

Neutral Citation No. - 2025:AHC-LKO:19201
Judgment reserved on 01.04.2025
Judgment delivered on 07.04.2025

Case :- SALES/TRADE TAX REVISION No. - 58 of 2008

Revisionist :- M/S Mohan Meakin Ltd. Through Its Financial Dir.

Opposite Party :- Commissioner Commercial Taxes Lko.

Counsel for Revisionist :- Yogesh Chandra Srivastava, Yogesh Chandra Srivastava

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

AND

Case :- SALES/TRADE TAX REVISION No. - 64 of 2008

Revisionist :- M/S Mohan Meakin Ltd. Through Its Financial Dir.

Opposite Party :- Commissioner Commercial Taxes Lko.

Counsel for Revisionist :- Yogesh Chandra Srivastava, Yogesh Chandra Srivastava

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

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Dhruv Agarwal, learned Senior Advocate assisted by Sri Yogesh Chandra Srivastava, learned Counsel appearing on behalf of the revisionist as well as Sri Sanjay Sareen, learned Counsel appearing on behalf of the State.
2. The Sales/ Trade Tax Revision No.58 of 2008 has been filed challenging the validity, legality and correctness of the order dated 04.04.2008 passed by the Trade Tax Tribunal, Lucknow Bench, Lucknow in Second Appeal No.243 of 1999 for the Assessment Year 1995-96 and the other Sales/ Trade Tax Revision No.64 of 2008 has been filed challenging the order dated 04.04.2008 passed in Second Appeal No.241 of 1999 for the Assessment Year 1994-95.

3. As common questions of law and facts arise in both the revisions and as such both are being decided by means of this common judgment.
4. The facts in brief are that the revisionist is a company incorporated under the Indian Companies Act and is registered under the Uttar Pradesh Trade Tax Act as well as under the Central Sales Tax Act and is said to be maintaining all the books of accounts as prescribed under law. By means of an order dated 31.03.1998, the Assessing Authority while passing the assessment order imposed higher rate of tax on the sales incurred by the revisionist. Challenging the said order dated 31.03.1998, a first appeal was preferred by the revisionist. The said appeal was partly allowed vide order dated 09.03.1999. Still aggrieved against the said order, both the State as well as the revisionist preferred second appeal under Section 10 of the U.P. Trade Tax Act before the Trade Tax Tribunal. The Tribunal vide its order dated 04.04.2008 allowed the appeal filed by the State/Revenue and dismissed the appeal filed by the revisionist. The aforesaid revisions have been filed challenging the said orders of the Tribunal dated 04.04.2008.
5. Although both the revisions were admitted vide order dated 08.05.2008, however, the questions of law was not framed. The questions of law as raised in both the revisions has to be decided in the light of the arguments raised. The questions of law are as under:

(1) Whether the Trade Tax Tribunal was justified in confirming the imposition of Tax above 26% as contemplated under Section 3-A(1)(c) of the Act?

(2) *Whether the Trade Tax Tribunal as well as lower authorities were justified in imposing tax over and above 26% i.e. 32.5%?”*

6. Sri Dhruv Agarwal, learned Senior Advocate while arguing the abovesaid cases argues that Section 3-A of the U.P. Trade Tax Act is a main charging section, which provides for tax, which can be levied as per the provisions of tax. Section 3-A is quoted as under:

“Section 3-A. Rates of tax.

(1) Except as provided in section 3-D, the tax payable by a dealer under this Act shall be levied :-

(a) on the turnover in respect of 'declared goods', at the point of sale to the consumer at the maximum rate for the time being specified in section 15 of the Central Sales Tax Act, 1956 or where the State Government, by notification declares any other single point or a lesser rate, at such other point or at such lesser rate;

(b) on the turnover in respect of any food or drink served for consumption in a hotel or restaurant or part thereof, with which a cabaret or floor show is provided therein, at such rate, not exceeding forty per cent, as the State Government may, by notification, declare;

(c) on the turnover of spirits and spirituous liquors of all kinds including methyl alcohol and motor spirit, diesel oil and alcohol as defined under the United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939, at such point and at such rate not exceeding twenty-six per cent, as the State Government may, by notification declare.

Provided that no tax shall be levied on any goods under this clause if tax is payable on purchase or

sale of such goods, under any other Uttar Pradesh Act for the time being in force.

(d) on the turnover in respect of goods specified in the Schedule, at such point and at such rate, not exceeding, fifteen, per cent., as the State Government may, by notification, declare, and different points and different rates may be declared in respect of different goods comprised in any entry in the said Schedule:

Provided that the State Government may, by notification, omit the entry relating to any goods from the Schedule and may, in the like manner, restore any entry so omitted, and upon the issue any such notification omitting or restoring any entry the said Schedule shall, subject to the provisions of sub-section (2), be deemed to be, amended accordingly.

(e) on the turnover in respect of goods, other than those referred to in clauses (a), (b), (c) and (d), at the the point of sale by the manufacturer or importer at the rate of eight percent:

Provided that the State Government may, from time to time, by notification, modify the rate or point of tax on the turnover in respect of any such goods, with effect from such date as may be notified in that behalf so however, that the rate does not exceed eight per cent.

(2) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed take effect from the date of its publication in Gazette subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make, so, however, that any such modification or

annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said notification or annulment.”

7. It is argued by Sri Agarwal that subsequently Section 3-A underwent amendments in the year 1998 wherein, the maximum rate was amended to be fixed as 35% in place of 26%. He argues that Section 3-E of the U.P. Trade Tax Act prescribes for levying additional tax on certain dealers whose turnover exceeds ten lakh rupees to be calculated as the rate prescribed. Section 3-E of the U.P. Trade Tax Act is quoted below:

“Section 3-E. Additional tax on certain dealers.

(1) Every dealer liable to pay tax under this Act, the aggregate of those turnover, as referred to in subsection (2) of section 3, exceeds ten lakh rupees in any assessment year, shall, in addition to the tax payable under any other provision of the Act, be liable to pay an additional tax calculated at the rate of five percent, of the tax payable by him for that assessment year under the provisions of this Act;

Provided that in calculating the additional tax payable by the dealer, the tax payable under the other provisions of this Act in respect of sales or purchases of declared goods shall not be taken into consideration.

(2) The additional tax shall be paid by the dealer before furnishing, or alongwith, the return for the month in which such turnover as computed from the commencement of the assessment year first exceeds ten lakh rupees and where return for that month has already been filed, the additional tax shall be paid before filing, or alongwith, the first return filed thereafter. The tax so payable shall be for the period from the commencement of the assessment year to the end of the period covered

by such return, and the dealer shall continue to be liable to pay the additional tax for that assessment year for all the subsequent periods till the end of that assessment year:

Provided that the additional tax in respect of assessment year 1983-84 shall be payable only for the period commencing from October 1, 1983.

(3) Notwithstanding anything contained in the preceding sub-sections, the State Government may, by notification, direct that the additional tax shall be payable with effect from such date, in such manner and at such rate (not exceeding twenty five per cent.) on the tax payable under the other provisions of this Act as may be specified in the notification -

(a) by every dealer irrespective of the aggregate of his turnover, or

(b) by every dealer the aggregate of whose turnover as referred to in sub-section (2) of section 3 exceeds such amount as may be specified in the notification;

and different rates may be specified in relation to different amounts of such turnover:

Provided that in calculating such additional tax payable by the dealer, there shall not be taken into consideration the tax payable in respect of-

(i) the sales or purchases of 'declared goods',

(ii) the sales or purchases of other goods relating to any period prior to the date with effect from which such additional tax shall be payable.”

8. In the light of the said statutory provisions, Sri Agrawal, learned Senior Advocate argues that the maximum rate of tax, as can be levied, is prescribed under Section 3-E read with Section 3-A, wherein the rates of tax has been prescribed. He reiterates that the

rate of tax as prescribed under Section 3-A (c), the maximum tax, which can be levied and collected, is fixed as 26% and cannot increase in any manner. He argues that the prescription of levying of additional tax in terms of Section 3-E (3) of the U.P. Trade Tax Act which prescribes for levy of additional tax not exceeding 25% on tax payable, can in no case exceed the limit as imposed by virtue of Section 3-A (c) of the U.P. Trade Tax Act. He argues that in fact, the anomaly, which led to passing of the order, which are impugned, the burden cast upon the revisionist exceeded the limit of 26% as prescribed under Section 3-A and thus the orders impugned are contrary to the scheme of Section 3-A of the U.P. Trade Tax Act. In short, the submission is that the levy of tax imposed against the revisionist beyond the limit of 26% is bad in law. In support of his contention and to further clarify, he argues that this anomaly was noticed by the legislature itself and for the subsequent years, the amendments were carried out. In Section 3-A, the maximum tax was increased from 26% to 35% and Section 3-E, which prescribes for levy of additional tax, was deleted from the statute books.

9. Sri Agarwal, learned Senior Advocate further argues that the subsequent development in law can be taken into consideration as held by the Hon'ble Supreme Court in the case of *Pappu Sweets and Biscuits and another vs Commissioner of Trade Tax, U.P., Lucknow: (1998) 7 SCC 228* and relies particular emphasis on para 13, which is as under:

“13. The learned counsel for the appellant also drew our attention to a similar exemption notification for the subsequent period issued by the State of U.P. wherein the relevant item is worded thus:

"Units making sweetmeats, namkin, reori, gazak (but excluding such confectionery manufacturing units as are registered under the Factories Act, 1948) and restaurants."

The learned counsel submitted that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous or capable of more than one interpretation. In support of his contention, he relied upon the decisions of this Court in State of Bihar vs S.K. Roy (1966) Supp. SCR 259 and Yogender Nath Naskar v. Commissioner of Income Tax, Calcutta (1969) 3 SCR 742. In Naskar's case (supra), this Court quoted with approval the following observations made in Cape Brandy Syndicate v. I.R.C. (1921) 2 K.B.403:

"I think it is clearly established in Attorney General v. Clarkson (1900) 1 QB 156 that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quit agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier Act."

10. No other argument has been advanced by Sri Dhruv Agarwal, learned Senior Advocate appearing on behalf of the revisionist.
11. Sri Sanjay Sareen, learned Counsel appearing on behalf of the State, on the other hand, justifies the levy of tax and argues that in terms of the mandate of Trade Tax Act, the liability to pay the tax arises out of Section 3 and the rate of tax is prescribed under Section 3-A of the U.P. Trade Tax Act. He argues that in addition to

the tax as prescribed to be levied, the State Government in its legislative wisdom has also prescribed for levy of additional tax on certain dealers which cannot exceed 25% of the tax payable under the other provisions of the Act. He thus argues that the State Government in its legislative wisdom has prescribed for levy of tax as well as additional tax and the submission of the Counsel for the revisionist that the total quantum of tax as prescribed under Section 3-A cannot exceed, is erroneous and is liable to be rejected.

12. In the light of the arguments as raised above, it is essential to notice that the liability to tax under the U.P. Trade Tax Act, as then was for the respective financial years arose from Section 3 of the Act. The rate of tax were prescribed under Section 3-A and for the revisionist, the tax prescribed was pegged at a rate not exceeding 26%. That apart from the tax as could be levied and collected, the State Government in its legislative wisdom prescribed for levy of additional tax on certain dealers, however, the limit for levy and collection of the additional tax was pegged at not exceeding 25% on the tax paid. The said two taxes prescribed under the Act are separate and distinct. The vires of Section 3-E is not under challenge and thus, the issue is to be decided only on the basis of the statutory prescriptions as existed at the time of passing of the assessment order. Merely because in the subsequent year, the State Government in its legislative wisdom had decided to omit the provisions of Section 3-E, the same itself cannot be a binding factor to form a view that the State Government even for the relevant years (relevant for the present cases) could not impose the different taxes, which in the present case are trade tax as well as additional tax. The reliance placed upon the judgment in the case of *Pappu Sweets and Biscuits (Supra)* would have no applicability to the facts of the present case as on a plain reading of Sections 3, 3-A and 3-E

are separate and distinct. It is also worthwhile to notice that the validity of Section 3-E has been upheld by this Court in the case of *U.P. State Cement Corporation Limited Churk, Mirzapur through K.P. Singh vs State of U.P. and another:1986 U.P.T.C. 66*. Thus finding that the tax and the additional tax are two separate taxes which are leviable by virtue of the statutory enactments, the contention of the revisionist cannot be accepted. Thus, the Questions of Law (1) and (2) are decided in favour of the State/revenue and against the assessee.

13. For the reasons stated above, both the revisions are *dismissed*.

Order Date:07.04.2025

akverma

(Pankaj Bhatia,J.)