(2010) 09 AHC CK 0309

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1200 of 2010

Chandpur Enterprises Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:
Uttar Pradesh Value Added Tax Act, 2008 — Section 25(1)

Citation : (2010) 09 AHC CK 0309

Hon'ble Judges : Yatindra Singh, J and Rajes Kumar, J

Final Decision : Disposed Of

Judgement

Yatindra Singh and Rajes Kumar, JJ.—The question involved in the writ petition is whether provisional assessment could be made after expiry of time prescribed or extended by the Assessing Officer (the A.O.) for submission of return.

THE FACTS

2. The petitioner is a company registered under the Indian Companies Act. It did not file return from the month of April to July, 2008 and a notice dated 04.03.2010 was issued to the petitioner under Section 25(1) of the U.P. Value Added Tax Act 2008 (the Act) for making provisional assessment under.

.3. Respondent no. 2 by his order dated 16.03.2010 passed an order for provisional assessment. According to the petitioner, this order was received by 27.07.201. Hence, the present writ petition.

SUBMISSIONS OF THE PETITIONER

4. We have heard learned counsel for the petitioner and the learned standing counsel for the State. With the consent of the parties, the writ petition is being decided of at this stage.

5. The learned counsel for the petitioner submitted that:

The annual return was not filed by the petitioner after the expiry of time prescribed or extended by the assessing officer for submission of annual return;

No provisional order for assessment could be passed after the aforesaid period; and

The assessing officer could have passed the final assessment order against the petitioner but not the provisional assessment order.

THE DECISION

6. Section 25 is title as ''Assessment of tax for a tax period''. Subsection (2) of Section 25 {Section 25(2)} of the Act provides when a provisional assessment can not be made. It is as follows:

''No provisional order of assessment, under sub section (1) for any tax period of an assessment year, shall be made after the dealer has been submitted annual return of turnover and tax, and where such annual return has not been submitted by the dealer, after expiration of the time prescribed or extended by the assessing authority, for submission of annual return.''

7. A reading of Section 25(2) of the Act shows that provisional assessment cannot be made in the following situation:

(i) When assessment of tax has been filed by the assessee; or

(ii) Where such annual return has not been submitted by the dealer after expiration of the time prescribed or extended by the assessing authority for submission of annual return.

8. This is also held in the two decisions of our court reported in M/s Dinesh Chandra Gupta Vs. State of U.P., 2010 (43) NTN 126 and M/S Gopal Traders Vs. State of U. P., 2010 (7) VSTI 16. However in these cases, the first condition was applicable.

9. In the present case the second condition is applicable..

10. The petitioner ought to have filed his annual return up to 31.10.2009 under Section 25 (1) of the Act. The petitioner had not filed the same and as such there was no justification to pass the provisional assessment order. The authority below ought to have passed the final assessment order under the Act.

CONCLUSION

11. In view of the above, the order dated 16.03.2010 passed by the respondent no. 2 for provisional assessment order is quashed. The authority below will be at liberty to pass final assessment order unde the Act expeditiously.

12. With the aforesaid observations, the writ petition is disposed of.

