

**Court No. - 5**

**Case :- SALES/TRADE TAX REVISION No. - 45 of 2023**

**Revisionist :-** The Commissioner, Commercial Tax

**Opposite Party :-** M/S Tirupati Construction Co.

**Counsel for Revisionist :-** Ravi Shanker Pandey

**Counsel for Opposite Party :-** Saumya Srivastava, Kushagra Srivastava

**Hon'ble Piyush Agrawal, J.**

Heard Shri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the revisionist and Shri Kushagra Srivastava, learned counsel for the opposite party.

The instant revision has been preferred challenging the order dated 17.11.2022 passed by the Commercial Tax Tribunal, Ghaziabad, Division - 2, Ghaziabad by which levy of entry tax amounting to Rs. 5,00,000/- on purchase turnover of Rs. 1,00,00,000/- determined under the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 (hereinafter referred to as, '**the Entry Tax**') has been set aside.

The revision was admitted vide order dated 04.04.2023 on the following question of law:-

*"Whether on the facts and the circumstances of the case, the Tribunal was legally justified in setting aside the levy of entry tax amounting to Rs. 5,00,000/- on a turnover of purchase of iron & steel from unregistered person amounting to Rs. 1,00,00,000/- when the same turnover was upheld under the U.P. VAT Act 2008 by the Tribunal in its common order dated 17.11.2022?"*

Learned ACSC submits that the opposite party is a work-contractor and deals in the business of electric fittings. The dispute relates to the assessment year 2013-14 under the Entry Tax Act. He further submits that in the disputed year, the respondent carried on the work of electric fittings. The Assessing Authority, while passing the order dated 20.09.2017 under the UP VAT Act had disbelieved certain purchases and rejected certain claim of the respondent treated the same to be purchased from unregistered dealer and made the best judgement assessment. Since the best judgement assessment was made holding certain purchases being made from unregistered dealer, the tax was imposed. Similarly, under the Entry Tax Act also, when under UP VAT Act, but judgement is made treating purchases being made from unregistered dealer, therefore, entry tax was imposed. Against the said orders, two first

appeals were preferred, i.e., under the UP VAT Act and Entry Tax Act and all the appeals were rejected by the order dated 18.02.2021. Against the said order, the respondent preferred two second appeals, out of which one appeal has been partly allowed by the impugned order (under UP VAT Act) and the appeal under the Entry Tax Act was allowed in toto.

Learned ACSC further submits that while partly allowing the second appeal of the respondent under the VAT Act, purchases were accepted from outside the State of U.P. as well as goods imported from outside the country, but the liability, which was imposed by the Assessing Authority on various other grounds, has been confirmed; meaning thereby, purchases from unregistered dealer have been confirmed. He further submits that while passing the order under the Entry Tax Act, without discussing a word, the Tribunal has wrongly held that the respondent has not purchased iron & steel from unregistered dealer and therefore, the Assessing Authority was not justified in fixing the purchases of Rs. 1 crore and levying tax of Rs. 5 lacs and the Tribunal deleted the levy of entry tax amounting to Rs. 5 lacs. He further submits that the Tribunal was not justified in holding that the levy of entry tax being made without any material or evidence. He prays for allowing the revision.

Per contray, learned counsel for the respondent - dealer supports the impugned order passed by the Tribunal. He submits that the Tribunal has accepted the purchases being made from outside the State of U.P. as well as goods imported from outside the country and therefore, has partly allowed the appeal. He further submits that there was no material under the Entry Tax Act to justify fixation of turnover of Rs. 1 crore and levying the tax of Rs. 5 lacs and therefore, the Tribunal has rightly deleted the said levy of tax. He further submits that the Tribunal has accepted that there was no purchase being made from unregistered dealer and therefore, has rightly deleted the levy of entry tax. He prays for dismissal of the revision.

After hearing learned counsel for the parties, the Court has perused the records.

It is not in dispute that against the order of the Tribunal partly allowing the second appeal of the respondent, any revision has been preferred under the UP VAT Act. It is also not in dispute that while allowing the second appeal in part, the Tribunal has confirmed the levy of tax apart from purchases being made from outside the country as well as purchases made from outside

the State of U.P. In other words, all levy of tax, other than the aforesaid two, has been confirmed against the respondent, to which no appeal or revision has been preferred. It is admitted between the parties that the tax levied by the Assessing Authority has been confirmed, which goes to show that the purchases from unregistered dealer have been confirmed upto the Tribunal. Once the said finding is not assailed by the respondent, the Tribunal was not correct in holding that the respondent has not made purchase of iron & steel from unregistered dealer.

The Tribunal, by the impugned order, has tried to blow hot & cold at the same time. It may further be observed that the Tribunal, while recording the finding under the Entry Tax Act that the purchased have not been made from unregistered dealer by the respondent, has neither made any discussion, nor any material was brought on record to justify the said observation. Once it has been held that under the UP VAT Act purchases from unregistered dealer have been made, the Tribunal's observation that no purchase has been made and in absence of any material and evidence, the entry tax cannot be levied, is perverse and cannot be justified in the eyes of law.

In view of the aforesaid facts & circumstances of the case, the impugned order passed by the Tribunal is set aside to the extent that the levy of entry tax as assessed by the Assessing Authority is confirmed.

The revision succeeds and is allowed.

The question of law is answered accordingly.

**Order Date :- 22.8.2023**

Amit Mishra