(2008) 07 AHC CK 0261

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Sanjeev Bricks Works RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2010) 28 VST 284

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The present revision is directed against the order passed by the Trade Tax Tribunal in second appeal deleting the tax on the turnover of coal as also rejecting the rectification application.

2. The dealer-opposite party carries on the business of manufacturing and sale of bricks. The only question raised in the present revision is with regard to the tax liability of coal purchased by the dealer-opposite party for consumption in the brick kiln, from unregistered dealers. The contention of the dealer-opposite party which has found favour by the Tribunal was that since Section 3AAAA has been declared unconstitutional, no tax on such turnover can be levied.

3. It has placed reliance upon a judgment of this Court in the case of Pioneer Tanneries & Glue Works, Kanpur v. State of Uttar Pradesh [1991] 83 STC 1: [1991] UPTC 585 wherein this Court had declared that Section 3AAAA is ultra vires. The said section was amended with retrospective effect and thereafter an application by the Department before the Tribunal was filed to rectify the parent order of the Tribunal granting relief to the dealer-opposite party on the turnover of the coal. By the order under revision the said application has been dismissed. In the memo of revision, the following question of law has been sought to be raised:

Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to reject the application filed by the Revenue for amendment in the order of the Tribunal in the light of retrospective substitution of provisions of Section 3AAAA by U. P. Act 8 of 1992 ?

4. Heard the learned standing counsel for the Department. None is present on behalf of the dealer-opposite party. An affidavit of service has been filed. The dealer-opposite party inspite of service has chosen not to appear and contest the present revision.

5. The controversy involved in the present revision stands concluded by the authoritative pronouncement of the apex court in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., wherein it has been held by the apex court that Section 3AAAA before its amendment as well as after its amendment is a valid piece of legislation. The apex court reversed the decision of this Court given in the case of Pioneer Tanneries & Glue Works [1991] 83 STC 1 : [1991] UPTC 585 which was relied upon by the Tribunal in its parent order. Respectfully following the judgment of the apex court, it is held that the Tribunal was not justified in rejecting the application filed by the Department u/s 22 of the Act for rectification of mistake.

6. The revision succeeds and is allowed and it is held that the dealer-opposite party is liable to pay tax on the turnover of coal purchased from unregistered dealers. The order of the Tribunal is hereby set aside.