

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Commercial Tax Revision No. 66 of 2011

M/s Parrys

.....Revisionist

Versus

The Commercial Tax Tribunal and another

.....Respondents

Mr. Pulak Raj Mullick, Advocate, present for the revisionist.

Mr. Hari Mohan Bhatia, Advocate, present for the respondents.

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Dated: 30.06.2015

**Coram: Hon'ble K.M. Joseph, C.J.
 Hon'ble U.C.Dhyani, J.**

K.M. Joseph, C.J.(Oral)

The revisions, being connected, we are disposing of the same by a common judgment.

2. Petitioner, according to him, commenced his business in Textiles in the year 1999-2000. He was not registered with the Tax Department. There was a raid conducted on his premises on 29th May, 2003; documents were seized; on the strength of the same, after issuing notices to the petitioner and finding no cooperation from him as the petitioner did not care to respond to the notices, best of judgment assessments were completed from the year 1999-2000 onwards. What is in controversy before us is the assessments relating to the assessment years 1999-2000 and 2001-02 in these two revisions. Petitioner, not having succeeded before the First Appellate Authority as also the Tribunal, is before us. The Tribunal, it must be noticed, took note of the lack of response from the petitioner to the notices and blames the petitioner for not

availing the opportunities provided and finding no ground to interfere with the assessments, confirmed the assessments.

3. Sri Pulak Raj Mullick, learned counsel for the petitioner, in both the cases, would submit that in the assessment year 1999-2000, which was the first year of the business of the petitioner, on the basis of the seized material, which is in the region of ₹46,000/- in relation to readymade garments, under the guise of best of judgment assessments, the Assessing Officer has arrived at a fantastic sum of near ₹20,00,000/-. He reminds us that it was his first year in business and the business will slowly grow-up. He would point out that for certain years, where also the assessment was completed based on best of judgment of the Assessing Officer, on the basis of the incriminating material seized in raid, petitioner has accepted those assessments, which were done reasonably. But, as far as assessing turnover of readymade garments in a sum of ₹20,07,000/- in the first year is concerned, the same would amount to a perverse finding, which would entitle the revisional court to interfere as a perverse finding would give rise to a substantial question of law. He would also submit that likewise in 2001-02, his principal complaint projected before us is that the seized material is evidencing the turnover of ₹11,135/-, the assessment is put at ₹12 lacs in relation to the readymade garments. Learned counsel for the petitioner also submits that the matter may be remanded back.

4. Per contra, learned counsel for the State would submit that there is no substantial question of law involved and what is involved is factual finding and it must be remembered that the petitioner has accepted the assessment based on the same raid in relation to the other years and no substantial question of law arises.

5. We notice that as far as CTR No. 67 of 2011, which relates to the assessment year 1999-2000 is concerned, year 1999-2000 marks the beginning of his business career and proceeding on the basis that the value of the seized material in the raid amounts to about ₹46,000/- putting the turn over of the readymade garments at ₹20 lacs, in our view, would appear to be a little too much. We notice

that for 2000-2001, it is pointed out that the turn over on the basis of the seized documents would amount to ₹49,750/-, while the assessment is only put at ₹2 lacs. We are told that the assessment orders in all years have been passed by the very same Assessing Officer. Therefore, such variance in the assessments appears to be rather unjustified. We also take note, as we have already done, of the fact that 1999-2000 is his first year in business. While best of judgment assessment may involve an element of guess work, but at the same time, it is settled law that it must be made *bona fide* and it cannot be whimsical or arbitrary. Therefore, as far as the CTR No. 67 of 2011 is concerned, we would grant relief by holding that there was an element of perversity in the turnover arrived at in regard to readymade garments, instead of remanding the matter as we think that no purpose will be served by remanding the matter as the petitioner did not avail of the opportunities, which were given by the statutory Authorities to respond to the notices, which were issued and we cannot give an opportunity again. Therefore, we would, instead, fix the turnover at ₹12 lacs in relation to readymade garments and the revision will stand allowed to that extent only and his assessment will stand modified as above on the said basis.

6. As far as CTR No. 66 of 2011 is concerned, it relates to year 2001-02. The complaint, which is essentially pressed before us, relates to the turnover relating to the readymade garments. Then, here we notice that it is the third year of his business and even going by the submission of Mr. Pulak Raj Mullick, the business will look-up and it will only show an upward trend. The assessment is put at ₹12 lacs in relation to the readymade garments when the turnover on the basis of the seized material showed about ₹11,000/-. We would notice that even according to the turnover, which the petitioner has accepted for the year 2000-01, it is in the region of about ₹2,51,000/- and still the petitioner has shown his turnover for 2001-02 at ₹11,000/-. According to the petitioner, petitioner volunteered with the information, which revealed the turnover of

₹51,000/- and therefore, including the seized material, the amount will be nearly ₹62,000/-. We see no reason to interfere with the order passed in CTR No. 66 of 2011. It will stand dismissed. No order as to costs.

(U.C.Dhyani, J.)
30.06.2015

Rathour

(K.M. Joseph, C.J.)
30.06.2015