Neutral Citation No. - 2023:AHC:169366

RESERVED

Court No. - 5

Case :- SALES/TRADE TAX REVISION No. - 26 of 2023

Revisionist :- The Commissioner, Commercial Tax
Opposite Party :- M/S Ramway Foods Ltd.
Counsel for Revisionist :- Avinash Chandra Tripathi
Counsel for Opposite Party :- Vishwjit

WITH

Case :- SALES/TRADE TAX REVISION No. - 27 of 2023

Revisionist :- The Commissioner, Commercial Tax
Opposite Party :- M/S Ramway Foods Ltd.
Counsel for Revisionist :- Avinash Chandra Tripathi
Counsel for Opposite Party :- Vishwjit

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri B.K. Pandey, learned Additional Chief Standing Counsel for the State - revisionist and Shri Vishwjit, learned counsel for the opposite party.

2. Sales/Trade Tax Revision No. 26 of 2023 relates to the Assessment Year 2016-17 under section 28(2) of the VAT Act, while Sales/Trade Tax Revision No. 27 of 2023 relates to the Assessment Year 2016-17 under section 9(4) of the U.P. Tax on Entry of Goods Act, 2007. Since the issue involved in these two revisions are similar, therefore, the same are being decided by the common order.

3. The present revisions have been filed against the judgement & order dated 04.11.2022 passed by Commercial Tax Tribunal, Aligarh Division, Aligarh shifting the burden of proof upon the Department and partly allowing the appeals of the dealer, in which following questions of law have been framed:-

Sales/Trade Tax Revision No. 26 of 2023

(i) Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in deleting the amount of tax levied by the assessing authority when the rejection of account of books have been confirmed and illegally shifted the burden on the department?

(ii) Whether on the facts and in the circumstances of the case the Commercial Tax Tribunal was legally justified in deleting the amount of tax of Rs. 72,50,000/-?

Sales/Trade Tax Revision No. 27 of 2023

(i) Whether on the facts and circumstances of the case the Commercial Tax Tribunal was legally justified in deleting the amount of tax levied by the assessing authority when the rejection of account of books have been confirmed and illegally shifted the burden on the department?

(ii) Whether on the facts and in the circumstances of the case the Commercial Tax Tribunal was legally justified in deleting the amount of tax of Rs. 12,50,000/- as well as Rs. 25,000/- which was confirmed by the 1st Appellate Authority?

4. The aforesaid questions of law have been admitted by this Court vide order dated 24.02.2023.

5. Learned Additional Chief Standing Counsel for the revisionist submits that the opposite party/dealer is a limited company and engaged in the business of purchase of wheat and manufacture of *atta, maida* & *suji.* On 19.08.2016, the business premises of the opposite party was surveyed by the Surveying Authority, in which the books of account of the opposite party were found to be incomplete and various transactions were found to be not properly recorded in the books of account, on the basis of which best judgement assessment was made after rejecting the books of account. The seized documents could not be explained properly and the purchases & sales were made beyond the record. The opposite party claimed the purchases to be made outside the State

of U.P. and supporting documents were submitted. But on verification of the registration numbers of the vehicles, it was found that some of the vehicle numbers were not traceable and some of them were found to be of auto-rickshaw, two-wheeler, passenger vehicles, etc. On the said basis, enhancement of turnover was made treating the same being purchased within the State of U.P., since the goods were treated to be purchased from unregistered dealer. Moreover, only tax was imposed upon the HDEP bags. Feeling aggrieved by the order of the assessing authority, the opposite party preferred appeal before the 1st appellate authority, who, by the order dated 23.12.2021, partly allowed the appeal, against which cross-appeals were preferred before the Commercial Tax Tribunal. The Tribunal, by the impugned judgement & order, has confirmed the rejection of books of account, but has accepted the declared turnover and tax and deleted the amount of tax as assessed by the assessing authority, shifting the negative burden upon the Department that the Department has failed to prove by any cogent materiel that the goods were being purchased from unregistered dealer. Hence, these revisions.

6. Learned ACSC further submits that the section 16 of the UP VAT Act specifically provides that in any assessment proceedings where any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him (assessee), and in particular, the burden of proving the existence of the circumstances bringing the case within any of the exemptions, exceptions or reliefs under any provisions of this Act, including claim of any amount as input tax credit, shall lie upon him (assessee) and assessing authority shall presume the absence of such circumstances. He further submits that the opposite party claims that purchases have been made from outside the State of U.P., but the movement of the goods through various trucks could not be proved as the truck numbers provided for transportation of

goods were found to be two-wheeler, small three-wheeler, passenger vehicles, etc. He further submits that the impugned orders are liable to be set aside and prays for allowing the revisions.

7. Per contra, learned counsel for the assessee – opposite party submits that by the impugned orders, the appeals have been allowed in part and rejection of books of account has been confirmed, but for fixing the turnover, the Department has no cogent reason or material to show that the goods have been purchased from unregistered dealers. He further submits that the opposite party has brought on record the invoices, in which the payment has been made through banking channels. The Mandi Parishad issued requisite forms and copy of the GR's and other document show that the goods were being purchased from outside the State of U.P. and not within the State of U.P. as has been alleged by the Department. The Department has failed to justify the purchases having been made from unregistered dealers within the State of U.P. He prays for dismissal of the revisions.

8. The Court has perused the records.

9. It is not in dispute that the business premises of the opposite party was surveyed on 19.08.2016; wherein, various incriminating materials were found, including loose parchas and books of account was not up-to-date. On the basis of these findings, the books of account were rejected and affirmed upto the Tribunal.

10. It is also admitted at Bar that against the rejection of books of account, the opposite party has not preferred any revision. The only issue remained with regard to fixation of turnover after rejection of the books of account. The dealer has accepted that purchases have been made. If the purchases were made from the registered dealer, then the liability of purchase tax will not arise and if the same were made from unregistered dealer, then the liability of purchase tax will be upon the dealer. The opposite

party – dealer, in support of the purchases, has submitted that the goods have been purchased through invoices, payments were made through banking channel, under the Mandi Adhiniyam requisite forms were submitted for movement of goods as well as the entry in the Mandi area, etc.

11. The opposite party has also submitted the detail of vehicles which were used for the transportation of the said purchases, along with registration numbers. On verification of the registration numbers of the said vehicles, it was found that some of the vehicle numbers were not in the official website of the Motor Vehicle Department and some of the vehicle numbers were found to be of two-wheeler, small three-wheeler, passenger vehicles, etc. The contention of the learned counsel for the opposite party – dealer cannot be accepted merely on production of invoices or payments made through banking channel or forms issued by the Mandi Parishad. For claiming the benefit, the dealer was also required to prove beyond doubt that actual movement of goods was there. Once most of the vehicle numbers provided by the opposite party - dealer were found to be fictitious, the movement of goods cannot be accepted.

12. Section 16 of the UP VAT Act reads as under:-

> ***16. Burden of proof :***
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> *In any assessment proceedings where any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of the circumstances bringing the case within any of the exemptions, exceptions or reliefs under any provisions of this Act including claim of any amount as input tax credit, shall lie upon him and assessing authority shall presume the absence of such circumstances.*

13. From perusal of the aforesaid provision, it is evidently clear that the burden of proof lies upon the dealer/opposite party. In other words, the burden of claim of ex U.P. purchases is squarely upon the opposite party, who has to discharge the said burden and not the Department. Merely showing the purchases through invoices

from the registered dealer, will not enough and sufficient to proof that the purchases have been made bona fidely.

14. The Apex Court in the case of ***The State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited*** (Civil Appeal No. 230 of 2023, decided on 13.03.2023), while considering the *pari materia* of section 70 of the Karnataka Value Added Tax Act, 2003, where the burden was upon the dealer to prove beyond doubt its claim of exemption and deduction of ITC, has observed as under:

> *9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.*
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> *10. Even considering the intent of section 70 of the Act, 2003, it can be seen that the ITC can be claimed only on the genuine transactions of the sale and purchase and even as per section 70(2) if a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable*

> *to be taxed, or liable to take at a lower rate, or that a deduction of input tax is available, such a dealer is liable to pay the penalty. Therefore, as observed hereinabove, for claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer/s fails/fail to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them from the concerned dealers and on which the ITC have been claimed, the Assessing Officer is absolutely justified in rejecting such ITC claim.*

15. The Apex Court has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc.

16. In the case in hand, from the verification of the registration numbers of the trucks provided by the dealer, it was found that some of them are of two-wheeler, passenger vehicles, small three-wheeler and some of them could not be found. Therefore, the dealer has miserably failed to prove the actual physical movement of goods which deemed to have been purchased from ex UP dealers. Once the dealer failed to establish the said purchases and the physical movement of the same, the claim for non-taxability cannot be accepted.

17. The Tribunal has failed to appreciate this vital aspect of the matter that the actual physical movement of the goods could not be proved beyond doubt as claimed by the opposite party – dealer. Surprisingly, the observation of the Tribunal in shifting the burden upon the Department contrary to the provisions of section 16 of the UP VAT Act, is beyond imagination and therefore, the same is perverse.

18. Once the dealer has failed to prove the actual physical movement of goods, the presumption drawn by the assessing authority treating the purchases from unregistered dealer is justified.

19. Once the dealer has failed to prove its purchases from registered dealer, the levy of entry tax treating the same to be purchases from outside the local area and levying of entry tax on the HDEP bags is also justified.

20. In view of the aforesaid facts & circumstances of the case, the judgement & order dated 04.11.2022 passed by Commercial Tax Tribunal, Aligarh Division, Aligarh impugned in Sales/Trade Tax Revision Nos. 26 & 27 of 2023 cannot be sustained and the same is hereby set aside.

21. Accordingly, both the revisions are allowed with a cost of Rs. 5,000/- each, which shall be deposited with the Department within a period of one month from today.

22. List the matter after three months in Chamber, by which time an affidavit of compliance of deposit of cost shall be filed by the opposite party – dealer.

23. The questions of law are answered accordingly.

Order Date :-**23/08/2023**
Amit Mishra