(2011) 03 AHC CK 0010

In the Allahabad High Court

Case No : Writ Tax No. 984 of 2010

Chandpur Enterprises Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21(2)

Citation : (2012) 47 VST 544

Hon'ble Judges : Ferdino Inacio Rebello, C.J;Prakash Krishna, J

Bench : Division Bench

Advocate : Shubham Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

1. The petitioner, a manufacturer of paper, has approached this court to challenge the notice of reassessment dated 2nd of July, 2010. By this notice the Revenue seeks to reopen the order of reassessment which was made on 4th of October, 2008. The petitioner has raised two grounds which are :

(1) That the petitioner who is a manufacturer has paid the entry tax and as such considering the notification dated 10th of February, 2005 it is entitled to a set-off in the payment of the trade tax in proportion to the entry tax already paid; and

(2) That the notice issued is without jurisdiction inasmuch as it has been made after two years of the period of reopening of the assessment has ended and there is nothing on the record to indicate that the authority has invoked the provision of the proviso to section 21(2) of the U.P. Trade Tax Act, 1948 which hereinafter shall be referred as "the Act.

2. As we propose to dispose of this petition on the issue of limitation, we do not propose to answer the first question and it will be open for consideration in the appropriate proceedings.

3. So far as the issue of limitation is concerned, the relevant dates have already

been set out. The order of assessment had to be passed by 31st of March, 2008 but was passed only on 4th of October, 2008. The notice of reassessment is after this date.

4. For considering the controversy it will be necessary to reproduce the section 21(2) of the Act, which reads as under :

21. 1. Subs, by U.P. Trade Tax (Amendment and Validation) Act, 2001 (U.P. Act No. 11 of 2001), dated April 30, 2001 (with effect from March 5, 2001).

...

(2) Except as otherwise provided in this section, no order of assessment or reassessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later :

Provided that if the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the assessing authority in that behalf, such assessment or reassessment may be made after the expiration of the period aforesaid, but not after the expiration of 1(six years from the end of such year or March 31, 2002, whichever is later) notwithstanding that such assessment Or reassessment may involve a change of opinion :

Provided further that the assessment or reassessment for the assessment year 1987-88 may be made by March 31, 1993 :

Provided also that if the eligibility certificate granted u/s 4A has been amended or cancelled by the Commissioner under sub-section (3) of section 4A, the order of assessment or reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, whichever is later :

Provided also that the assessment or reassessment for the assessment year 1989-90 may be made by March 31, 1995.

5. A reading of the said sub-section would show that under any provisions of this Act the order of reassessment cannot be made after expiration of two years from the end of such assessment year.

6. In the instant case, the assessment year is 2005-06, It will, thus, be clear that the proviso to the sub-section confers power on the Commissioner in the manner set out therein to grant permission for reassessment even after that period but not after expiration of eight years from the end of such year. Though the Revenue has filed counter-affidavit but nowhere in the counter-affidavit it has been set out that the permission required from the Commissioner has been taken to issue notice for reassessment, therefore, in view of the said sub-section, the issuance of notice for reassessment is without jurisdiction as it is barred by limitation having been issued after more than two years from the end of relevant

assessment year and consequently, the notice is liable to be set aside and is set aside.

7. We, however, make it clear that if the Revenue is otherwise entitled to issue a fresh notice of reassessment, then, the fact that this writ petition is allowed will not stand in the way of the Revenue. The writ petition succeeds and is allowed.