

Court No. - 50

Case :- SALES/TRADE TAX REVISION No. - 96 of 2023

Revisionist :- The Commissioner, Commercial Tax U.P.

Opposite Party :- M/S Vikalp Construction Company

Counsel for Revisionist :- Ravi Shanker Pandey,S.C.

Counsel for Opposite Party :- Aditya Pandey

Hon'ble Shekhar B. Saraf,J.

1. This is a revision application filed by the Department against the order passed by the Tribunal dated April 28, 2023. The questions of law framed are as provided below:-

“1. Whether on the facts and circumstances of the case, the Commercial Tax Tribunal was legally justified in not including the inward freight, labour expenses incurred in loading and unloading of goods in the sale consideration received by the seller of goods against the provisions contained in Section 2(ad) defining ‘Sale Price’ under the U.P. VAT Act, 2008?

2. Whether on the facts and circumstances of the case, the Commercial Tax Tribunal was legally justified in misreading the fact that the dispute involved in the present case was in respect of inward freight and other expenses incurred before handing over the delivery of goods and not outward fright and other expenses?”

2. Counsel on behalf of the revisionist states that the judgment of the Supreme Court in **India Motors Limited vs. State of Tamilnadu** reported in **2010 UPTC 1309** would apply to the present case and the inward freight and labour expenses incurred by the assessee is to be added in the sale consideration.

3. Counsel on behalf of the respondent/assessee relies on an order passed by a coordinate Bench of this Court in case of the same assessee in Sales/Trade Tax Revision No.493 of 2011 (Vikalp Construction Company vs. the Commissioner, Commercial Tax) for the assessment year 2009-10 in which identical issue was answered in favour of the assessee. In the

aforesaid case, this Court had clarified that the judgment in **India Motors' case** (supra) would not apply as the provisions of the Tamil Nadu General Sales Tax Rules, 1959 are different from the U.P. Trade Tax Act. Similar order dated 26.4.2022 has been passed by another coordinate Bench of this Court in Sales/Trade Tax Revision Nos.19, 20, 21, 22 and 23 of 2017 following the ratio applied in the assessee's case in Sales/Trade Tax Revision No.493 of 2011.

4. Counsel on behalf of the respondent/assessee further relies on a Tribunal's order dated September 22, 2012 passed pursuant to the remand made by this Court in Sales/Trade Tax Revision No.493 of 2011. The Tribunal categorically held in favour of the assessee. He states that this order was never challenged by the Department and, therefore, the position of law is now settled.

5. Counsel on behalf of the respondent/assessee also relies on a Supreme Court judgment in the case of **Birla Corporation Ltd. vs. Commissioner of Central Excise** reported in **2005(186) E.L.T. 266 (S.C.)** to buttress his argument that once the Department has accepted a particular stand and not gone in appeal, it cannot raise the similar issue in subsequent assessment year. The relevant paragraph is quoted below:-

“5. In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in *Pepsico India Holdings Ltd.* (supra) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in state of confusion and will place the authorities as well as the assesseees in a quandary.”

6. Upon hearing counsel on behalf of the parties and upon perusal of record and after careful examination of the catena of judgments cited by

the respondent/assessee, I am of the view that no interference is required in the impugned order and no substantial question of law arises.

7. Accordingly, both the questions of law are answered in the affirmative and in favour of the assessee.

8. The revision is dismissed.

Order Date :- 15.12.2023

Rakesh

(Shekhar B. Saraf, J.)