

**Court No. - 1**

**Case :- SALES/TRADE TAX REVISION No.123 of 2023**

**Revisionist :- The Commissioner, Commercial Tax U.P.**

**Opposite Party :- M/S R.P. Milk Made Products (P) Ltd.**

**Counsel for Revisionist :- Ravi Shanker Pandey**

**Counsel for Opposite Party :- Suyash Agarwal**

**Hon'ble Shekhar B. Saraf, J.**

1. Heard Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State/revisionist and Sri R.R. Agarwal, learned Senior Advocate assisted by Sri Nitin Kumar Kesarwani, learned counsel for the assessee/respondent.
2. This revision petition has been filed by the revisionist assailing the order dated March 20, 2023 passed by the Tribunal.
3. This revision petition has been admitted on the following questions of law :

*“(i) Whether on the facts and circumstances of the case, the Commercial Tax Tribunal was legally justified in affirming the order of the first appellate authority that turnover amounting to Rs.1,33,20,839/- of old machinery and equipment after the closure of business is not exigible to tax by ignoring the amended provisions of the term of “Business” as contained in Clause (iv) of Section 2(e) of the U.P. VAT Act, 2008 which had been brought on the statute book from 26.05.2014 by U.P. Act No.33 of 2014?*

*(ii) Whether on the facts and circumstances of the case, the Commercial Tax Tribunal was legally justified in not considering the liability of payment of interest on the admitted turnover and legally assessed turnover of Rs.1,70,31,900/- and Rs.1,33,20,839/- respectively, in view of the specific provision*

*contained in Sub-section (2) of the Section 33 of the U.P. VAT Act, 2008?”*

4. The main issue herein is as to whether the sale of old machinery worth Rs.41,73,994/- and sipper box and rack, MS table and moulds, laboratory equipments, office equipments, fire extinguisher, stabilizer and delivery vehicle worth Rs.91,46,845/- are exigible to tax as per the amended definition of Section 2(e) of the Value Added Tax Act, 2008 (hereinafter referred to as ‘the Act’).

5. Before going into the issue, it shall be advisable to list out the various definitions of the Act that are applicable in the present case. They are delineated below:

**“2. Definitions.-** *In this Act, unless there is anything repugnant in the subject or context;*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) ...*

**(e)** *“business” in relation to business of buying or selling goods includes-*

*(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern;*

*(ii) the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period);*

*(iii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste or by-products, or any other goods of a similar nature or any unserviceable or obsolete or*

*discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever, which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure or concern, works contract or lease,*

*(iv) any transaction, even after the closure of business, if it relates to sale of goods acquired during the period in which business was carried out.<sup>1</sup>*

*but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods.*

**(f)** *“capital goods” means any plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation used for manufacture or processing of any goods for sale by the dealer and includes:-*

*(i) components, spare parts and accessories of such plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation;*

*(ii) moulds and dies;*

*(iii) storage tank;*

*(iv) pollution control equipment;*

*(v) refractory and refractory materials;*

*(vi) tubes and pipes and fittings thereof,*

*(vii) lab equipments, instruments and accessories,*

*(viii) machinery, loader, equipment for lifting or moving goods within factory premises, or*

*(ix) generator and boiler*

*used in manufacture of goods for sale by him but for the purpose of section 13, does not include:-*

*(i) air-conditioning units or air conditioners, refrigerators, air coolers, fans, and air circulators if not connected with manufacturing process;*

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<sup>1</sup> Added as per the Uttar Pradesh Value Added Tax (Amendment) (Second) Ordinance, 2014 (U.P. Ordinance No.6 of 2014)

*(ii) an automobile including commercial vehicles, and two or three wheelers, and parts, components and accessories for repair and maintenance thereof;*

*(iii) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees.*

*(iv) vehicle used for transporting goods or passengers or both;*

*(v) capital goods used in the execution of a works contract;*

*(g) ...*

*(h) ...*

*(i) ...*

*(j) ...*

*(k) ...*

*(l) ...*

*(m) "goods" means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed, but does not include actionable claims, stocks, shares or securities;*

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*(ac) "sale" with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration and includes, -*

*(i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;*

*(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*

*(iii) the delivery of goods on hire purchase or any other system of payment by installments;*

*(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;*

*(v) the supply of goods by an association or body of persons (whether incorporated or not) to a member thereof for cash, deferred payment or other valuable consideration;*

*(vi) the supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration and such delivery, transfer or supply of any goods under sub-clause (i) to sub-clause (vi) above shall be deemed to be sale of those goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made.*

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**(ag)** *“tax” means a tax leviable under this Act, on the sale or purchase or both, as the case may be, of goods other than news paper; and shall include,-*

*(i) composition money either at an agreed rate or in lump sum, as the case may be, payable, in lieu of actual amount of tax due on turnover of sales or purchases or both, as the case may be in accordance with provisions of section 6 or section 6A;*

*(ii) amount of reverse input tax credit; (w.e.f.01.01.2008)*

*(iii) the amount of additional tax leviable under section 3-A*

*(iv) the amount of cess leviable under section 3-B”*

6. Counsel for the revisionist has argued that after the amendment in Section 2(e) of the Act in the year 2014, any transaction made even after

the closure of the business in relation to the sale of goods acquired during the period in which the business was carried out, would be exigible to tax. He has further submitted that the various items that have been sold are not fixed assets but are assets which are movable in nature, and therefore, would fall under the definition of 'goods' as defined in Section 2(m) of the Act.

7. Per contra, counsel appearing on behalf of the assessee has submitted that the goods that have been sold are falling under the definition of 'capital goods' as per Section 2(f) of the Act, and accordingly, the same would not fall in the amended definition in which only sale of goods are taxable. He has relied upon the judgments in **Narmada Bearing (P) Limited v. Commissioner of Trade Tax, U.P., Lucknow** reported in (2010) 14 VLJ 280 and **Rajesh Paper Mills Limited v. Commissioner, Commercial Tax** reported in 2018-T.L.D.-74 to buttress his argument that plant and machinery would not fall in the definition of goods, and therefore, not liable to be taxed under the Act.

8. Upon a perusal of the orders passed by the Assessing Officer, First Appellate Authority and the Tribunal, one is able to decipher that the Tribunal has categorically come to the finding that the items that were sold after the closure of the business amounting to Rs.1,33,20,839/- are in the nature of plant and machinery falling under capital goods. In light of the same, the Tribunal came to the finding that these goods would not fall within the definition of Section 2(e)(iv) of the Act. The Tribunal further agreed with the assessee and relied upon the judgments produced by the assessee to come to the finding that such items were in the nature of plant and machinery, and therefore, not exigible to tax. The finding of the Tribunal and the First Appellate Authority that the particular goods were in nature of capital goods and not the goods under Section 2(m) of the Act is not a perverse finding. In my view, this Court in its revisional jurisdiction would not enter into the findings of the Tribunal unless the

same are factually unbelievable and perverse. The Tribunal being the last fact finding authority, its findings are paramount and should not be interfered with by this Court unless the same are patently illegal and perverse.

9. It is to be noted that the amended definition of Section 2(e) of the Act only includes the sale of goods acquired during the period in which the business was carried out. This definition pre-supposes that the goods were acquired during the period in which the business was carried out and were subsequently sold after the closure of the business. The definition could very well have been amended to include all kinds of goods including capital goods. The legislature has limited itself to only sale of “goods”, and therefore, the definition of goods as per the Section 2(m) of the Act has to be taken into account and not the goods which fall under the definition of capital goods in Section 2(f). In light of the same, plant and machinery sold after the closure of business shall have to be excluded from the scope and ambit of the levy of tax.

10. In light of the above findings, I am of the view that there is no requirement to interfere with the impugned order passed by the Tribunal. The revision petition is, accordingly, dismissed.

11. The questions of law are answered against the revisionist and in favour of the assessee/respondent.

**Date :-** 5.4.2024  
Kuldeep

(Shekhar B. Saraf, J.)