Court No. - 7

Case :- SALES/TRADE TAX REVISION No. - 311 of 2011

Revisionist :- Commissioner Commercial Tax Lucknow
Opposite Party :- M/S Rajdhani Arms Corporation Lucknow
Counsel for Revisionist :- Standing Counsel
Counsel for Opposite Party :- Anand Dubey

Alongwith

(1) **Case :-** SALES/TRADE TAX REVISION No. - 313 of 2011

Revisionist :- Commissioner Commercial Tax Lucknow
Opposite Party :- M/S Rajdhani Arms Corporation Lucknow
Counsel for Revisionist :- Standing Counsel
Counsel for Opposite Party :- Anand Dubey

(2) **Case :-** SALES/TRADE TAX REVISION No. - 22 of 2012

Revisionist :- Commissioner Commercial Tax Lucknow
Opposite Party :- M/S Rajdhani Arms Corporation 10 Latush Road Lucknow
Counsel for Revisionist :- C S C
Counsel for Opposite Party :- Anand Dubey

(3) **Case :-** SALES/TRADE TAX REVISION No. - 25 of 2012

Revisionist :- Commissioner Commercial Tax Commercial Tax Bhawan Lko.
Opposite Party :- M/S Rajdhani Arms Corp. 10 Latush Road Lko.
Counsel for Revisionist :- C.S.C.
Counsel for Opposite Party :- Anand Dubey

Hon'ble Alok Mathur,J.

1. Heard Sri Sanjay Sarin, learned Standing Counsel appearing for the revisionist as well as Sri Anand Dubey, learned counsel appearing on behalf of opposite party.

2. Present revisions have been filed by the Revenue against judgment and order dated 13.04.2011, passed by the Commercial Tax Tribunal, Bench-I, Lucknow, pertaining to Assessment Year 2006-07 (State) and 2007-08 (State & Central), wherein by means of common judgment and order

four appeals preferred by the opposite party were allowed.

3. Present revisions were admitted on 14.02.2020, on the following substantial questions of law :-

"*(ii) Whether the learned Tribunal was legally justified in view of law laid down by the Hon'ble High Court in the case of Singh Trading Co. Vs. CST, reported in STI 1989, page 322 and CST Vs. Kishore Singh Oswal, 1999 UPTC page 1051, wherein the Hon'ble High Court has observed that finding of facts not based on record can be disturbed in revision?*

(iii) Whether the learned Tribunal was legally justified in holding that the proceedings were undertaken under Section 21 while the said proceedings were initiated only after collecting information and that too after taking permission for initiation of the same from the competent authority?"

4. Brief facts of the case are that opposite party (Assessee) is a dealer of arms and ammunition and for Assessment Year 2006-07 (State) and for the Assessment year 2007-08 (State and Central) for the period 01.04.2007 to 31.12.2007, the opposite party submitted his returns, which was accepted by the Assessing Officer by final assessment order dated 06.11.2009. The Assessing Officer reopened the assessment for the aforesaid period under Section 21 of the Trade Tax Act, 1948 on the basis of some adverse facts obtained by SIB. The Additional Commissioner, Grade-I, Commercial Tax, Lucknow Zone-I, Lucknow has given approval for re-assessment.

5. On the basis of adverse facts obtained by the SIB, it has been submitted by learned counsel for the revisionist that the opposite party had purchased arms and ammunition from M/s Mahak Gun House, Sirsa, Haryana and M/s Balaji Gun House, Haryana and they have undervalued price of the goods purchased by them and consequently had evaded tax. It is submitted that entire purchase has not been disclosed in the books of account.

6. It is next submitted by learned counsel for the revisionist that that the opposite party had taken no objection certificate from the District Magistrate, but they did not purchase the quantity for which NOC was issued by the District Magistrate and less quantity of purchase was declared, while infact, opposite party had purchased higher quantity of arms and ammunition and thereby had evaded tax.

7. It is further brought on record that proceedings under Section 21 of the Trade Tax Act were initiated on receipt of information

with regard to M/s Mahak Gun House and M/s Balaji Gun House that they had declared higher sale while filing their returns, while opposite party had declared lesser quantity purchased from the said gun houses from Haryana and accordingly, there was reason to believe that opposite party has deliberately concealed the material facts and disclosed lesser quantity of arms and ammunition purchased by them and hence has evaded tax.

8. It is on the basis of aforesaid material that the Assessing Officer has rejected the books of account of opposite party and assessed him by his best judgment assessment and created tax liability by means of order of assessment dated 25.11.2010.

9. Against fresh order of assessment, an appeal was filed before the Additional Commissioner, Grade-I, Commercial Tax, Lucknow Zone-I, Lucknow who rejected the same on 08.03.2011, against which opposite party preferred second appeal before the Commercial Tax Tribunal and the second appeal was allowed by means of impugned judgment and order dated 13.04.2011, against which present revisions have been filed.

10. Learned counsel for the revisionist has submitted that the Tribunal has considered entire conspectus of the case where opposite party had deliberately concealed the quantity of goods purchased from the aforesaid two gun houses, whereas the said gun houses, based in the State of Haryana, while filing their returns had disclosed higher sale to opposite party.

11. Learned counsel appearing for the opposite party has vehemently opposed the revisions and has submitted that entire aspect of matter pertaining to purchase of arms and ammunition is totally controlled by the provisions of Arms Act, 1959 as well as Arms Rules, 1962. He has submitted that for purchase of any quantity of arms and ammunition an application has to be made to the District Magistrate under the Rules, 1962 and no transport or import of arms and ammunition can be done without seeking permission of the District Magistrate.

12. It is submitted by learned counsel for the revisionist that the opposite party had obtained necessary permission from the District Magistrate for import of arms and ammunition from M/s Mahak Gun House regarding 2000 cartridges of 0.315 bore vide Bill No. 456, 2000 cartridges of 0.315 bore vide Bill No. 457, 1000 cartridges of 0.315 bore vide Bill No. 458, which shows that only 5000 cartridges were imported/purchased by the opposite party while he had obtained NOC for 6000 cartridges from the District Magistrate.

13. It is submitted by learned counsel for the opposite party that they had obtained permission for import of 6000 cartridges of 0.315 bore from the District Magistrate, but infact he had imported/purchased only 5000 cartridges. It is also submitted that after seeking NOC from the District Magistrate, import of arms and ammunition has to be made within a period of six days, and the goods once they reach to the consigned area, it has to be informed to the District Magistrate, where another inspection is carried out confirming the purchase made by the dealer.

14. It is also submitted by learned counsel for the opposite party that he had duly followed the provisions of Rules, 1962 and all the papers in this regard alongwith relevant bills were submitted to the Assessing Authority at the time of assessment. It is submitted that merely on the ground of some information having been received by the Revenue which was merely regarding the returns filed by the two Gun Houses at Haryana that proceedings were initiated against the opposite party. It is submitted that none of the facts with regard to discrepancy in purchase of arms and ammunition can be demonstrated either from any document or any material necessitating reassessment in pursuance to Section 21 of the Trade Tax Act has been made out and consequently, entire exercise conducted by the revisionist is illegal and arbitrary.

15. Heard learned counsel for the parties and perused the record.

16. The Tribunal after considering rival contentions has dwelled in detail into the facts as stated by the opposite party and found that there is no illegality or infirmity in case dealer has purchased arms and ammunition in lesser quantity than what has been disclosed in the NOC received from the District Magistrate. The Tribunal has also found that there was no material which can be placed by the Revenue to demonstrate that the opposite party had infact purchased higher quantity of arms and ammunition than what was disclosed by him and hence order of Assessing Authority and first Appellate Authority were found to be arbitrary and accordingly were set aside. Before this Court in the present revisions, same facts have been reiterated.

17. This Court has perused the judgment and order passed by the Assessing Authority, First Appellate Authority as well as that of the Tribunal. The undisputed facts of the case are that the opposite party had taken NOC from the District Magistrate for import/purchase of 6000 cartridges of 0.315 bore which were being purchased from M/s Mahak Gun House and M/s Balaji

Gun House which were based in the State of Haryana. The Assessing Authority accepted the returns filed by the opposite party and completed his assessment.

18. Subsequently, it came to the knowledge of the Revenue that returns filed by the two gun houses based in Haryana had disclosed higher sale than what was disclosed by the opposite party at the time of filing his returns and hence order under Section 21 of the Trade Tax Act was passed re-opening the assessment.

19. Though this Court does not find any infirmity in the order of re-assessment considering the fact that information was received to the taxing authority that opposite party had infact deliberately concealed his purchase which were of lesser quantity than what has been disclosed in the NOC obtained by him and same was lesser in quantity than what was disclosed by the two gun houses from whom arms and ammunition was purchased. Subsequent to reopening of the assessment there was no material which was examined by the Assessing Authority or the First Appellate Authority by which tax liability upon opposite party could have been enhanced and there was no material to doubt the documents submitted by the dealer (opposite party) pertaining to purchase of cartridges from M/s Mahak Gun House and M/s Balaji Gun House. Merely on the basis of certain information higher tax liability could not have been fastened on the opposite party without there being cogent and reliable material in this regard.

20. No material has been produced by the learned Standing Counsel to contest the facts discussed by the Tribunal and for this Court to take different view of the matter without there being any perversity, hence no interference is called for in the present revisions.

21. In the light of above, no question of law arises for determination in the present revisions.

22. The revisions being devoid of merit are **dismissed**.

Order Date :- 3.9.2024
A. Verma

(Alok Mathur, J.)

Digitally signed by :-
ANURAG VERMA
High Court of Judicature at Allahabad,
Lucknow Bench