

Court No. - 2

Case :- SALES/TRADE TAX REVISION No. - 782 of 2008

Revisionist :- M/S Kashi Ram Ved Prakash

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

**Counsel for Revisionist :- Praveen Kumar,Ashok Kumar,Deepak
Kumar Jaiswal**

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

Hon'ble Piyush Agrawal,J.

1. Heard Mr. Deepak Kumar Jaiswal for the revisionist and Mr. B.K. Pandey, learned Additional Chief Standing Counsel for the respondents.

2. The present revision has been filed against the order dated 3.3.2008 passed by the Trade Tax Tribunal, Kanpur Bench -I, Kanpur in Second Appeal No. 31 of 1997 (A.Y. 1988-89) arising out of penalty proceeding initiated under Section 15 A (1) (qq) of UP Trade Tax Act.

3. By the order dated 23.5.2008, the present revision has been admitted on the following questions of law:-

"A. Whether the Trade Tax Tribunal is legally justified in law in setting aside the order passed by the 1st Appellate Authority and in allowing the appeal filed by the department?

B. Whether on the facts and the circumstances of the case, the Tribunal is correct in holding that the provisions of Section 15 A (1) (qq) are attracted on the facts and the circumstances of the present case and the revisionist is liable for penalty?

C. Whether in view of the decision of the 1st Appellate Authority and the findings recorded by it, the Tribunal is justified in disbelieving the situation which occurs in the present case while allowing the appeal filed by the department fixing the liability of penalty in conformity of the orders of the assessing authority?

D. Whether in any manner and on the facts and the circumstances of the case, where admittedly the tax realized has been deposited with return in due course, the Tribunal is justified in holding that the petitioner is liable for penalty under Section 15 A (1) (qq) ignoring that it may be a bona fide mistake?

E. Whether in any view of the matter when admittedly the applicant has issued the bills charging tax in those bills holding the equity of the provisions of Section 15 A (1) (qq) to the petitioner and ignoring the purchaser UP Sugar Mills who has issued Form 3 B on full confessional rate is justified in the eyes of law?"

4. Learned counsel for the revisionist submits that penalty under Section 15 A (1)(qq) has wrongly been imposed. He submits that while passing the assessment order a refund of Rs. 21,658.50/- was given hence it cannot be said that the revisionist has realized the tax from UP State Spinning Mills Company Limited and has not deposited the same.

5. He further submits that since Form 3 B was submitted by the purchasing dealer i.e. UP State Spinning Mills Company Limited, therefore, neither the tax was realized nor being paid nor deposited by the revisionist and entire proceeding is bad in the eyes of law.

6. He further submits that the first appellate authority who after detailed discussion had dropped the penalty proceeding. He submits that the revisionist has neither realized the excess tax nor there was any intent of evade of payment of tax. He further submits that it is neither a case of the revenue that revisionist has kept money which has been realized as tax nor deposited the same along with the return but on the contrary entire realized tax has already been deposited in due course along with the return submitted thereof.

7. *Per contra*, learned ACSC supports the impugned order and submits that an information was received from the assessing authority of UP State Spinning Mills, i.e. the purchasing dealer of the revisionist wherein it was informed that the revisionist in its bill has separately charged 4.4% of trade tax. He further submits that the amount along with the tax was duly paid by UP State Spinning Mills and the said fact was also mentioned by the assessing authority in the order. He further submits that 4.4 % of tax as realized by the revisionist, has not been deposited by it. He prays for dismissal of the revision.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. On perusal of the records, the Court finds that proceeding under Section 15 A (1) (qq) has rightly been initiated against the revisionist. A finding of fact has been recorded that the revisionist has realized 4.4 % of trade tax from UP State Spinning Mills Company Limited Akbarpur. The said fact has not been assailed by

the revisionist at any stage. Further merely because some excess tax amount was found to be refunded while passing the assessment order, the revisionist cannot escape from the liability for depositing the tax realized from the purchasing dealer of its goods i.e. UP State Spinning Mills. The registered dealer after realizing the tax cannot withhold the same on the pretext that some excess amount of tax was deposited. The amount realized on the strength of Act, must be deposited and in case any amount found excess, the same will be refunded to the actual person from whom the same amount was realized as tax. The revisionist cannot get the benefit of any refund of amount while passing the assessment order. The Tribunal while passing the impugned order has specifically reversed the finding of fact recorded by the first appellate authority, which is not challenged in the present revision.

10. In view of above, the revision lacks merit and is **dismissed**.

11. The substantial questions of law are answered accordingly.

Order Date :- 5.7.2024

Rahul Dwivedi/-