(1982) 12 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 100 of 1982

Asghear Ali Mohammad Ilyas and Another — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 14-12-1982

Acts Referred:

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3(1A), 3AA, 3B
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3(1A), 3AA, 3B
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3(1A), 3AA, 3B

Citation : (1983) 37 CTR 223 : (1983) 143 ITR 898

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : A.K. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Sapru, J.—The petitioner has a cane crusher. He exercised an option as provided u/s 3(1A) of the Act as a result of which he became liable to pay a fixed amount of purchase tax under the U.P. Sugarcane Purchase Tax Act, 1961. The petitioner has paid the tax for the year 1977-78. The petitioner was sent a notice by the assessing authority that the petitioner''s application for being taxed on the assumed basis had been rejected by the Accountant-General and that he was required to pay tax on his actual consumption of sugarcane. The petitioner was required to deposit Rs. 50,460 85 in the treasury. This order was dated September 25, 1979. The petitioner''s case was that he never received the order. A copy of the order has been filed along with the counter-affidavit. On that there is a written endorsement that the petitioner had refused to take the copy of the order. Subsequently, the petitioner was communicated another order dated March 14, 1980, which was to the same effect. The rectification of a mistake can be made by the assessing authority u/s 3AA of the Act. There is a proviso to that section, which provides that no rectification shall be made without giving a reasonable opportunity of being heard to the parties concerned. Admittedly, in this case, no communication was sent to the petitioner by the assessing authority that he proposed to rectify a mistake u/s 3AA. The order dated 25th September, 1979, as also the order dated 14th March, 1980, are, therefore, both against the provisions of Section 3AA of the Act as also the principles of natural justice. The fact that the petitioner did not file a revision against that order u/s 3B will not stand in the way of the petitioner, as, an order made in violation of natural justice is void and can be directly challenged in a writ petition. In the second place, the writ petition has been admitted and it would be unjust to reject the petition on the ground that the petitioner had a remedy u/s 3B of the Act.

2. It appears from the counter-affidavit that the petitioner''s application for exercising his option was rejected on the ground that it was delayed. Annexure 2 to the supplementary affidavit is the report of the assessing officer to the Assistant Commissioner, Sugarcane, which says that the petitioner had exercised the option within time and has sent the relevant information regarding the starting of the crushing season within time. The facts mentioned in this application are not disputed in the supplementary counter-affidavit. The rectification application appears to have been rejected on the ground that the option was exercised late. There appears to have been a misrepresentation of the facts to the Accountant-General which led to an objection by the Accountant-General. In view of the fact, stated in this latter (Annex. 2 of the supplementary affidavit), it is held that the assessment proceedings could not be reopened u/s 3AA on the ground that the petitioner had not exercised the option and had not sent the relevant information in time.

3. In the result I find that the orders dated September 25, 1979, annex. 1 to the counter-affidavit, and 14th March, 1980, annex. 2 to the writ petition, are quashed. It is necessary to quash the appellate order dated December 31, 1981, as no appeal lay against an order u/s 3AA of the Act. The petitioner is entitled to his costs. If any tax has been deposited in pursuance of the aforesaid two orders, the same shall be refunded to the petitioner.

