

Court No. - 17

Case :- SALES/TRADE TAX REVISION No. - 286 of 2010

Revisionist :- M/S Food Corporation Of India Lucknow Asst. General Manager

Opposite Party :- Commissioner Of Commercial Tax U.P. Lucknow

Counsel for Revisionist :- P. Agrawal

Counsel for Opposite Party :- C.S.C.,Md. Rafi Khan

Hon'ble Alok Mathur,J.

1. Heard Sri Pradeep Agarwal learned counsel for revisionist as well as Sri Pankaj Khare, learned Additional Chief Standing Counsel for respondents.

2. By means of the present revision, the revisionist has assailed the order of the Commercial Tax Tribunal, Bench-I, Lucknow dated 26.08.2010 whereby it has rejected the second appeal preferred by the revisionist.

3. The facts in brief are that the revisionist is a Central Government Undertaking and is registered dealer under the U.P. Value Added Tax Act, 2008. The revisionist renders services to producers and consumers alike by procuring food grains at the notified prices, providing buffer stocks of food grains and essential commodities and acts as an agency of the Union of India.

4. It has been stated that the procurement and distribution of food grains is regulated by various control orders as well as orders and directions of the Union of India and State of U.P. The food grains are also collected under the various orders passed under the Essential Commodities Act and under the levy procurement scheme of the Price Support Scheme. The revisionist is entrusted inter alia with the duty of collecting levy food grains for and on behalf of the State of U.P. and for storing the same for the Central Pool.

5. The dispute in the present revision is with regard to the assessment year 2000-01 and the assessment was completed on 15.02.2003 by the assessing authority. During the said assessment year, the revisionist claims to have purchased food grains from the State agency for value of Rs. 7,60,14,249.75/- on which 4% trade tax was paid.

6. It has further been stated that by means of Notification dated 21.05.1994, the State of U.P. has issued a Notification

under Section 4B of the Uttar Pradesh Trade Tax Act, 1948, which are read as under:-

"In exercise of the powers under clause (a-1) of sub-section (1) of Section 4-B of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948), the Governor is pleased to declare that with effect from June 1, 1994 where any declared goods liable to tax under sub-section (1) of Section 3-D of the said Act are sold or supplied by a dealer who is the first purchaser thereof, to another dealer holding a valid recognition certificate issued under sub-section (20) of the said Section 4-B, the dealer making such sale or supply shall, on furnishing to the assessing authority within the time prescribed a declaration in Form 3-B obtained from the dealer to whom such goods were sold or supplied, be liable to tax at the rate of 2 per cent on the turnover of first purchase of such goods."

7. As per the said notification, a rebate of 2% is admissible on the turnover of the first purchase of the goods after demonstrating that the said goods were sold after obtaining form 3B from the dealer and the goods should be the declared goods liable to be taxed under Sub-Section 2 of Section 4B.

8. The Assessing Officer while considering the assessment for the assessment year 2000-01 had issued notices to the revisionist but despite notices no one appeared and ultimately the representative who appeared could not satisfy or produce any documents that the said roller flour mills was with regard to goods on which the tax had already been paid. It is due to the aforesaid reasons, he disallowed the rebate of 2% which would otherwise has been admissible to the revisionist as per Notification dated 21.05.1994. The revisionist being aggrieved by the assessment order dated 18.05.2006 preferred a first appeal before the Joint Commissioner (Appeal-3), Trade Tax Act, Lucknow and the said appeal was also rejected on 15.12.2007.

9. A perusal of the said order indicates that despite the said issue having been raised by the revisionist was noticed but it was not dealt by him in the said order. The revisionist being aggrieved by the first appellate order dated 15.12.2007 preferred a second appeal before the Trade Tax Tribunal which has been rejected by means of impugned order dated 26.08.2010 against which present revision has been preferred.

10. The Tribunal while rejecting the said revision has noticed that the revisionist could not produced any document to indicate that the wheat sold to the roller flour mills was from the wheat on which tax had already been paid and merely on the said basis

rejected the revision preferred by the revisionist.

11. Sri Pradeep Agarwal, learned counsel for revisionist has vehemently urged that the chart as per the assessment order would clearly indicate that the revisionist has purchased wheat valued at Rs. 76014290/- out of which the wheat for an amount of Rs. 61151881/- was sold to the roller flour mills. He submits that on the entire purchase of the wheat which was valued Rs. 76014290/- , tax @ 4% was paid. He further submits that merely because the assessing authority was not satisfied on the basis of records that the goods supplied to the roller flour mills had already been subjected to tax @ 4% he has rejected the contention of the revisionist. He has submitted that all the documents are in possession and knowledge of the revisionist and he can demonstrate the same before the competent authority.

12. Learned Chief Standing Counsel on behalf of the State has supported the impugned order. He submits that as per the notification dated 21.05.1994, it was provided that the petitioner would have to demonstrate that the said wheat has been sold after obtaining Form 3B and secondly the said goods have to be declared goods liable to be taxed under sub-Section 2 of Section 4B. He further submits that the petitioner was unable to demonstrate that the goods which was supplied to the roller flour mills had in fact been subjected to tax @ 4% being the first purchaser of goods and consequently he submits that in case the revisionist had produced the relevant documents before the assessing authority, they could have been scrutinized and the rebate as admissible could have been considered.

13. In light of the above and specially contention raised by learned counsel for revisionist that the goods supplied to the roller flour mills were in fact goods on which tax had already been paid tax @ 4%. This fact is also evident from the order of assessing authority, but relevant documents could not be produced by the revisionist before the assessing authority. In the said situation, it would be in fitness of things that an opportunity is given to him to demonstrate that the goods supplied to the roller flour mills is covered by Notification dated 21.05.1984 and the conditions made therein are fulfilled.

14. With a view to giving opportunity to the revisionist to demonstrate the fulfillment of the conditions prescribed in the aforesaid order, the matter is accordingly remitted to the Trade Tax Tribunal. In the remand proceedings, the Tribunal if thinks proper may further remit the matter for the limited purpose to the assessing authority or may call for a report from the assessing authority to satisfy himself that the conditions

mentioned in the Notification dated 21.05.1994 are either fulfilled or not. In case the revisionist is able to demonstrate that all the conditions of notification dated 21.05.1994 are fulfilled then the Tribunal shall proceed to pass orders accordingly.

15. Considering that much time has lapsed since pendency of the present revision, it is provided that necessary orders may be passed expeditiously, say, within a period of six months from the date of a certified copy of this order is produced before him.

16. In light of the above, the revision is allowed. Subject to the aforesaid directions. The order dated 26.08.2010 passed by the Tribunal is set aside.

(Alok Mathur, J.)

Order Date :- 11.12.2023

Ravi/