(2021) 12 UK CK 0285

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2769 Of 2021

Amish Kumar Gupta — APPELLANT

Vs

Deputy Commissioner (Tax Assessment) — RESPONDENT

Date of Decision : 28-12-2021

Acts Referred:

Uttarakhand Value Added Tax Act, 2005 — Section 25(6), 31, 31(1), 42(B)(3), 42(B)(4), 43(A)(7), 43(8), 48(10), 48(A)(5), 48(A)(6), 48(A)(7), 51, 56

Citation : (2021) 12 UK CK 0285

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Siddhartha Sah, T.S. Phartiyal

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Petitioner is challenging the orders passed by Assessing Authority, under provision of Uttarakhand VAT Act, 2005.

2. Learned Additional Chief Standing Counsel for the State has raised a preliminary objection that petitioner has a remedy under Section 51 of filing

First Appeal, which reads as hereunder:-

â?? First Appeal- Any dealer or other person aggrieved by an order made by the Assessing Authority or by an officer in charge of tax audit or any

order passed under sub-section(3) or sub-section(4) of section 42(B)other than,

(i) an order mentioned in section 56, or

(ii) an order passed under sub-section (8) of section 43, or

(iii) an order passed under sub-section (7) of section 43(A), or

(iv) an order passed under or sub-section (10) of Section 48; or

(v) an order of seizure passed under sub-section (5) of section 48(A); or

(vi) an order passed under sub-section (6) or sub-section (7) of section 48(A) may; within sixty days from the date of the service of the copy of the

order, appeal to such authority as may be prescribed, and shall also serve a copy of the Memorandum of Appeal on the assessing authority.]â??

3. Learned counsel for the petitioner submits that assessment orders have been passed ex-parte, without service of notice upon the petitioner as

mandated by Section 25 sub-section 6 of Uttarakhand VAT Act, 2005.

4. Section 31 (1) of Uttarakhand VAT Act, 2005 enables the Assessing Authority to set aside an order of assessment, if such officer is satisfied that

the applicant did not receive notice or was prevented by sufficient cause from appearing, on the date fixed. Section 31(1) of Uttarakhand VAT Act is

reproduced below:-

â??SECTION 31 : Power to set aside an Order of Assessment-

[(1)] In any case in which an order of assessment or reassessment or order of penalty is passed ex-parte, the dealer may apply to the Assessing

Authority within thirty days of the service of the order to set aside such order and reopen the case; and if such officer is satisfied that the applicant did

not receive notice or was prevented by sufficient cause from appearing on the date fixed, he may set aside the order and reopen the case for hearing.

Provided that no such application for setting aside such ex-parte order shall be entertained unless the dealer has submitted all periodical returns and

Annual Return completely and correctly and it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the dealer to be

due.â??

5. Since Uttarakhand VAT Act, 2005 provides a statutory remedy to petitioner, therefore, this Court is not inclined to entertain this writ petition.

6. Accordingly, the writ petition is dismissed on the ground of alternative remedy, with liberty to petitioner to approach the appropriate authority under

the Uttarakhand VAT Act, 2005.

