(2016) 11 AHC CK 0176

In the Allahabad High Court

Case No : Trade Tax Revision Defective No. 837 of 2011

Commissioner, Commercial Tax — APPELLANT

Vs

Belma Bandhu Traders — RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:
Central Sales Tax Act, 1956 — Section 10B

Citation : (2017) 95 UPTC 23

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Sri B.K. Pandey, Standing Counsel, for the Applicant; Ms. Kamini Pandey, Advocate, for the Opposite Party

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Ms. Kamini Pandey, Advocate has put in her appearance on behalf of the respondent. She has filed counter affidavit to the delay condonation application which is taken on record.

2. Heard Sri B.K. Pandey, learned counsel for the revisionist and Ms. Kamini Pandey, learned counsel for the respondent on Delay Condonation Application No. 33840 of 2011. Cause shown for delay is sufficient. Delay condonation application is allowed. Delay in filing the revision is condoned.

3. Learned counsel for the revisionist submits that the tribunal has committed manifest error of law in setting aside the order of remand by the impugned order dated 14.06.2011 passed in Second Appeal No. 269 of 2011 (A.Y. 2006-07) (Central) under Section 10-B of the Act.

4. Learned counsel for the respondent supports the impugned order.

5. By the impugned order, first appeal filed by the respondent assessee was allowed on the ground that the order passed by the Joint Commissioner (Executive) dated 25.03.2011 was unsustainable for reason that against the

assessment order the assessee had filed an appeal before the First Appellate Authority and as such the initiation proceeding under Section 10-B of the Act was unjustified.

6. It is undisputed that against the assessment order dated 31.03.2009 under Section 9(2) of the Central Sales Tax Act, the assessee preferred first appeal under Section 9 of the U.P. Trade Tax Act, 1948 (hereinafter to be referred as the ''Act'') which was pending as on the date when the proceeding under Section 10-B of the Act was initiated by the Joint Commissioner (Executive), Commercial Tax, Jhansi Bench, Jhansi. Consequently, in view of the provisions of sub section (3) of Section 10-B of the Act the Joint Commissioner (Executive) was not authorised to pass an order under Section 10-B(1) of the Act. Thus, the order dated 25.03.2011 passed by the Joint Commissioner (Executive), Commercial Tax, Jhansi Bench, Jhansi was without jurisdiction.

7. Under the circumstances, the tribunal has not committed any error of law in setting aside the said order by the impugned order dated 14.06.2011.

8. In view of the aforesaid, I do not find any merit in this revision.

9. Consequently, revision is dismissed.