

Court No. - 6

Case :- SALES/TRADE TAX REVISION No. - 236 of 2018

Applicant :- M/S Shivalik Buildtech Pvt. Ltd.

Opposite Party :- The Commissioner, Commercial Taxes

Counsel for Applicant :- Shubham Agrawal

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

Hon'ble Ashok Kumar,J.

Heard Ms. Sanyukta Singh, learned counsel for the revisionist and Sri B.K. Pandey, learned counsel for the opposite party.

This revision petition is filed under Section 58 of the U.P. VAT Act, 2008 by which the revisionist has challenged the order passed by the Commercial Tax Tribunal, Saharanpur Bench, Saharanpur passed in Second Appeal No. 37 of 2017 for the Assessment Year 2010-11 under Section 54 (1)(11) of VAT Act.

Brief facts of the case are that the revisionist is a registered company and is carrying on a business of construction of building for which certain purchases were affected by the revisionist including the purchase of sand.

While claiming benefit of Input Tax Credit the revisionist has submitted the relevant documents before its assessing authority and during the course of verification of the claim the assessing authority has inquired into the purchases affected by revisionist from one M/s. Deoki Nandan Trading Company, Govindpuram, Ghaziabad. The said firm M/s Deoki Nandan was allotted TIN number by the respondent department being TIN No. 09488813822 which was effective till the order of cancellation was passed by the assessing authority of the said seller on 20.11.2010.

The revisionist claimed that admittedly the sand was purchased by the revisionist from Deoki Nandan Trading Company against Bill No. 770 dated 15.11.2010 for sum of Rs.6,74,673/- on

which the VAT was payable to the tune of Rs.33,734/- and against Bill No. 900 dated 18.12.2010 for sum of Rs. 5,40,616/- on which the VAT was payable to the tune of Rs.27,031/-, total liability of VAT therefore, comes to Rs.60,765/- for which while submitting the return the revisionist has claimed 'Input Tax Credit'.

It is noticed that the Assistant Commissioner, Commercial Tax Sector, Ghaziabad has informed vide its letter No.868 dated 26.7.2011 that seller M/s. Deoki Nandan Trading Company was registered, however the registration of the said seller was cancelled on 20.11.2010. It is also informed by the Assistant Commissioner that the said firm was a bogus firm which never indulged any kind of purchase and sale business, it is therefore, claimed that the present revisionist was also indulged in the said bogus activities, hence the penalty proceedings are carried out against the revisionist under Section 54(1)(11) of the Act.

Section 54 of the VAT Act provides penalty in certain cases. Sub-section(1) of Section 54 provides as under :

“(1) The assessing authority, if he is satisfied that any dealer or other person, as the case may, has committed the wrong described in coloumn-(2) of the table below, it may, after such inquiry, if any, as it may deem necessary and after giving dealer or person reasonable opportunity of being heard, direct that such dealer or person shall, in addition to the tax, if any, payable by him, pay by way penalty, a sum as provided in column (3) against the same Serial No. of the said table.”

Sub-section (11) of Section 54 of the Act provides as follows :

| Sl. No. | Wrong | Amount of penalty |
|---------|--|-----------------------|
| 11 | Where the dealer or other person, as the case may be,- (i) issues or furnishes a false or wrong certificate or from of declaration prescribed under this Act, by reason of which a tax on sale or purchase, ceases to be leviable, whether in full or in part; or | 50% of value of goods |

| | | |
|--|--|--|
| | (ii) issues a tax invoice or sale-invoice without actual sale of goods; or (iii) issues a transport memo, challan or transfer invoice without actual dispatch or delivery of goods; or (iv) receives a tax invoice or sale-invoice without actual purchase of goods; or (v) receives a transport memo, challan or transfer invoice without actual receipt of goods; or (vi) issues or furnishes a false tax invoice, sale invoice, certificate or declaration, by a reason of which a tax on sale or purchase ceases to be leviable under this Act or Rules made thereunder; | |
|--|--|--|

It is provided that in the event if the assessing authority is satisfied that any dealer has committed wrong which is described in column 2 [in the instant case described in the chart as under Sub-section 11 of Section 54(1)], in that case after an inquiry, if the assessing authority deem necessary, after providing a reasonable opportunity to the parties concerned, direct that such dealer or person shall, in addition to tax, if any payable by him, pay by way of penalty (in the instant case 50% of value of goods).

Learned counsel Ms. Sanyukta Singh has pointed out that the entire penalty proceedings was illegally and arbitrarily initiated against the present revisionist whereas, even assuming without admitting, if any wrong is found, it is always open to the department to proceed against the dealer whose registration was cancelled.

Learned learned counsel for the revisionist has also submitted that in the instant case the registration of the seller was cancelled on 20.11.2010 whereas admittedly the part of the purchase of sand was affected by the present revisionist on 15.11.2010 and thereafter again on 18.12.2010. It is claimed that in fact the revisionist was not aware that the registration of the seller was

cancelled.

Having heard learned counsel for the parties, in my opinion, the penalty proceeding which is initiated in the instant case against the revisionist, is totally illegal, arbitrary for the reason that in case if a registered dealer is effecting the purchases from a registered dealer whose registration is subsequently cancelled then in that event unless and until the purchaser is aware or is informed by the department it cannot be presumed that he was aware about the proceedings for cancellation of registration of a dealer/seller. The purchase of sand by the revisionist in the instant case, appears to be affected bona fide as the revisionist was not aware about the fact that the seller who was effecting the sales is not a registered dealer or his registration is cancelled. In view of the aforesaid reasons, in my opinion, the revisionist cannot be held guilty nor he is liable to pay the penalty.

However, it is open to the department to take appropriate action, in accordance with law against the seller whose registration was cancelled.

The revision is allowed. The penalty order passed by the Tribunal is set aside.

Order Date :- 26.09.2018
S.S.