

Court No. - 5

Case :- SALES/TRADE TAX REVISION No. - 65 of 2015

Revisionist :- M/S Kanhaiya Lal Prag Das 7 Nazirabad
Lko.Thru.Proprietor

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

Counsel for Revisionist :- Neerav Chitravanshi

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

Hon'ble Abdul Moin,J.

1. Heard Shri Neerav Chitravanshi, learned counsel for the revisionist as well as Shri Sanjay Sarin, learned Additional Chief Standing counsel on behalf of the opposite party.

2. The instant revision has been filed on various questions of law. The revision had been admitted on the questions framed in paragraph 32 of the revision in clause (i), (ii) & (vi) which are the questions which are required to be considered.

3. For the sake of convenience, questions framed in paragraph 32 of the revision in clause (i), (ii) & (vi) are reproduced below:

"(i) Whether in the facts and under the circumstances of the case, the learned Tribunal was justified in upholding the best judgment assessment?

(ii) Whether absence of books of accounts on the date of survey dated 21.10.2011 alone can be the basis of best judgment assessment while the same were produced during assessment proceedings and no defect or discrepancy was found therein?

(vi) Whether the material on record was sufficient for rejection of books of accounts and enhancement of turnover of the revisionist for the year under consideration in the facts and circumstances of the case?

4. Bereft of unnecessary details, the facts of the case are that a survey was conducted on the commercial premises of the revisionist on 21.10.2011 and a search memo under the provision of Section 45(4) of the U.P. Value Added Tax Act, 2008 (hereinafter referred to as "Act, 2008") was prepared. A copy of the search memo is annexure 1 to the revision. It is contended that a notice was issued to the revisionist on 01.11.2011 and thereafter, a second notice was issued on 30.12.2011, a copy of which is annexure 4 to the petition. The said notice specifically indicated that at the time of survey, the revisionist failed to produce the book of accounts of sale and purchase, bills, the cash book etc. A reply was filed by the petitioner specifically denying the non-production of books of accounts, a copy of which is annexure 5 to the petition. On the basis of the reply of the petitioner, a confidential report dated 10.01.2012, a copy of which is annexure 6 to the petition, was drawn up per which it was specifically indicated that at the time of survey, the petitioner failed to produce the books of accounts. Subsequent thereto, the order dated 28.10.2023 was passed against the petitioner, a copy of which is annexure 10 to the petition, in which it was specifically indicated that at the time of survey on 21.10.2011, the revisionist failed to produce the books of accounts rather the accounts were said to be on computer but the revisionist was required to keep a copy of the days accounts by printing a hard copy and to keep it bound, but no such documents were ever produced at the time of survey and consequently, Rs.18/- Lacs and odd towards sales and Rs.16/- Lacs and odd towards purchases were assessed and the petitioner was thus, required to pay an amount of Rs.2/- Lacs and odd towards additional tax.

5. Being aggrieved, the petitioner filed an appeal under Section 55 of the Act, 2008 which was partly allowed vide order dated

22.01.2014, a copy of which is annexure 12 to the revision, and the tax liability was reduced. Still being aggrieved, the petitioner filed an appeal under Section 57 of the Act, 2008 which had been rejected vide order dated 25.06.2015, a copy of which is annexure 15 to the revision, and hence the instant revision.

6. The argument of learned counsel for the revisionist is that a perusal of the receipt as issued under Section 45(4) of the Act, 2008 would itself indicate that the authorities have seized the books of accounts of the revisionist and no discrepancy in the said memo was indicated. He also contends that upon a notice being issued to the revisionist, the revisionist while sending his reply, a copy of which is annexure 5 to the petition, had specifically indicated this fact that all the books of accounts were available at the time of the survey which were duly shown and seized by the authorities, and hence, at a subsequent stage indicating that the revisionist did not show the complete books of accounts, is patently misconceived. He further contends that the authorities, while drawing up the confidential report dated 10.01.2012, have failed to consider this aspect of the matter. This aspect of the matter has also not been considered while passing the assessment order dated 28.10.2013 and in the appellate orders dated 22.01.2014 & 25.06.2015. He further contends that the learned Tribunal while passing the judgment and order dated 25.06.2015 has gone to the extent of observing that the reply of the appellant-revisionist that in case the books of accounts would have been demanded the same would have been shown is patently misconceived as in case the surveying authorities are going at the spot inspection obviously they would ask for books of accounts at the first instance, which is totally misconceived and totally belied from records considering the receipt as had been issued by the authorities

under the provision of Section 45(4) of the Act, 2008 as well as the reply submitted by the petitioner, which all had not been considered in the proper perspective.

7. Another argument of learned counsel for the revisionist is that the impugned order passed by the learned Tribunal dated 25.06.2015 has been passed without complying with the provisions of Rule 63(5) of the U.P. Value Added Rules, 2008 (hereinafter referred to as "Rules, 2008") which has been held to be mandatory by this Court in **Sales/Trade Tax Revision No.39 of 2018 in Re: M/S Rajansh Marble House Gomti Nagar Lko.Throu Proprietor Vs. The Commissioner Commercial Tax U.P.Lucknow And Another** decided on 11.01.2024.

8. On the other hand, Shri Sanjay Sarin, learned Additional Chief Standing counsel appearing on behalf of the opposite party has supported the orders impugned by indicating that there is no illegality and infirmity in the orders passed by the authorities including the judgment and order dated 25.06.2015 passed by the learned Tribunal and as the revisionist failed to produce the books of accounts, consequently, no error was committed by the learned Tribunal while dismissing the appeal filed by the revisionist.

9. Heard learned counsels for the parties and perused the record.

10. From perusal of the records, it emerges that a survey was conducted on the commercial premises of the revisionist on 21.10.2011. The books of accounts were seized and a receipt thereof was issued under the provision of Sub-section (4) of Section 45 of the Act, 2008. The copy of the receipt nowhere indicates of any books not having been produced by the revisionist rather it only indicates about the books which have

been seized and taken away by the surveying authority. Upon the issue of the notice to the revisionist, he submitted his reply, a copy of which is annexure 5 to the petition, specifically indicating that all the books of accounts were available at the time of survey and whatever books of accounts were taken away by the authorities, the receipt thereof was given and that no discrepancy or shortage or any non-inclination of the revisionist in showing the books of accounts was ever indicated in the said survey report. Based on the reply of the petitioner, the confidential report dated 10.01.2012 was drawn up by the authorities which indicated that the books of accounts were not made available at the time of survey. Subsequent thereto, the assessment order dated 28.10.2013 was passed whereby it was specifically indicated that at the time of survey, various books of accounts were not produced by the revisionist. Consequently, the revisionist had been required to pay additional tax. The appeal filed against the same has been partly allowed vide order dated 22.01.2014 and the tax liability was reduced. Upon an appeal being filed by the revisionist, the said appeal has been rejected vide order dated 25.06.2015.

11. A perusal of the receipt as issued under the provision of Sub-section (4) of Section 45 of the Act, 2008 would indicate that the surveying authorities had seized certain books of the revisionist. Sub-section (4) of Section 45 of the Act, 2008 specifically provides that where the authorized officer while examining any books, accounts or documents or conducting search or inspection has reason to believe that any dealer is trying to evade liability of payment of tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account register or document, he may seize **such account, register or document** as may be necessary.

12. For the sake of convenience, the Sub-section (4) of Section 45 of the Act, 2008 is reproduced below:

"(4) If the authorised officer while examining any books, accounts or documents or conducting search or inspection has reason to believe that any dealer is trying to evade liability of payment of tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or document, he may seize such account, register or document as may be necessary. The authorised officer shall forthwith grant a receipt for the same and shall return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of seizure after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or documents, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed on each account, register or documents:

Provided that where a dealer has maintained any document on magnetic media or electronic media, the authorized officer, after preparing hard copies of the document and CD in duplicate and after putting his signature at various places on such hard copy and CD, return such media alongwith one copy of the hard copy and the CD:

Provided further that where intimation, for receiving seized account, register or document back, has been sent to the dealer or the person concerned and the dealer or such person, in spite of receipt of such intimation, does not appear on the date fixed for return of such documents and consequently, where seized account, register or document is returned to the dealer or the person concerned after expiry of the period of ninety days, it shall be deemed that such account, register or document has been returned within the period of ninety days."

13. From a plain reading of Sub-section (4) of Section 45 of the Act, 2008, it clearly emerges that where from the documents from which any liability can be found from any register or document, that document is to be seized. The authorized officer has seized two documents of the petitioner as specifically stands recorded in the receipt which has been issued meaning thereby, that it was on the basis of those two documents that the authorized officer was of the opinion that any liability could be found against the revisionist. Incidentally, the said receipt does not indicate about non-production of books of accounts for which the revisionist is being subsequently charged. It is not

understood that when certain books of accounts were in fact seized, as emerges from a perusal of the receipt dated 21.10.2011, what prevented the authorities from indicating on the said receipt itself or by a separate memo on the same day itself regarding the revisionist not having produced the books of accounts. Moreover, Section 45(4) of the Act, 2008 mandates seizure of such documents, accounts or register from which investigation of liability of payment of tax may be found meaning thereby that the other books of accounts were not required to be seized at that stretch of time. The notices that have been issued to the revisionist are also of subsequent dates i.e. the first notice being issued ten days later on 01.11.2011 and the second notice being issued more than two months later on 30.12.2011 while the confidential report has been drawn up on 10.01.2012. Had the authorities woken up to the alleged fact of the revisionist having not produced the books of accounts at the time of inspection itself i.e. on 21.10.2011, the said fact could have been indicated on the receipt itself which, if true, would have prevented the wasted time both at the end of authorities and of this Court, the instant revision having been filed in the year 2015.

14. Apart from the above, what the Court finds is that the judgment of the learned Tribunal dated 25.06.2015 does not conform to Sub-rule (5) of Rule 63 of the Rules, 2008 which has been held to be mandatory by this Court in the case of **M/S Rajansh Marble House (supra)**. For the sake of convenience, para no.26 of the said judgment is reproduced below:-

"Accordingly, when the impugned judgement of learned Tribunal is seen in the context of the law laid down by this Court in the case of Ved Ram (supra) vis a vis the provisions of Section 57(8) and Section 57(5) of the Act, 2008 read with Rule 63(5) of the Rules, 2008 it clearly emerges that learned Tribunal has patently erred in neither noting the points for

determination nor giving the reason for such decision thereon. Even though certain reasons are indicated in the impugned judgement, as emerge from a perusal of the said judgement, yet without determining the points for determination and the reasons for such decision thereon, it cannot be said that the judgement of learned Tribunal complies with the provisions of Rule 63(5) of the Rules, 2008."

15. Apart from the above, the learned Tribunal has also not dealt with the specific grounds, as raised by the appellant-revisionist in his appeal, of the entire books of accounts having been shown at the time of the survey itself.

16. Keeping in view of the aforesaid discussion, the revision is **allowed**. The impugned order dated 25.06.2015, a copy of which is annexure 15, is **set aside**. The matter is remitted to the learned Tribunal to decide the matter keeping in view of the discussions made above.

17. Let such a decision be taken within a period of three months from the date of receipt of certified copy of this order after giving due opportunity of hearing to all the concerned parties.

18. The questions of law are decided accordingly.

Order Date :- 31.1.2024

S. Shivhare