

**Reserved On: 25.03.2022**  
**Delivered On:31.03.2022**

**Court No. - 1**

**Case :- SALES/TRADE TAX REVISION No. - 512 of 2015**

**Revisionist :- M/S. Shree Ram Engineering Works**

**Opposite Party :- Commissioner Of Commercial Tax U.P. Lucknow**

**Counsel for Revisionist :- Suyash Agarwal**

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

**Hon'ble Piyush Agrawal,J.**

1. Civil Misc. Amendment Application No. Nil of 2015 is allowed. Learned counsel for the applicant is permitted to incorporate the substantial questions of law in the memo of revision.
2. Heard Shri Suyash Agarwal, learned counsel for the revisionist and Shri Nitin Kumar Agrawal, learned Additional Chief Standing Counsel for the opposite party.
3. The present revision has been filed against the judgement & order dated 28.08.2015 passed by the Commercial Tax Tribunal, Bench – I, Agra in Second Appeal No. 169 of 2015 for the assessment year 2010-11 arising out of the penalty proceedings under the UP Value Added Tax Act, in which following questions of law have been framed:-

*i) Whether on the facts & circumstances of the case, the Tribunal was correct to uphold estimation of stock at 40 tons as against 24 to 25 tons disclosed at the time of survey dated 18.09.2010 ignoring that no weightment of stock was carried out by the SIB?*

*ii) Whether the issue of excess stock of 17 tons having not adjudicated by the appellate authority, the Tribunal was correct to affirm the same instead of remanding the same to appellate authority?*

*iii) Whether the Tribunal was correct to decide the appeal without calling for the comments of the SIB submitted by SIB Authority u/s 45(10) of the Act especially when the applicant has submitted the reply before him in pursuance to notice u/s 45(10)?*

*iv) Whether in the alternative suppression found for 4 months amounting to Rs. 4,43,772/- on the basis of loose papers, the Tribunal was correct to estimate the same at Rs. 5 lacs and concealed purchase and sales at Rs. 40 lacs and Rs. 47 lacs respectively on the facts &*

*circumstances of the case?*

*A) Whether on the facts & circumstances of the case the Tribunal was correct to uphold estimation of stock at 40 tons by A.O. when the same was done without any objective appraisal of relevant material and contrary to decision of M/s Agarwal Plastic Industries, Ghaziabad Vs. C.S.T. 1989 UPTC 1281 (Alld)?*

*B) Whether the Tribunal was justified in sustaining the estimation of concealed purchase and sales at Rs. 40 lacs and Rs. 47 lacs respectively on presumption when the actual suppression recorded by the Assessing Officer was Rs. 4,43,772/-?*

4. Learned counsel for the applicant submits that the applicant is engaged in the business of manufacture and sale of rough C.I. Casting. The business premises of the applicant was surveyed on 18.08.2010, where certain exhibits were seized. On the said basis, the books of account as well as estimation of turnover was made, which was assailed upto the Tribunal. The Tribunal has partly allowed the appeal. He further submits that at the time of survey, the estimate of CI casting was not actually weighted or verified, but only on the basis of estimate or eye measurement, the same was recorded as 40 tons. He further submits that in pursuance of notice issued under section 45(10) of VAT Act, specific ground was raised in the reply to the show cause notice, copy of which has been annexed as Annexure No. 4 to the revision. The said issue was also raised before the Assessing Authority, but unsuccessful upto the Tribunal. He further submits that once a specific ground was raised that the estimate of CI casting of 40 tons was made without actual weight, the authorities below were not justified in drawing an adverse inference against the applicant. He further submits that no specific finding has been recorded by the authorities below. He prays for allowing the revision.
5. Per contra, learned Standing Counsel supports the order of the authorities below. He submits that at the time of survey dated 18.08.2010, one of the partners of the firm was present and on whose statement, the same was recorded. He further submits that

if the surveying officer has arbitrarily recorded more than the disclosed by the partner, then it was incumbent upon the said partner to put his objection before signing or not to sign the survey report. He further submits that the copy of the survey report has not been annexed along with the revision and therefore, the issue is concluded by finding of fact and prays for dismissal of the revision.

6. The Court has perused the records.
7. It is admitted that the survey was conducted at the business premises of the applicant and at the time of survey, books of account were not produced as well as certain exhibits were seized and therefore, the books of account were rejected and the enhancement of turnover was made.
8. The only dispute has been raised by the counsel for the applicant before this Court is only that the estimate of 40 tons has wrongly been recorded by the authorities; whereas, no actual weightment was made by the surveying authority. The counsel for the applicant has relied upon clause (4) of the reply to the notice issued under section 45(10) of the VAT Act, which reads as under:-

*“यह कि तैयार माल के स्टॉक रजिस्टर के अनुसार दिनांक – 18-08-2010 को रहतिया 22.771 टन गणना के आधार पर निकाला है, जिसे सर्वेक्षण के समय उपस्थिति फर्म साझीदार ने अनुमान के आधार पर चौबीस से पच्चीस टन अनुमानित बताया था, लेकिन आपने रहतिया को सर्वेक्षण में प्रार्थी के अनुसार अंकित न करके अपने अनुमान पर 40 टन माना है। यह यहाँ पुनः विचारणीय है कि आपके द्वारा अंकित 40 टन माल भौतिक सत्यापन व तोल नाप से समर्थित नहीं है।”*

9. The assessee, himself, has accepted that one of the partners was present at the time of survey, who himself, on estimation (*Anuman Se*) stated that the stock is for 24-25 tons, but he never

requested to correct the stock entries or objected before the surveying authority about the noting the same as “40 tons”. At this juncture, the counsel for the applicant submits that there is no provision to object to the entries incorporate during the survey.

10. This argument of the applicant's counsel appears to be very attractive at the first instance, but on the close scrutiny, it has no legs to stand on. Once the partner of the firm was available at the time of survey, who must have signed the survey report, he could very easily requested to correct the entries or refuse to sign the survey report, if it was not recorded as per his statement. No averment, whatsoever, has been made before the authorities or in the revision that the said partner protested the recording of “40 tons” or any rebuttal to the recording of the said fact of 40 tons was made immediately after the survey was concluded.
11. The counsel for the applicant has relied upon the judgement in *Sarang Electricals Vs. CST* reported in 1998 (12) NTN 155 (paragraph nos. 7 & 8) and *M/S Agarwal Duplex Board Mills Ltd. Muzaffarnagar Vs. C.C.C.* (TTR No. 821 of 2010, decided on 24.10.2019) (paragraph no. 10), but the facts of these judgements are entirely different to the facts involved in the present case as one of the partners was present at the time of survey and on his statement, entries were made in the survey report. Therefore, the judgements relied upon by the applicant are not applicable to the facts & circumstances of the instant case.
12. In view of the aforesaid facts & circumstances of the case, the issue is concluded by finding of fact and hence, the same cannot be interfered in the revisional jurisdiction as no question of law arises. The revision is, accordingly, dismissed.

**Order Date :-31/03/2022**

*Amit Mishra*