(2007) 08 AHC CK 0011

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Hans Casting Pvt. Ltd. RESPONDENT

Date of Decision : 20-08-2007

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

Citation : (2008) 17 VST 447

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vikram Nath, J.—Heard learned Standing Counsel for the Commissioner, Trade Tax/applicant.

2. The dispute relates to the assessment year 1989-90. The following question of law has been sought to be raised by means of this revision.

Whether the Trade Tax Tribunal was legally justified to accept the dealer''s taxation declaration, inspite of suppressed sale was detected by the Trade Tax Officer, SIB on the scrutiny of the record of the Central Excise and Custom Department of Kanpur?

The dealer is a manufacturer of M.S. ingot. The original assessment order with regard to the dealer was passed on March 30, 1994 whereby the account books were accepted and the taxable turnover was determined at Rs. 1,98,210 with a tax liability of Rs. 7,288.40. Subsequent thereto the assessing officer, SIB while looking into the record of the Central Excise Department was of the view that certain turnover of the dealer had escaped assessment and therefore, proceeding u/s 21(2) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") was sought to be initiated, as the time-limit prescribed for the proceedings u/s 21(1) of the Act had lapsed. The material which was noticed from the record of the Central Exercise Department was that the consumption of electricity by the dealer was not matching with the production reflected by the dealer in his account books. The assessing officer by order dated August 4, 1997 determined the turnover at Rs. 11,90,464 with a tax liability of Rs. 4,47,619. The dealer preferred appeal, which was allowed by the Deputy Commissioner (Appeal), Saharanpur vide order dated June 15, 1999 and the matter was remanded to the assessing officer for a fresh assessment. Against the order of remand the dealer preferred a second appeal before the Tribunal.

3. The Tribunal relying upon the decision of this court in the case of Mahabir Prasad Jagdish Prasad v. Commissioner of Sales Tax reported in [1971] 27 STC 337 : [1971] NTC 337 and in the case of Laxmi Oil Mill, Varanasi v. Commissioner of Sales Tax reported in [1972] UPTC 363 held that the high consumption of electricity alone cannot be a ground for reopening of assessment. The assessing officer must have positive material on record to come to the conclusion that there has been escapement of turnover which alone could justify the proceedings u/s 21 of the Act. On mere conjecture that there has been high consumption of electricity reopening of assessment cannot be justified. I do not find any reason to differ with the aforesaid two decisions of this court.

The revision lacks merit and it is, accordingly, dismissed.

4. There shall, however, be no order as to costs.

