

CASE NO.:
Appeal (civil) 4913 of 2006

PETITIONER:
Commissioner, Sales Tax, U.P.

RESPONDENT:
M/s Mohan Brickfield, Agra

DATE OF JUDGMENT: 13/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 19958 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

The Commissioner of Sales Tax, Uttar Pradesh, calls in question legality of the order passed by a learned Single Judge of the Allahabad High Court allowing the revision petition filed by the respondent under Section 11 of the Uttar Pradesh Trade Tax Act, 1948 (in short the 'Act'). The dispute relates to the assessment year 1984-85. The High Court set aside the order passed by the Sales Tax Tribunal, Agra (in short the 'Tribunal') in Second Appeal No.129 of 1989.

High Court by the impugned order observed that the rejection of accounts on the ground that books of accounts were not produced at the time of survey conducted on 29.3.1984 and 30.3.1985 was really of no consequence since no defect was specifically pointed out in respect of books of accounts produced at the time of assessment.

The factual position in a nutshell is as follows:-

Respondent (hereinafter referred to as 'assessee') at the relevant point of time was carrying on business of manufacturing and sales of bricks. Two surveys were conducted in the business premises of the respondent on 29.3.1984 and 30.3.1985. But the books of accounts were not produced on either of the dates. The Assessing Officer was of the view that non-production of books of accounts at the time of these surveys established that books of accounts were not maintained in the regular course of business and, therefore, were liable to be rejected. It was also noted that apart from the fact that books of accounts were not produced as noted above, two other factors existed to discard the books of accounts.

Firstly, the respondent-assessee had indicated the Fukai period of seventy two days, but had shown lesser production. The selling rate was found to be lesser than the rate prevailing during the year in question when compared to sales at kilns in the same vicinity. No explanation was offered as to how this was possible. It was noted that the assessee did not disclose the capacity of the kiln. Therefore, taking into account the productions and rates in similar cases, the Assessing Officer took the established norm of production to be one lakh bricks in six days and accordingly fixed the production at 12 lakhs bricks. Accordingly, assessment was completed to the best of judgment.

An appeal was preferred by the assessee before the

Assessment Commissioner (Judicial), Range I. The said authority with reference to the material on record found as follows:

(1) No allowance for weightage for after adjusting the opening and closing stock of bricks outside kiln that 76000 and 2,08,000 respectively. The sale of burn bricks was determined to be 13,68000 breaking allowance 58000 was given and the sale was determined at 10,10,000 bricks.

For the year 1983-84 the average sale was determined at Rs.280/- by the appellate authority. Taking that into account the sale rate was fixed at Rs.320/- for the year in question. An appeal was preferred by the assessee against the Assistant Commissioner's order before the Tribunal. The Commissioner of Sales Tax also preferred appeal. Both the appeals were taken up together. The Tribunal found that the rejection of accounts was justified. Though reliance was placed on certain decisions of the Allahabad High Court to contend that when books of accounts were produced at the time of assessment which were free from defect, it cannot be held that they were not maintained in the regular course of business, merely on the ground that at the time of survey they were not produced. Tribunal found that that was not the only reason for rejection of the accounts and other factors relating to rates and low production were reflected. However, the sale of bricks was fixed at nine lakh bricks. Accordingly the appeal filed by the assessee was partly allowed and the revenue's appeal was dismissed.

The assessee filed revision application before the High Court. As noted above, by the impugned judgment the learned Single Judge allowed the same.

In support of the appeal learned counsel for the appellant submitted that the High Court proceeded on erroneous premises to hold that the only ground for rejection of books of accounts was non-production of books of accounts at the time of survey. As elaborately dealt with by the Tribunal, that was not the only ground. Even otherwise the High Court's view if accepted will render Sections 12 and 13 of the Act redundant. It is also pointed out that Section 11 of the Act confers limited jurisdiction on the High Court to interfere only on the question of law. The High Court should not have interfered with the findings of fact while exercising the revisional jurisdiction.

The learned counsel for the assessee on the other hand supported the order of the High Court.

We shall first deal with the power of the High Court in dealing with the revision petition. Section 11 of the Act reads as follows:

"11. Revision by High Court in special cases.\027(1) Any person aggrieved by an order made under sub-section (4) or sub-section (5) of Section 10, other than an order under sub-section (2) of that section summarily disposing of the appeal, or by an order passed under Section 22 by the Tribunal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.

(2) Any person aggrieved by an order made by the Revising Authority or an Additional Revising Authority refusing to state the case

under this section, as it stood immediately before April 27, 1978, hereinafter referred to as the said date, may, where the limitation for making an application to the High Court under sub-section (4), as it stood immediately before the said date, has not expired, likewise apply for revision to the High Court within a period of ninety days from the said date.

(3) Where an application under sub-section (1) or sub-section (3), as they stood immediately before the said date, was rejected by the Revising Authority or an Additional Revising Authority on the sole ground that the period of one hundred and twenty days for making the reference, as specified in the said sub-section (1), has expired, such applicant may apply for revision of the order made under sub-section (2) of Section 10, to the High Court within sixty days from the said date on the ground that the case involves any question of law.

(4) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.

(5) Every application for making a reference to the High Court under sub-section (1) or sub-section (3), as they stood immediately before the said date, pending before the Revising Authority or an Additional Revising Authority on the said date, shall stand transferred to the High Court. Every such application upon being so transferred and every application under sub-section (4) as it stood immediately before the said date, pending before the High Court on the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6) Where the High Court has before the said date, required the Revising Authority or an Additional Revising Authority to state the case and refer it to the High Court under sub-section (4), as it stood immediately before the said date, such authority shall, as soon as may be, make reference accordingly. Every reference so made, and every reference made by such authority before the said date in compliance with the requirement of the High Court under sub-section (4), as it stood before the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6-A) Where the Revising Authority or an Additional Revising Authority has, before the said date, allowed an application under sub-section (1) or sub-section (3), as they stood immediately before the said date, and such authority has not made reference before the said date, it shall, as soon as may be, make reference, to the High Court. Every such reference, and every reference already made by such authority before the said date and pending before the High Court on the said

date, shall be deemed to be an application for revision under this section and dispose of accordingly.

(7) Where an application under this section is pending, the High Court may, on an application in that behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due, under the order sought to be revised :

Provided that no order for the stay of recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(8) The High Court shall, after hearing the parties to the revision, decide the question of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(8-A) All applications for revision or orders passed under Section 10 in appeals arising out of the same cause of action in respect of the same assessment year shall be heard and decided together.

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining application, it may recall such earlier decisions and may thereafter proceed to hear and decide all the applications together.

(9) The provisions of Section 5 of the Limitation Act, 1963, shall, mutatis mutandis, apply to every application, for revision under this section.

Explanation \026 For the purpose of this section,
the expression "any person" includes the
Commissioner and the State Government."

The parameters of exercising power under the said provision were considered by this Court in Commissioner of Sales Tax, U.P. v. Kumaon Tractors & Motors (2002 (9) SCC 379). It was inter alia noted as follows:

"8. X X X X X

It appears that the High Court ignored the provisions of Section 11 of the Trade Tax Act which confers limited jurisdiction to interfere with the order of the Tribunal only on the question of law, that too the said question of law is required to be precisely stated and formulated. Instead of deciding the question of law, the High Court simpliciter re-appreciated the evidence and ignored the material documents maintained and produced by the assessee, that is, books of accounts, bills and Form 'C' submitted by it. In this view

of the matter, the impugned order cannot be sustained."

Apart from the fact that the High Court proceeded on erroneous premises to hold that rejection of accounts was only on the ground of non-production of accounts at the time of survey, the conclusions are also not otherwise sustainable. Sections 12 and 13 of the Act are relevant for the purpose. They read as follows:

"12. Accounts to be maintained by dealers.\027

(1) Every dealer including a dealer exempted from tax on payment of fee under any provision of the Act, shall keep and maintain a true and correct account showing the value of the goods sold and bought by him, and in case the accounts maintained in the ordinary course do not show the same in an intelligible form, he shall maintain true and correct account in such form, as may be prescribed in this behalf. Provided that this section shall not apply to such dealers as are not liable to taxation under this Act.

(2) A manufacturer liable to pay tax under this Act shall, in addition to the accounts referred to in sub-section (1), maintain stock books in respect of raw materials as well as the products obtained at every stage of production: Provided that in the case of any class of manufacturers, the aggregate of whose turnover, as referred to in Clauses (a) to (d) of sub-section (2) of Section 3, in an assessment year does not exceed five lakh rupees, the Commissioner, and in any other case the State Government, may relax the requirements of this sub-section subject to such conditions and restrictions as he or it may deem fit to specify.

(3) The accounts and the stock books required to be maintained under sub-section (1) or sub-section (2) shall be preserved by the dealer or, as the case may be, by the manufacturer for such period as may be prescribed."

"Section 13: Power to order production of accounts and powers of entry and inspection.

- (1) Any officer empowered by the State Government in this behalf may, for the purposes of this Act, require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy, the same and make such enquiries from the dealer relating to his business, as may be necessary: Provided that books, documents and accounts of a period more than four years prior to the assessment year shall not be so required, unless in any special case, for reasons to be recorded, such officer considers it necessary.

(2) All books, documents and accounts maintained by any dealer in the ordinary course of his business, the goods in his possession, and his place of business or vehicle shall be open to search and inspection at all reasonable times by such officers, as

may be authorised by the State Government in this behalf.

(3) If the officer authorized under sub-section (2) has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or documents, he may seize such account, register or document, as may be necessary. The officer seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of such seizure, after having such copies or extracts taken therefrom as may be considered necessary; provided the dealer or the aforesaid person gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or document, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him, the number of places where the signature and seal of such officer have been affixed on each account, register or document.

(3-A) Notwithstanding anything contained in sub-section (3), the officer seizing any account, register or other document under that subsection may for reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such account, register or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the years for which they are relevant, as he deems necessary.

(4) For the purposes of this section, the officer authorised thereunder may enter and search any place of business or vehicle, or any other building or place where he has reason to believe that the dealer keeps or is, for the time being, keeping, any books, registers, documents, accounts or goods relating to his business :

Provided that no residential accommodation (not being a place of business-cum-residence) shall be entered into, inspected or searched by such officer unless specially authorised in this behalf by the Commissioner in writing.

(4-A) An officer authorised to act under sub-section (2)\027

(i) shall have the power to seal the place of business or vehicle, or any box, almirah or other receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or the person in occupation or

incharge of such place of business or vehicle or box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so;

(ii) where the owner or other person in occupation or incharge of the place of business or vehicle or of the box, almirah or other receptacle found on the place of business or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such place of business or vehicle or box, almirah or other receptacle, may break open the same and prepare a list of the goods and documents found therein.

(4-B) [* * *]

(4-C) No person shall tamper with any seal put under sub-section (4-A).

(5) Any officer empowered under sub-section (1) may require any person,

(a) who transports or holds in custody, for delivery to or on behalf of any dealer, any goods, to give any information likely to be in his possession in respect of such goods or to permit inspection thereof, as the case may be, (b) who maintains or has in his possession any account, book or document relating to the business of a dealer, to produce such account, book or document for inspection.

(6) Every person transporting goods by any public service motor vehicle or by any vessel and every forwarding agent shall submit to assessing authority of the area from which the goods are despatched, such returns, as may be prescribed, of all goods transported or forwarded him. The Assessing Authority concerned shall have the power to for and examine the books of account or other documents in the possession of such transporter or agent with a view to verify the correctness the returns submitted, and that transporter or agent shall be bound furnish the books of account or other documents, when so called.

(7) The provisions of Sections 100 and 165 of the Code of Criminal Procedure, 1973 shall, 'as far as may be', apply in relation to any entry, search or inspection under this section, as they apply in relation any inspection or search under the said Code.

Explanation.\027In calculating the period specified in sub-section the period during, which proceedings under this Act remain stayed under the orders of any Court or authority shall be excluded."

Power to order production of accounts and powers to entry and inspection are provided in Section 13. An officer empowered by the State Government for the purpose of the Act may require any dealer to produce before him any book, document of the business and may inspect and make such enquiries from the dealer relating to his business as necessary. Section 7(3) empowers the Assessing Officer to make an assessment to the best of his judgment if no return is submitted or return submitted by the assessee appears to

him to be incorrect or incomplete.

As noted above, Section 12 mandates a dealer to keep and maintain true and correct accounts. Obviously, the books of accounts are to be kept at the place of business. If they are not kept at the place of the business, the power of inspection in terms of Section 13 becomes redundant. Sub-section (4) of Section 13 empowers the officer of the authority to enter and search any place or any other building or place where he has reason to believe that the dealer keeps or for the time being keeps any documents and accounts relating to his business.

The expression "place of business" is defined in Section 2(c)(1). The definition is an inclusive one and includes any place where a dealer keeps his books of accounts.

That being so, non-production of the books of accounts at the time of survey is a factor which can be taken into consideration by the Assessing officer while examining the return to find out whether the same is incorrect or incomplete.

Non-production of books of accounts at the time of assessment does not take away the effect of non-production at the time of survey. Such non-production is a relevant factor which can be considered by the Assessing Officer while considering whether the books of accounts are to be accepted as to have been maintained in the regular course of business.

It is incumbent upon the assessee to offer plausible explanation as to why they were not produced at the time of survey. The burden is on him to show as to why no adverse inference should be drawn.

Looked at from any angle, the order of the High Court is indefensible and is set aside.

The appeal is allowed. No costs.