

**Court No. - 5**

**Case :-** SALES/TRADE TAX REVISION No. - 99 of 2023

**Revisionist :-** M/S Sri Shanti Readymade

**Opposite Party :-** The Commissioner, Commercial Taxes, U.P.

**Counsel for Revisionist :-** Sanyukta Singh

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

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Ms. Sanyukta Singh for the revisionist and Mr. B.K. Pandey, learned Additional Chief Standing Counsel for the opposite party.
2. The present revision has been filed against the judgement and order dated 16.5.2023 passed by Commercial Tax Tribunal in Second Appeal No. 46 of 2022 (A.Y. 2014-15) passed in the proceedings under Section 9 (2) of Central Sales Tax Act.
3. The present revision has been admitted vide order dated 10.8.2023 on the following questions of law: -

*“(A) Whether the Tribunal was justified in rejecting the account books and affirming the best judgement assessment, even after recording the finding in favour of the applicant that assessing authority and the first appellate authority has not given any basis of fixing the turnover and the best judgement assessment should not be whimsical, else it would be illegal?”*

*B. Whether the tribunal was justified in only partially allowing the appeal filed by the applicant and estimating the turnover of undisclosed Central Sale at Rs. 10 Lakh merely on the basis of alleged entry of UP sale of Rs. 1.10 lakh found to be recorded in the documents seized during the survey, which does not relate to the applicant and which relates to the period prior to the commencement of business of the applicant?”*

*C. Whether the tribunal was justified in enhancement of turnover under the Central Sales Tax Act merely on the basis of surmises and conjunctures, in absence of any material of suppression of Central Sales ?*

4. Learned counsel for the revisionist has submitted that the applicant is a registered dealer under the UP VAT Act (hereinafter referred to as the 'Act') and engaged in trading of ready-made garments and his business was commenced from Assessment Year 2014-15. She submitted that on 27.9.2014 a survey was conducted in the business premisses of the revisionist and at the time of survey, the revisionist was not present at the spot. She submitted that at the time of survey business of the applicant was closed but the shop was opened for carpentry work. It was submitted that during spot inspection, six loose documents were found which were relating to the transactions of previous assessment year when the revisionist was not in possession of the shop in question and same was being used by the erstwhile tenant.

5. She further submitted that the disclosed turnover of Central Sales Tax cannot be rejected merely on the ground that the books of account under UP VAT Act has been rejected and some suppression have been found. She further submitted that in the absence of any material suppression of Central Sales Tax enhancement of turnover cannot be said to be justified in the eyes of law.

6. In support of her contention she relied upon the judgement of this Court in the case of **M/s R.D. Gupta and Company Vs. C.S.T., UP, 2004 NTN (Vol 25) 1243** and **Guru Prasad Roller Flour Mills Pvt. Limited Vs. Commissioner of Commercial Tax, U.P., 2016 NTN (Vol. 62) 345** and prayed for allowing the present revision.

7. *Per contra*, learned A.C.S.C. has supported the impugned order and prayed for dismissal of the present revision.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. Admittedly, business premisses of the petitioner was surveyed on 27.9.2014 and on the basis of said survey, the books of account under UP VAT

Act was rejected and disclosed turnover was enhanced. However merely the books of accounts were rejected and enhancement was made and same was challenged before this Court in Sales/ Trade Tax Revision No. 106 of 2013 which has been partly allowed by this Court by a separate order passed today in which the Court has upheld the rejection of books of accounts under local sales but enhancement of turnover is not justified. Merely because books of account under local sales have been rejected, the same will not necessary to led the ground for rejecting the books of account under Central Sales Tax Act also in the absence of any cogent material available on record.

**10.** From perusal of the impugned order, neither any reference nor any material have been brought on record sustaining the enhancement of disclosed turnover under Central Sales Tax Act.

**11.** This Court in the case of **M/s R.D. Gupta (supra)** has held that the books of accounts and disclosed turnover under Central Sales Tax Act cannot be rejected merely because books of account under local tax have been rejected and it has been further observed that the enhancement of turnover cannot be justified.

**12.** Again this Court in the case of **Guru Prasad Roller Flour Mills Pvt Limited (Supra)** has held that merely on the basis that the books of account of assessee was rejected under UP VAT Act, the same would not led to a conclusion that the assessee had infact entered into Central Sales in the absence of any material available on record.

**13.** The case is in hand none of the authorities below have recorded any finding or disclosed any material which would necessarily led to the conclusion that the assessee had infact made any central sales.

**14.** In view of above, the enhancement of turnover made by the impugned order cannot be sustained in the eyes of law. In the results, the revision is **allowed** and the order of the tribunal is set aside.

**15.** The substantial questions of law are answered accordingly.

**Order Date :- 20.11.2023**

Rahul Dwivedi/-