(2010) 03 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 413 of 2010

ACC Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2), 21(4)

Citation : (2011) 38 VST 328

Hon'ble Judges : Ram Autar Singh, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By means of the present writ petition, the petitioner is challenging the order of the Additional Commissioner, Grade I, Commercial Tax, Kanpur Zone I, Kanpur, dated March 4, 2010, by which he has granted the approval under the proviso to section 21(2) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") which is applicable to the U.P. Tax on Entry of Goods Act, 2000.

2. The contention of the petitioner is that the petitioner had paid the entry tax on the market value in the year under consideration, which had been accepted by the assessing authority vide order dated March 30, 2006 and, therefore, no proceeding u/s 21 of the Act can be initiated on the ground that the petitioner is liable to pay entry tax on the value after adding the freight. He submitted that the petitioner had filed detailed reply to the notice u/s 21(2) of the Act but without application of mind and giving any reason the impugned order dated March 4, 2010 has been passed. He further submitted that the assessing authority has illegally issued the notice dated March 2, 2010 even before the grant of approval by the Additional Commissioner, Grade I, Kanpur Zone I, Kanpur, dated March 4, 2010 and, therefore, the notice dated March 2, 2010 is patently illegal and without jurisdiction.

3. In support of the contentions reliance has been placed on the Division Bench

decision of this court in the case of S.K. Traders v. Additional Commissioner, Grade I, Trade Tax, Zone, Ghaziabad reported in [2009] 26 VST 601, in the case of Ramayan Traders v. Assistant Commissioner (Assessment III), Trade Tax, Bareilly reported in [2007] 35 NTN 31 and in the case of Yadav Traders v. State of U.P. reported in [2010] 29 VST 107; [2009] UPTC 576.

4. Sri U. K. Pandey, learned standing counsel, states that let the matter may be remanded back to the Additional Commissioner, Grade I, Kanpur Zone I, Kanpur to pass a fresh order on a consideration of the reply by a reasoned order and the limitation should be saved as has been saved in the case of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, .

5. We have perused the impugned order. We are of the view that while granting the approval, the Additional Commissioner, Grade 1, Kanpur Zone 1, Kanpur, has not applied its mind to the reply given by the petitioner. The order is mechanical and therefore, vitiated and is liable to be set aside. We are also of the view that the Deputy Commissioner, Commercial Tax, Sector 10, Kanpur, has issued the notice u/s 21 of the Act on March 2, 2010 prior to the date of the grant of approval, which is patently illegal and without jurisdiction and, therefore, the said notice is also liable to be set aside.

6. In the case of Ramayan Traders v. Assistant Commissioner (Assessment III), Trade Tax, Bareilly [2007] 35 NTN 31 which has been relied on by the subsequent Division Bench of this court in the case of Yadav Traders v. State of U. P. reported in [2010] 29 VST 107; [2009] UPTC 576, held as follows :

From a perusal of the aforesaid order, it would be seen that he has not dealt with any of the grounds given in the reply submitted by the petitioners. He has only given his conclusion. No finding has been recorded nor any reason has been assigned as to why the approval/ sanction should be granted. Except for the aforesaid order dated July 12, 2001, which has been brought on record by the petitioner, the respondents have not brought any other order passed by respondent No. 2, which may show that any other reasons have been assigned. The order dated July 12, 2001 does not contain any reason and, therefore, as held by this court in the case of Manaktala Chemicals Pvt. Ltd. v. State of U.P. reported in [2007] 5 VST 284; [2006] UPTC 1128 and S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, (Civil Misc. Writ Petition No. 483 of 2002), decided today, reasons have to be assigned by the Additional Commissioner while granting sanction/ approval for initiating proceeding u/s 21(2) of the Act. As no reason has been assigned, the authorization/sanction dated July 12, 2001 cannot be sustained and is hereby set aside.

7. So far as the limitation is concerned, the Division Bench of this court in the case S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, held as follows (at page 638 of VST) :

Recently a Division Bench of this court in Civil Misc. Writ Petition No. 563 of 2007 (King Agency v. State of U.P.) decided on May 11, 2007 had followed the aforesaid decision and had held that where proceeding has been set aside by this court in exercise of powers under article 226 of the Constitution the period of limitation shall not apply while initiating proceeding thereafter. We are therefore of the considered opinion that the period of limitation provided under the first proviso to sub-section (2) of section 21 or sub-section (4) of section 21 would not be attracted in the present case both for passing a fresh order of sanction and reassessment. However, it would not mean that they could be passed at any time at the sweet will of the authorities. They are to be passed within a reasonable period and what would be the reasonable period would depend upon the facts of each case.

8. We follow the aforesaid view expressed by the Division Bench of this court.

9. In view of the aforesaid law laid down by the Division Bench of this court, the limitation provided in the Act may not be a bar in passing the fresh orders.

10. In the result, the writ petition is allowed. The order dated March 4, 2010 passed by the Additional Commissioner, Commercial Tax, Grade I, Commercial Tax, Kanpur Zone I, Kanpur and notice dated March 2, 2010 issued by the Deputy Commissioner, Commercial Tax, Sector 10, Kanpur, are set aside and the matter is remanded back to the Additional Commissioner, Grade I, Commercial Tax, Kanpur Zone I, Kanpur, to pass a fresh order after giving opportunity of hearing on a consideration of the reply filed by the petitioner or any other representation, which the petitioner proposes to file. The Additional Commissioner, Grade I, Commercial Tax, Kanpur Zone I, Kanpur, is further directed to pass fresh order within a period of three weeks from the date of presentation of a certified copy of this order, which the petitioner undertakes to file within a period of two weeks.