

Court No. - 10

Case :- SALES/TRADE TAX REVISION No. - 39 of 2025

Revisionist :- M/S Maha Luxmi Roller Flour Mills

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

Counsel for Revisionist :- Rishi Raj Kapoor

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

With

Case :- SALES/TRADE TAX REVISION No. - 29 of 2025

Revisionist :- M/S Maha Luxmi Roller Flour Mills

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

Counsel for Revisionist :- Rishi Raj Kapoor

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

Hon'ble Piyush Agrawal,J.

1. Heard Sri Rishi Raj Kapoor, learned counsel for the revisionist and Sri B.K. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
2. With the consent of parties, the aforesaid revisions are being decided at the admission stage itself by this common order.
3. For convenience, the facts are being delineated from STRE No.39 of 2025.
4. By means of instant revision, the revisionist has assailed the order dated 26.11.2024 passed by Commercial Tax Tribunal, Saharanpur Bench, Saharanpur in Second Appeal No. 34/24.
5. Learned counsel for the revisionist submits that before the tribunal, two cross appeals were filed i.e. one by the revisionist and other by the revenue. He further submits that the appeal of the revisionist was allowed and the appeal filed by the revenue was dismissed, and remanded the matter for fresh assessment.
6. He further submits that the tribunal misdirected itself in remanding the matter while recording the finding in favour of the revisionist. He further submits that the assessment order dated 27.12.2019 was passed on the basis of survey dated 30.08.2016; whereby rejecting the books of accounts and estimated the total tax on turnover of purchase of wheat and packing materials from unregistered dealers at Rs. 26,55,469/-.

7. He further submits that the purchase of wheat by 20 trucks were also taken into consideration for enhancement of the turnover. Against the said assessment order, the first appeal was filed by the revisionist, which was partly allowed whereby purchase of wheat by twenty trucks were deleted as well as with regard to the best judgment, partial relief was also granted. Being aggrieved from the appellate order, allowing the appeal in toto, second appeal was filed by the revisionist and an appeal by the revenue was also filed against the appellate order. While deciding both the appeals by a common order, the tribunal had remanded the matter back for deciding afresh.

8. He further submits that the tribunal being the last fact finding authority, it ought to have decided the issue itself instead of remanding the matter to the assessing authority for fresh assessment. He further submits that the appeal of the revenue has been dismissed and the appeal of the revisionist was allowed, but still with regard to the deletion of twenty trucks, appeal of the revenue was filed, which has been dismissed. However, the matter on that ground was remanded, which was bad. He further submits that while remanding the matter, a fresh innings is given to the department for fishing and roving enquiry.

9. In support of his submission, he has placed reliance upon the judgment of this Court passed in the case of **Indian Sugar & General Engineering Corporation Appellant Vs. Commissioner of Sales Tax, U.P. Respondent (Sales Tax Revision No.221 of 19991), decided on November 28, 2003.**

10. *Per contra*, learned Additional Chief Standing Counsel supports the impugned orders and submits that the stand was taken before the Tribunal by the revisionist that no opportunity was given to rebut the material used against him over import of twenty trucks which in turn, enhanced the turnover and once the revisionist himself pleaded for rebutting the material used, the order is justified. He further submits that perusal of the order itself shows that the findings have been recorded against the revisionist, but it appears to be due to inadvertence mistake, and therefore, the appeal preferred by the revenue has been noticed as dismissed.

11. After hearing the parties, the Court has perused the record.

12. It is not in dispute that against the assessment order, first appeal was filed by the revisionist, which was partly allowed. Against the first appellate order, both the revisionist and revenue preferred second appeals out of which, the appeal filed by the revisionist was allowed and the appeal filed by the revenue was dismissed by remanding the matter back for fresh innings to the assessing officer to adjudicate the case as fresh while fresh material was available on record before the Tribunal to take the decision.

13. This Court in the case of **Sugar & General Engineering Corporation** (supra) in para no. 6 has held as under:-

"6. I have perused the order of Tribunal and the authorities below. In my view, remanding back the case by Deputy Commissioner (Appeals) is not justified and accordingly, the order of Tribunal is also not correct. Perusal of the assessment order as well as of the Deputy Commissioner (Appeals) shows that the entire material relating to the transaction in dispute are available on record and on the basis of such material, only the decision has to be taken whether the transaction was inter-State sales or intra-State Sales. Deputy Commissioner (Appeals) as a matter of fact has not remanded back the case for any further enquiry or investigation from any source but had remanded back the case for fresh examination of the same materials and to decide the nature of the transaction, which is nothing but providing another inning to the Assessing Officer to adjudicate the issue, on the basis of the same materials, on which he had already formed its opinion. It is true that the Appellate Authority has power to remand the case for fresh decision but such power should be exercised sparingly and preference should be to decide the matter finally instead of keeping the matter pending for long time. Effort should be that the proceeding should be finally closed and settled as early as possible. Unnecessary remand of the case, keep the matter pending for long time. Effort should be that the proceeding should be finally closed and settled as early as possible. Unnecessary remand of the case, keep the matter pending for long time and delay in reaching to finality. Remand should be made only in a situation when it is found that on the basis of the material available on record, decision is not possible at the appellate stage and the matter requires factual investigation and enquiry. As state above, in the present case, all the materials relating to the nature of transaction are available and on the basis of such materials, decision is only required to be taken. Therefore, in my view, remand of the case is not justified. Deputy Commissioner (Appeals) in my opinion should decide the appeal on merits as its own stage. However, in case, while deciding the appeal, if Deputy Commissioner (Appeals) feels that any query on factual aspect is required, he can seek a report under Rule 68 (8) of the Rules."

12. In the result, both the revisions are **allowed**. The impugned order passed by the tribunal is set aside. The matter is remanded to the Tribunal to decide the matters by passing reasoned and speaking order, after hearing all the stakeholder.

13. It is expected from the Tribunal that it shall decide the case expeditiously.

14. The question of law is answered accordingly.

Order Date :- 9.4.2025

Pravesh Mishra