

Neutral Citation No. - 2023:AHC:200309**Court No. - 5**

Case :- SALES/TRADE TAX REVISION No. - 139 of 2022

Revisionist :- M/S Sah Agencies Pvt. Ltd.

Opposite Party :- Commissioner, Commercial Tax U.P.

Counsel for Revisionist :- Rishi Raj Kapoor

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

WITH

Case :- SALES/TRADE TAX REVISION No. - 140 of 2022

Revisionist :- M/S Sah Agencies Pvt. Ltd.

Opposite Party :- Commissioner, Commercial Tax U.P.

Counsel for Revisionist :- Rishi Raj Kapoor

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

Case :- SALES/TRADE TAX REVISION No. - 141 of 2022

Revisionist :- M/S Sah Agencies Pvt. Ltd.

Opposite Party :- Commissioner, Commercial Tax U.P.

Counsel for Revisionist :- Rishi Raj Kapoor

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

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Rishi Raj Kapoor, learned counsel for the revisionist and Shri B.K. Pandey, learned Additional Chief Standing Counsel for the State - respondents.
2. Sales/Trade Tax Revision No. 139 of 2022 relates to the Assessment Year 2009-10 under the UP VAT Act, Sales/Trade Tax Revision No. 140 of 2022 relates to the Assessment Year 2008-09 under the UP VAT Act and Sales/Trade Tax Revision No. 141 relates to the Assessment Year 2010-11 under the UP VAT Act. Since the issues involved in these revisions are similar, therefore, the same are being decided by the common order.

Sales/Trade Tax Revision No. 139 of 2022 is taken as a leading case for deciding the controversy involved in these revisions.

Sales/Trade Tax Revision No. 139 of 2022

3. The present revision has been filed against the impugned judgement & order dated 22.02.2019 passed by the Commercial Tax Tribunal, Gorakhpur Bench, Gorakhpur in Second Appeal No. 174/2017 for the assessment year 2009-10.

4. The present revision was admitted by this Court vide order dated 29.03.2023 on the following questions of law:-

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in, rejecting the Form E - 1 and C, filed along with application for filing additional evidence, as not filed before the tribunal?"

"(ii) Whether, on the facts and in the facts and circumstances of the case the Tribunal was legally justified in dismissed the appeal, without considering that the application for additional evidence was already on record and a report from assessing authority was sought by the Tribunal?"

5. Learned counsel for the applicant submits that the applicant is a Private Limited Company and registered under the UP VAT Act as well as under the Central Sales Tax Act. In the normal course of business, the applicant made inter-State stock transfer, against which Forms F, E-1 and C were issued. The aforesaid Forms F & E-1 are to be collected from the branch or dealers situated outside the State of U.P. On 30.04.2013, the Assessing Authority passed the assessment order imposing tax of Rs. 1,59,919/-. He further submits that at the time of passing the order assessment order, the said forms could not be produced in spite of the best efforts and the same were submitted before the authorities below at the appellate stage. He further submits that the first appellate authority as well as the second appellate authority have erred in passing the impugned orders dated 20.06.2017 and 22.02.2019. In support of this contention, he has placed reliance on the judgement of this Court in ***Hindon River Mills Limited Vs. CTT*** [2008 (37) NTN DX 149]. Learned counsel for the applicant

submits that the Tribunal has not considered that the applicant - assessee has filed Form E-1 & C along with the application as additional evidence and without deciding the application for additional evidence, the claim of the applicant has been rejected in an illegal manner. He further submits that the Tribunal has not considered the settled legal position that Forms E-1 & C can be filed at the appellate forum and the benefit of the same should be given on late filing if sufficient cause is shown and therefore, the impugned order is illegal, arbitrary and bad in law. He prays for allowing the revision.

6. Per contra, learned ACSC supports the impugned order and submits that the applicant was required to submit the forms as prescribed under the law, but the same have not been submitted. The proceedings have rightly been initiated against the applicant and the authorities below have rightly disbelieved and not accepted the application of the applicant as additional evidence.
7. After hearing learned counsel for the parties, the Court has perused the record.
8. It is admitted that inter-State transaction has been made. In the event the forms submitted by the applicant are not accepted, the applicant will be compelled to pay higher rate of tax.
9. This Court, on an identical set of facts, in ***Hindon River Mills Limited*** (supra) has held as under:-

“10. The learned Counsel for the applicant has sought to rely upon certain decisions in support of his contention that the dealer should not be denied opportunity and secondly, that if the tax liability could be reduced in accordance with law and under Law dealer is not required to pay tax at higher rate, a liberal approach should be adopted.

11. Having considered the submissions of the learned Counsel for the parties, in my opinion, where the department had earlier applied the rate of two percent and subsequently sought to enhance it to four percent in proceedings under Section 22 of the Act and at the stage of appeal the dealer submitted declaration in Form C on the

ground that it was not available with it at the time of assessment order and sufficient opportunity had not been given to it, the application under Section 12B of the Act ought to have been accepted, as the Law does not permit unnecessary taxation and permits taxation only in accordance with law.

12. In the facts and circumstances of this case and in view of the discussion made above, the dismissal of the appeal to this limited extent cannot be sustained and is liable to be aside. The order dated May 19, 2006 passed by the Tribunal confirming the rejection of application under Section 12B of the Act is set aside and matter is remanded back to the Tribunal for passing appropriate orders taking into consideration the effect of 12 Form C subject to verification in accordance with law. Rest of the findings of the Tribunal remained intact.

13. Revision application is allowed as above. There shall however be no order as to costs.”

- 10.** The transaction already claimed by the applicant as exempt/concession rate of tax in its hand, the form, which could not be furnished due to unavoidable circumstances, the form could be considered by the Tribunal.
- 11.** In the peculiar facts & circumstances of the case, when the transaction has already been made and covered by the requisite forms, the applicant, if due to unavoidable circumstances, could not obtain the forms and had produced the same upto the state of Tribunal, even in the subsequent stage, providing the claim has already been made for the same, the form should be accepted.
- 12.** This view has been taken by this Court in the case of ***M/s Dhan Prakash Cane Crushers Vs. Commissioner of Sales Tax*** [2002 UPTC 634], which has been reiterated in the case of ***M/s Dhan Prakash Cane Crushers Vs. Commissioner of Sales Tax*** [2002 UPTC 788]. In the said case, this Court accepted the form, which was furnished for the first time in the revisional jurisdiction and had remanded the matter to the Tribunal to reconsider the same.
- 13.** In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in the cases referred to above,

the impugned judgements & orders passed by Commercial Tax Tribunal in these revisions cannot be sustained and the same are modified to the extent that the Tribunal is directed to accept the forms submitted by the applicant and thereafter, decide the issue in accordance with law.

- 14.** For the said purpose, the matter is remanded back to the Tribunal by restoring the case to its original number before the Tribunal.
- 15.** Accordingly, all the revisions are allowed.
- 16.** The questions of law are answered accordingly.

Order Date :-17/10/2023

Amit Mishra