



2025:AHC:180006

Reserved On:26.09.2025

Delivered On:10.10.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

SALES/TRADE TAX REVISION No. - 133 of 2023

The Commissioner,
Commercial Tax, U.P.

.....Revisionist(s)

Versus

M/S Gems Electronics.

.....Opposite Party(s)

Counsel for Revisionist(s)	: C.S.C.
Counsel for Opposite Party(s)	: Aditya Pandey

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Ravi Shankar Pandey, learned ACSC for the revisionist and Shri Aditya Pandey, learned counsel for the opposite party.
2. The instant revision has been admitted by this Court vide order dated 01.11.2023 on the substantial questions of law framed in the memo of revision.
3. The above-noted revision has been filed against the impugned order dated 19.07.2023 passed by the Commercial Tax Tribunal, Bench – 4, Kanpur in Second Appeal No. 57 of 2021 for the Assessment Year 2013-14 under section 29, read with section 28(2) of the UP VAT Act.
4. Learned ACSC submits that the opposite party is dealing with the electronic goods as well as selling and purchasing of DTH (Direct

to Home), which is unclassified item and liable for payment of VAT at a higher rate of 12.5%, along with additional tax. He further submits that while framing the original assessment order, tax liability has been levied @ 5% without there being any discussion of the same. Thereafter, re-assessment proceedings were initiated after obtaining permission by Additional Commissioner, Grade – 1, Commercial Tax, Kanpur Zone – II, Kanpur vide order dated 13.05.2019. Thereafter, notices were issued to the opposite party and the order of reassessment was passed on 07.02.2020 holding that DTH is not covered in Schedule – II at serial nos. 6 & 7 and therefore, the same is unclassified item and is liable to be taxed at a higher rate of 14% along with additional tax. Accordingly, reassessment order was passed creating demand against the opposite party, against which first appeal was filed, which was dismissed vide order dated 27.03.2021. Thereafter, the opposite party preferred second appeal, which has been allowed vide impugned order dated 19.07.2023 holding that there was no permission of the Additional Commissioner for reopening the completed assessment and also while reassessment proceedings, a change of opinion was involved and after citing various judgements, the appeal of the opposite party was allowed. He further submits that the judgement relied upon by the Tribunal is not applicable to the facts of the present case as the judgements were on trade/sales tax passed under section 21(2); whereas, in the case in hand, section 29(7) of the VAT Act is involved, which specifically empowers for reassessment even the same involved change of opinion and therefore, the impugned order is bad.

5. Per contra, learned counsel for the opposite party supports the impugned order and submits that there was no order of the Additional Commissioner granting permission to reopen the completed assessment and the present proceedings involved change of opinion and therefore, rightly held by the Tribunal on

relying upon the judgement passed by this Court. He further submits that under reassessment proceedings, if the matter requires change of opinion, the same will not empower for reassessment.

6. After hearing learned counsel for the parties, the Court has perused the records.
7. On the submission made by the learned counsel for the opposite party that there was no order sanctioning/granting permission for reopening the assessment, the original records were summoned by this Court, which were produced and perused by this Court.
8. The original assessment record as well as the record of the Additional Commissioner, Grade – 1, Commercial Tax, Kanpur Zone – II, Kanpur were also produced. On going through the record of assessment at page 210, the order dated 13.05.2019 passed by the Additional Commissioner, Grade – 1, Commercial Tax, Kanpur Zone – II, Kanpur was found on record, the copy of which has also been annexed along with the revision as Annexure No. 2, page no. 16.
9. The original record of the Additional Commissioner, Grade – 1, Commercial Tax, Kanpur Zone – II, Kanpur also shows that the same is on record and notices, before passing granting permission, were issued to the opposite party, but neither any reply was filed, nor the opposite party was present on the date fixed for passing the order of permission.
10. Once an order of Additional Commissioner, Grade – 1, Commercial Tax, Kanpur Zone – II, Kanpur is on record, the finding of the Tribunal that there was no permission/sanction for reopening the assessment is perverse, without any basis and against the material on record. On this count, the impugned order cannot be sustained.

- 11.** Before proceeding further, sub-sections (1) & (7) of section 29 of the UP VAT Act are quoted below:-

Section 29: Assessment of tax of turnover escaped from assessment:-

(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or re-assess the dealer to tax according to law:

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment or full assessment as the case may be.

Explanation I:- Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

Explanation II:- For the purpose of this section and of section 31, assessing authority means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

Explanation III:- Notwithstanding the issuance of notice under this sub-section, where an order of assessment or re-assessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied

by an order of assessment or re-assessment made under this section in pursuance of such notice.

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(7) Where the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the assessing authority in that behalf, such assessment or re-assessment may be made within a period of eight years after expiry of assessment year to which such assessment or re-assessment relates notwithstanding such assessment or re-assessment may involve a change of opinion:

Provided that it shall not be necessary for the Commissioner to hear the dealer before authorising the assessing authority.

- 12.** Bare perusal of the said section clearly shows that if the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or re-assess the dealer to tax according to law. It further provides that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment or full assessment as the case may be.
- 13.** Further, sub-section (7) provides that re-assessment may be made within a period of eight years after expiry of assessment year to which such assessment or re-assessment relates notwithstanding such assessment or re-assessment may involve a change of opinion.

- 14.** Once the provisions of the Act empowers for making reassessment, which may involve change of opinion, the Tribunal was not justified in holding that the reassessment proceedings have been initiated, which involved change of opinion and set aside the assessment order. Thus, the impugned order cannot be sustained in the eyes of law.
- 15.** In view of the aforesaid facts & circumstances of the case, the impugned order dated 19.07.2023 passed by the Commercial Tax Tribunal, Bench – 4, Kanpur in Second Appeal No. 57 of 2021 for the Assessment Year 2013-14 under section 29, read with section 28(2) of the UP VAT Act is hereby set aside.
- 16.** The revision is, accordingly, allowed.
- 17.** The questions of law are accordingly decided in favour of the State and against the assessee.
- 18.** The original records, produced before this Court, are returned accordingly.

(Piyush Agrawal,J.)

October 10, 2025

Amit Mishra