(2011) 07 AHC CK 0325

In the Allahabad High Court

Case No : Writ Tax No. 991 of 2011

B.S.N. Industries Pvt. Ltd. — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 61 VST 460

Hon'ble Judges : Sunil Ambwani, J;Pankaj Mithal, J

Bench : Division Bench

Advocate : Ashok Kumar, Assisted by Praveen Kumar, for the Appellant;

Judgement

1. We have heard Shri Ashok Kumar assisted by Shri Praveen Kumar for the petitioner. The learned standing counsel appears for the State-respondents.

The petitioner had earlier filed a Writ Tax No. 2054 of 2008 (B.S.N. Industries Pvt. Limited v. State of U.P.) in this court challenging the assessment order on the transactions which, according to the petitioner, were job-work and on which form F of the Central sales tax was not being issued. We had allowed the writ petition along with bunch of the writ petitions on December 1, 2009, with the following directions:

We have taken into account the submissions, the judgment of the Supreme Court dated March 31, 2009 Ambica Steels Ltd. Vs. State of U.P. and Others, , arising out of the judgment of the Division Bench of this court in Ambica Steels Limited Vs. State of U.P., , as well as the circular letter issued by the Commissioner, Trade Tax Department dated June 26, 2009, and consequently without going into the merits of the challenge to the vires of section 6A of the Act or other submissions, we dispose of all the writ petitions with the following directions:

(1) In all the cases, in which transactions of job-work and goods returned are involved, the assessment orders only to the extent that the tax was imposed on such transactions for want of form F of the Central sales tax are set aside. The

petitioners will appear and submit before the assessing authority a certified copy of this judgment in six weeks to complete the assessment proceedings with regard to such transactions only, on its own merits, after examining the transactions between the parties, and keeping in mind that the assessee is not in a position to obtain form F for no fault of his; and

(2) In the cases where the assessee has been subjected to reassessment proceedings in which the transactions of job-work and goods returned are involved, the reassessment orders only to the extent that the tax was imposed on such transaction/s for want of form F of the Central sales tax are set aside. The assessee will appear before the reassessing authority and submit a certified copy of this judgment in six weeks, to complete the reassessment proceedings in respect of such transactions only, on its own merits after examining the transactions between the parties, keeping in mind the findings recorded earlier on such transactions, and also that the assessee is not in a position to obtain form F, for no fault of his.

There will be no order as to costs.

2. The petitioner appeared before the assessing authority and submitted form F in respect of the transactions, which were claimed by it to be by way of job-work, and on which the goods were not transferred. By the impugned order the assessing authority has accepted all those transactions on which form F was produced and has recorded findings that in respect of the job-work of Rs. 1,26,23,771 neither form F has been produced nor other evidence has been produced on which the job-work may be verified.

3. The learned counsel for the petitioner submits that the assessing authority has disobeyed the order of this court and has committed contempt. According to the petitioner the assessing authority once again rejected transactions on the ground that the form F was not produced.

4. We do not agree.

5. From the assessment order, we find that the assessing authority has taken into account the judgment of this court and has not accepted only those transactions where the documents, or other evidence with regard to the job-work was not verified.

6. There is no jurisdictional error in the order to interfere in the matter in the writ petition under article 226 of the Constitution of India. Without expressing any opinion on the merits of the matter, we relegate the petitioner to avail of the statutory remedy of appeal against the assessment order. The writ petition is dismissed on the ground of availability of statutory alternative remedy. If the petitioner files the appeal within a fortnight from today, the competent authority will consider the application for condonation of delay on its own merits taking into account the fact that the petitioner had filed the writ petition and has been relegated to the remedy of filing of the appeal. Any observations made in the

order will not affect the powers of the appellate authority to consider the matter on its own merits.

