the assessee on the basis of survey report dated 28.07.2009 and 04.08.2009 vide assessment order dated 09.07.2012.

5. The revisionist being aggrieved by the assessment order preferred a First Appeal before the Additional Commissioner (Appeals) Commercial Tax, Ghaziabad. The First Appellate Authority allowed the appeal in-part deleting the turnover in respect of alleged purchase and sale of coal made from unregistered dealers on the ground that there was no material whatsoever to make the additions as was made by the assessing authority in this regard. The First Appellate Authority however maintained the average selling rate which was fixed by the assessing authority as well as the order with regard to the rejection of the books of accounts.

6. Against the order passed by the Additional Commissioner (Appeals) Commercial Tax, Ghaziabad, the assessee as well as the Revenue preferred a Second Appeal before the Commercial Tax Tribunal, Ghaziabad. The tribunal by means of the impugned order dated 23.11.2013 has allowed the appeal in part filed by the assessee, upholding the rejection of books of accounts and

the estimate of turnover, but on the other hand reduced the net turnover. The appeal filed by the revenue, has been dismissed.

7. The Tribunal has upheld the rejection of books of accounts, considering the fact that at the time of survey no books of accounts were produced and further that stock of Coal weighing 7-8 tonnes which was found could not be verified from the account books. With regard to the estimated turnover, the assessee had disclosed the average selling rate of Coal at Rs. 3 615.734 per MT, whereas the assessing authority estimated the same of Rs.4100/-but the Tribunal reduced it to Rs.3850/-per MT. The dispute with regard to the average selling rate arose due to the fact that the assessee had stated that the coal was sold at the railway site itself and was carted away by the purchaser themselves taking their own arrangements, while on the other hand the Assessing Officer and the Tribunal were of the view that the assessee had not produced any copy of the goods receipt or any certificate from the purchaser to show whether the freight was paid by them, and therefore, added the freight charges to the rate of coal.

8. In light of the above facts the following question arises for determination in the instant revision:-

1. whether the authorities were justified in rejecting the account books of the assessee for assessment year 2008-09 on the basis of survey report dated 28/07/09 and 04/08/09 is not pertain to the above assessment period and to pass the best judgement assessment?

9. The dispute in the present case relates to the assessment year 2008-09. The case of the assessee is that he is engaged in purchase and sale of coal. According to him,

coal is purchased from outside the State, which is transported by rail. The coal is mostly sold to the Brick Kiln owners. On account of survey conducted on 28.07.2009 and 04.08.2009 it was found that no books of accounts were present at the registered office of the assessee and responsible officer was also not present. In the said premises 7-8 tonne of Coal was found. Due to the above facts, the books of accounts were rejected and fresh assessment was carried out. The first appellate authority and also the tribunal have upheld the rejection of books of accounts and also considered the fact that the stock found on the premises could not be tallied. While rejecting the contention of the assessee, the authorities have recorded that no other fact or material was brought on record which could persuade them to reverse the finding in this regard in favour of the assessee. It recorded that in absence of books of accounts, bill book etc. it was open for the assessee to purchase and sell stock without making proper entries in this regard and therefore this leads to the irrefutable conclusion that the assessee is involved in trade with unregistered dealers to evade payment of tax.

10. The assessee has submitted that no books of accounts were produced before the Surveying Officer as no responsible person was present at the time of survey and no adverse inference of the same can be drawn against the assessee that he has not been maintaining books of accounts in the ordinary course of business. He has further submitted that the assessee is duly maintaining the books of accounts which are audited by the chartered accountants, and just

because the books of accounts were not found at the time of survey, could not be a reason for rejection of the same.

11. The order of the assessing authority dated 09.07.2012 indicates that in pursuance to the show cause notice appearance was put in on behalf of the assessee, and accounts were duly produced which were tallied with the stock and it was found that in fact the coal was sold at a higher rate and no evasion of tax was found. The tribunal, on the other hand, reiterating the above facts have also observed that the books were tallied by the SIT behind the back of the assessee.

12. Applying the above provisions of law the facts of the instant case I find that at the time of survey no books of accounts were found, even the persons responsible for carrying on the business were not found in the premises, but in response to the show cause notice, the assessee appeared along with the books of accounts. The books of accounts were looked into by the SIB and no instance of evasion of tax was discovered. The books of accounts have been rejected solely on the ground that they were not found at the premises of the registered office, and there is all possibility of the same being tampered with or filled in subsequently as per their own convenience which may not reflect the true and correct transactions. The assessee, on the other hand, has also submitted that when the survey was conducted, the books of accounts were with the accountant for the purposes of updating the various entries and were duly produced before the SIB.

13. The books of accounts can be rejected for various reasons; one of them can be that the stock does not tally with the books of accounts or from a perusal of the books of accounts it is not possible to determine the transactions made by the assessing authority or there may be discrepancy between the various stock registers with books of accounts and also with the physical verification of the stock which may lead to an inference that the books of accounts do not reflect the true transaction of business been carried out by the assessee.

14. In the instant case, it seems that the books of accounts were tallied and there is no mention of any deficiency in the books of accounts, but they have been rejected solely on the ground that the same were not found in the premises during the survey. The tribunal has also not considered any other reason for accepting the rejection of books of accounts which, in my opinion, is based on apprehension, rather than due consideration of the facts of the present case. It is also borne from the record that for the financial year 2008-09 tax invoice No. 467 dated 05.02.2009 relating to 63.225 metric tons of Coal was found where the coal was sold at the rate of Rs.3750/- per MT. It has also been observed that during the same period other traders have sold coal at the rate of Rs.6200/-per MT while the brick kiln is at the Ghaziabad and appellants have purchased coal for Rs.5800/- to Rs.6400/-. It is interesting to note that no details of any trader has been specifically mentioned nor the source of the information has been disclosed or verified while observing the above.

15. The Tribunal has not given any independent finding for accepting the order of the assessing officer in rejecting the books of accounts, but has only said that the same has also been upheld by the First Appellate Authority and no interference is required without taking into consideration the grounds taken by the assessee. It was the duty of the Tribunal, which is the final fact finding authority, to have considered the grounds raised by the assessee and to have returned a finding after considering the same. Though the Tribunal has recorded that the books of accounts were duly presented when the show cause notice was given to the assessee, and no discrepancy was found in the same, but non-presentation of the books of accounts at the time of survey cannot be the sole reason for rejection of the books of accounts. The order of the Tribunal in this regard deserves to be set aside and be remanded to it for fresh adjudication.

16. In light of the above, the order of the Tribunal dated 23.11.2013 is set aside and the matter is remanded to it for fresh adjudication expeditiously, say within a period of six months from the date a certified copy of this order is produced before it in accordance with law.

17. With the aforesaid observation, the revision is **allowed.**

Order Date :- 13.04.2020
A.K. Singh

(Alok Mathur, J.)