Neutral Citation No. - 2023:AHC:167225

Reserved

Court No. - 5

Case :- SALES/TRADE TAX REVISION No. - 188 of 2022

Revisionist :- M/S National Chemical

Opposite Party :- The Commissioner Commercial Tax

Counsel for Revisionist :- Aloke Kumar

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

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Aloke Kumar for the revisionist and Mr. B.K. Pandey, learned Additional Chief Standing Counsel for the opposite party.

2. The present revision has been filed against the judgement and order dated 10.12.2021 passed by Commercial Tax Tribunal in Second Appeal No. 47 of 2021 (A.Y. 2015-16).

3. At present learned counsel for the revisionist presses only question of law no. (A) which is quoted hereunder:-

> *"(A) Whether the Tribunal was legally justified in remanding the case on the issue which had already attains finality after the order of the first appellate authority passed in appeal filed against the provisional assessment order?"*

4. Learned counsel for the revisionist has submitted that the revisionist is a proprietorship firm involved in the manufacture and sale of chemicals. On 13.5.2015 a survey was conducted at the business premisses of the revisionist in which certain irregularities were found on the basis of which provisional assessment order was passed on 8.10.2015. In the provisional assessment order, it has been averred that while issuing the provisional notice, the fact has wrongly been mentioned with regard to name of chemical and the said fact has been admitted by the assessing authority, however, the provisional assessment order was passed raising certain demand, against which first appeal was preferred and same was allowed by order dated 18.12.2015. Thereafter the revenue has preferred a second appeal before the Tribunal. However, in the meantime, regular assessment order was passed on 2.3.2020 and second appeal filed by the revenue was dismissed as having become infructuous. Learned counsel for the revisionist further submitted that in the regular assessment again proceedings have been initiated on the basis of survey dated 13.5.2015 in which it has been held that 1710 kgs. calcium octet was not found at the spot, though the same was mentioned in the stock register. He further submitted that against regular assessment order, first appeal was preferred which had been decided in favour of the revisionist however the revenue preferred a second appeal in which two issues were raised and on second issue the matter had been remanded. He has submitted that while passing the provisional assessment order once it was held that on survey dated 13.5.2015, with regard to chemical of 1710 kgs., no adverse inference has been drawn by the authorities, in other words, the authority had accepted the fact that wrong description of chemical were noted at the time of survey thus no assessment was made against the revisionist in the provisional assessment, the Tribunal ought not to have remanded the matter. He prays that remand order be set aside.

5. *Per contra,* learned A.C.S.C. appeared for the opposite party has submitted that arguments raised by learned counsel for the revisionist is not correct. He submitted that while framing the provisional assessment, the first appellate authority without any material on record and without any discussion, had accepted the version of the revisionist. He further submitted that once the final assessment order has been passed, the order of provisional assessment emerges in the regular assessment. He further submitted that neither any finding nor any decision was recorded while framing the provisional assessment with regard to shortage found of 1710 kg of chemical as mentioned in the stock register at the time of survey dated 13.5.2015, thus the remand order is justified. He prays for dismissal of the present tax revision.

6. The Court has perused the records.

7. It is admitted that survey of the business premises of the revisionist has been conducted on 13.5.2015 and on the basis of which provisional assessment proceedings were initiated against the revisionist. The relevant part of provisional assessment order dated 08.10.2015 is extracted hereunder:-

> "व्यापारी से पूंछा गया की उनके व्यापार स्थल का सर्वेक्षण दिनांक 13.05.2015 के समय कैली० आक्स० का कोई स्टॉक नहीं पाया गया था जबकि जांच के समय प्रस्तुत स्टॉक रजिस्टर में कैल्सि० आक्टौट का स्टॉक 1710 किलो पाया गया कारण बताओ नोटिस में यह कमोडिटी कैल्शियम ओकटेट लिख गया है इस बिंदु पर व्यापारी के विरुद्ध कोई प्रतिकूल निर्णय नहीं निकाला जायेगा।"

8. On perusal of the aforesaid observation made in provisional assessment order, it transpires that query was put to the revisionist that at the time of survey dated 13.5.2015, calcium octet was not found at his business premises but on production of stock register, entries of 1710 kgs of calcium octet were mentioned however while issuing show cause notice for provisional assessment the commodities has wrongly been mentioned but the assessing authority has not discussed anything about the fact that at the time of survey stock of some specific chemical was not found though the same has been mentioned in the stock register. Further the assessing authority observed that no adverse inference should be drawn against the revisionist. The assessing authority has neither assigned any reason nor any finding has been recorded for not drawing any adverse inference against the revisionist. Once it is admitted that at the time of survey chemical was not found though the same has been mentioned in the stock register, the assessing authority was duty bound to record its finding before recording that no adverse inference should be drawn against the revisionist.

9. Against the provisional assessment order, first appeal was preferred by the revisionist and the first appellate authority while passing the order recorded a finding, relevant part of which, is extracted below :-

> "सर्वेक्षण दिनांक 13.5.2015 को कैल्शियम आक्टोवेट का स्टॉक नहीं पाया गया था जबकि कारखाने में मौजूद रहा है। कर निर्धारण अधिकारी ने अपीलकर्ता के स्पस्टीकरण को स्वीकार किया गया है। समग्र रूप से तथ्यों पर विचारोपरांत पारित अस्थाई कर निर्धारण आदेश समर्थन योग्य नहीं है। फलतः अपील स्वीकार किये जाने एवं पारित आदेश समाप्त किये जाने योग्य है।"

10. On perusal of the aforesaid findings, it transpires that the first appellate authority has observed that at the time of survey dated 3.5.2015 stock of calcium octet was not found but same was available in the factory. The said fact is accepted by the Assessing Authority. However, neither anything was brought on record to support the said finding nor any discussion had been made in the provisional assessment order to clarify the justification given by the assessee, as such, the findings recorded by the first appellate authority in this respect is perverse. The assessing authority, without any discussion, has mentioned that no adverse inference will be drawn against the revisionist, which was not justified. Further the first appellate authority i.e. Additional Commissioner, while passing the order dated 18.12.2015 had missed the said vital fact.

11. Further the observation of the 1st appellate authority that the chemical was available in the factory is without any material on record or discussion, therefore has no leg to stand. Once neither any discussion nor any finding has been recorded by any of the authority about shortcomings of chemical found at the time of survey dated 13.5.2015, it will be incorrect on the part of the revisionist to argue and suggest that once on the provisional assessment order the finding has been recorded in favour of the revisionist, which was confirmed by the first appellate authority, the matter ought not to have remanded the matter for redetermination of the said fact.

12. Further, the revisionist has failed to show any finding or detailed decision on merit, which was recorded by any of the competent authority in his favour to justify the shortage of chemical found at the time of survey dated 13.5.2015, though the same was mentioned in the stock register.

13. In view of aforesaid, no interference is called for by this Court in the impugned order. The revision is **dismissed.** The questions of law are answered accordingly**.**

Order Date :- 21. 8.2023
Rahul Dwivedi/-