

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Trade Tax Revision No: 35 of 2003

The Commissioner, Trade Tax,
Uttaranchal, Dehradun.

... **Applicant.**

Versus

M/s Princes Departmental Store,
The Mall, Nainital.

... **Opposite Party.**

Sri P.Maulekhi, Addl. Advocate General, learned counsel for the revisionist.
Sri Arvind Vashisht, Advocate, learned counsel for the opposite party.

Date: March 21, 2005.

PC: (Hon'ble B.S. Verma, J.)

This revision has been preferred under Section 11(1) of the U.P.Trade Tax Act against the impugned judgment and order, dated 9-4-2003, passed by the Member, Trade Tax Tribunal, Haldwani Bench, Haldwani, in Second Appeal No. 68/2002, Commissioner Trade Tax Uttaranchal Vs. M/s Princess Departmental Store, The Mall, Nainital, whereby the appeal preferred by the Commissioner Trade Tax Uttaranchal was dismissed and the judgment and order dated 20-9-2002 passed in Appeal No. 307/2001/97-98 by the Deputy Commissioner (Appeal), First Trade Tax, Haldwani was upheld.

The revision has been preferred on the ground that the Tribunal has passed the impugned order without appreciating the factual and legal position of the case. The applicant-revisionist framed the following question of law:-

Whether the learned Trade Tax Tribunal is legally justified in setting aside the penalty imposed against the opposite party under Section 15A(1)(c), holding that the turnover enhanced on the basis of best judgment assessment cannot form the basis for

imposing penalty, without taking into consideration that fact that the assessee did not challenge the assessment in appeal and his trading account for consecutive years clearly showed that he was deliberately furnishing inaccurate particulars of his taxable turnover with an intention to evade tax?

According to the revisionist, the opposite party-dealer is engaged in the purchase and sale of U.P. and Ex-U.P. Cotton and Woollen Hosiery, etc. In assessment proceedings for the year 1997-98 under Rule 41(8) of the U.P. Trade Tax Act (for short the Act), the dealer's declared turnover the ex-U.P. taxable goods was found far below their purchases and the same was also not verifiable from his account books as the opening and closing stock was mixed, therefore, the assessing authority enhanced the taxable turnover and imposed tax liability of Rs. 48,767/-, which was deposited by the dealer-O.P. without preferring any appeal, but subsequently, the assessing authority imposed a penalty of Rs. 24,383/- under Section 15A-1(c) of the Act vide his order dated 26.3.2001. Aggrieved by that order, the Opposite Party filed an appeal before the Deputy Commissioner (Appeal), who held that the enhanced turnover, on the basis of best judgment assessment, cannot be considered as concealed turnover and allowed the appeal and set aside the penalty vide order dated 20-9-2002. The revisionist went up in Second Appeal before the Trade Tax Tribunal, Haldwani, which dismissed the appeal vide its judgment and order dated 9-4-2003.

Aggrieved by the impugned judgment and order 9-4-2003, the revisionist has come up before this Court on the ground inter alia that the dealer had decided to declare low taxable sales in the returns in order to avoid payment of the balance tax on his actual taxable sales and that the dealer had been consciously suppressing his taxable turnover to escape tax liability.

I have heard learned Additional Advocate General, Sri P. Maulekhi, for the revisionist as well as learned counsel for the O.P., Sri Arvind Vashisht.

Learned counsel for the O.P. has submitted that the opposite party is not guilty of concealment of sales, therefore, the order imposition of penalty under Section 15A(1)(c) of the Act was rightly set aside by the First Appellate Court vide order 20-9-2002 and the learned Tribunal was justified in upholding the said order in Second Appeal.

I have perused the entire material on record including the impugned judgment and orders. The only point for consideration is whether prima facie a case of concealment of sales is made out against the Opposite Party or not so as to justify the imposition of penalty under the relevant provisions of the Act.

The only contention raised on behalf of the revisionist is that because the dealer has already made payment of Rs. 48,767/- in pursuance of the enhanced taxable turn over assessed by the Assessing Authority without preferring any appeal, therefore, the imposition of penalty by the Trade Tax Officer vide order dated 26.3.2001 was justified.

A copy of order dated 26.3.2001 passed by the Trade Tax Officer is on record. The opposite party preferred appeal No. 307/2001/97-98 before the Deputy Commissioner (Appeal) First, Trade Tax, Haldwani. The First Appellate Authority in its judgment has observed that the declared stock was not classified by the dealer and he had shown the tax-free goods and taxable goods together. It was also observed that the dealer has declared the purchase of taxable goods as Rs. 20,29,182.21 and sale of taxable goods was mentioned as Rs. 13,86,174.87. The verification of declared sales could not be done for want of classified statement. It was observed by the First Appellate Court that the taxable turnover was assessed

after adding the profit on the purchased taxable goods. It is significant to note that the appellate authority found that no case of concealed sale was made out from the ledgers and account books of the dealer. Therefore, the appeal preferred by the opposite party was allowed vide order dated 20-9-2002 and the penalty was waived.

The revisionist preferred second appeal before the Trade Tax Tribunal against the order dated 20-9-2002. The learned Tribunal after hearing both the parties observed that from the enhancement of tax assessment and its payment by the dealer, it cannot be concluded that the dealer/assessee was guilty of concealing the sales or tax liability. It was observed that the imposition of penalty under Section 15A(1)(c) of the Act was not justified. Accordingly, the second appeal was dismissed. Learned counsel for the revisionist could not point out any instance of concealment of sales on the basis of the ledgers/account books maintained by the dealer.

It may also be mentioned here that the payment of Rs. 48,767/- by the dealer/O.P. in pursuance of the enhanced taxable turnover was not at all the outcome of concealment of sales/tax liability, so as to warrant the penalty in question. The finding arrived at by the authorities below is a finding of fact based on evidence on record. I find no illegality or perversity in the impugned judgment and order so as to warrant any interference by this Court. The revision is liable to be dismissed.

The revision is dismissed in-limine. No order as to costs.

(B.S. Verma, J.)

RCP