(2005) 10 AHC CK 0064

In the Allahabad High Court

Case No : Trade Tax Revision No. 2682, 2683, 2684, 2685 and 2686 of 2004

Continental Cement Co. APPELLANT

Vs

Commisioner, Trade Tax RESPONDENT

Date of Decision : 28-10-2005

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 21, 4A

Citation : (2005) 10 AHC CK 0064

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : R.R. Agrawal and Suyash Agrawal, for the Appellant; U.K. Pandey and S.C., for the Respondent

Judgement

Rajes Kumar, J.—These five revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the orders of Tribunal dated 21.08.2004 relating to the assessment years 1992-93 (U.P.), 1993-94 (U.P.), 1994-95 (U.P.). 1994-95 (Central) and 1995-96 (U.P.) respectively arising out of proceedings u/s 21 of the Act.

2. The dealer was carrying on the business of manufacture and sales of Cement. It was holding Eligibility Certificate u/s 4-A of the Act for the period 1.9.1992 to 30.9.2002 for the period of 8 years or to the extent of Rs. 1,12,68,175/- which ever is earlier. Exemption limit had been expired in the year 1991, therefore, for the assessment year 1992-93, onward applicant Unit was not under the exemption and manufactured Cement was liable to tax. Applicant for all the aforesaid years, disclosed the turnover and admitted liability of tax which have been assessed to tax in the original assessment proceedings. Thereafter, Assessing Authority received a report of TTO. (SIB) (hereinafter referred to as TTO (SIB) and on the basis of which formed opinion that there was assessed assessment and therefore, it appears that permission was sought from the Additional Commissioner for extension of time under the proviso of Section 21(2) of the Act vide letter dated 12.9.2000. Proposal was accepted and approval was

granted by the Additional Commissioner on 23.9.2000. Thereafter, notices u/s 21 of the Act were issued for all the aforesaid years on 30.9.2000 to reopen the assessments. Notices u/s 21 of the Act were duly served upon the applicant. Thereafter a detailed Show Cause Notices were issued which were replied. In the reply, applicant challenged the validity of initiations of proceedings u/s 21 of the Act and also made submissions on various queries made in the Show Cause Notices. Assessing Authority, however passed the assessment order u/s 21 of the Act on 15.3.2001 and accepted turnover have been assessed. Applicant filed appeals before the Deputy Commissioner (Appeals), Trade Tax, Muzaffarnagar, which have been dismissed provide order dated 30.4.2001 for the assessment year 1992-93 and vide order dated 05.10.2000 for the other assessment years. Applicant filed five separate appeals before the Tribunal. The Tribunal vide impugned order dated 21.8.2004 allowed the appeals in part for the assessment year 1992-93. The Tribunal has upheld the validity of initiation of proceedings u/s 21 of the Act and estimate of suppressed sales of Cement at Rs. 50 Lacs. The Tribunal however, reduced the estimate of suppressed purchases of Lime Stone from unregistered dealer to Rs. 6 Lacs. Appeals relating to other assessment years came up for consideration before the Tribunal subsequently. The Tribunal vide impugned order dated 21.8.2004 allowed the appeals and set aside the order of the Appellate Authority and remanded back the case to the Assessing Authority for afresh assessment in the light of observations made therein. Tribunal has up held the validity of the initiation of proceedings u/s 21 of the Act, however on the estimate of turnover, matter has been remanded back to the Assessing Officer.

3. Heard Sri R.R. Agarwal, learned Counsel for the applicant and Sri U.K. Pandey, learned Standing Counsel.

4. Learned Counsel for the applicant submitted that as per Circular no.925 dated 02.9.2000 issued by the Commissioner of Trade Tax, material should be referred in the order-sheet which it was not referred, a specific information was not on record. He submitted that the Assessing Authority should bring the material on record prior to sending for approval before the Additional Commissioner. Original report was not summoned and only on the basis of photostat copies of the seized documents by Excise Department, the inference of suppression had been drawn. Assessing Authority had not applied his independent mind before issuing notices about the escaped assessment and only on the basis of TTO (SIB) report, notices u/s 21 of the Act were issued, therefore, issuance of notices are bad in law. Reliance is placed on the decision of this Court in the case of Vipin Kumar Vinay Kumar v. Commissioner of Sales Tax reported in UPTC 1990 page 467. He submitted that no reason has been assigned by the Additional Commissioner before according sanction, therefore, sanction are bad in law. Reliance is placed on the Division Bench decision of this Court in the case of Vikrant Tyres Limited v. State of U.P. and Ors. reported in 2005 NTN (Vol. 27)-14. He submitted that the Commissioner of Central Excise (Appeals) has quashed the levy of Excise duty on the basis of alleged material, by which, clandestine removal of the goods

have been inferred. For the assessment year 1992-93, he submitted that without proper opportunity, the suppressed turnover at Rs. 50 Lacs had been estimated. He submitted that for the subsequent year, matter has been remanded back to the Assessing Officer, therefore, in case if the contention of the applicant about the validity ot the notice u/s 21 of the Act is not accepted, matter for this year may also be sent back to the Assessing Officer for decision afresh. Learned Standing Counsel submitted that the initiation of proceedings was in accordance to law. He submitted that the TTO (SIB) had received various documents from the Central Excise Authority, which were relating to clandestine removal of the goods from the Factory of the applicant. On receipt of those documents, TTO (SIB) called upon the applicant to produce the books of account for verification, but inspite of several opportunity being given, the applicant could not appear before the TTO (SIB) and thus, the TTO (SIB) was compelled to prepare an ex-parte report on the basis of documents sent by the Central Excise Department which were relating to the clandestine removal of the goods. In the TTO (SIB) report on the basis of seized documents by Excise Authorities, the suppressed sales have been worked out. Thereafter on the receipt of the TTO (SIB) report, Assessing Authority sent a proposal on 12.9.2000 to Additional Commissioner for according approval for extension of turnover under the proviso of Section 21(2). In the proposal, reason for seeking the permission was the report of TTO (SIB). The Additional Commissioner accorded sanction on 23.9.2000 and thereafter, notices u/s 21 of the Act were issued on 30.9.2000. He submitted that while issuing notices u/s 21 of the Act on 30.9.2000, in the order sheet, reference of TTO (SIB) have been made which is clear from the perusal of the order sheet. In this view of the matter, he submitted that it cannot be said that the Assessing Authority without any material and application of mind sought the proposal from the Additional Commissioner. He submitted that the report of TTO (SIB) was very well on record, which was based on the seized documents by the Central Excise Authority, which reflected the clandestine removal of the goods. He submitted that the applicant was asked to produce the books of accounts for verification, which he failed to do so, therefore, inference has rightly been drawn to about the suppressed sales.

5. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and perused the order of Tribunal and the authorities below. I have also perused the assessment record and the record of the Additional Commissioner for each year, which have been produced by the learned Standing Counsel.

6. The record shows that the Assessing Authority had sent proposal to the Additional Commissioner for seeking extension of time under the provisions of Section 21(2) on 12.9.2000. In the proposal, TTO (SIB) report, was mentioned therefore, it can not be said that the permission for initiating proceeding u/s 21 of the Act was sought without any material, and on the basis of the If material referred in the proposal, sanction had been accorded by the Additional Commissioner. Further when the notices u/s 21 of the Act were issued on

30.9.2000, in the order sheet, report of TTO (SIB) had been referred, therefore, it can not be said that the notices u/s 21 of the Act were issued without application of mind and without looking to the TTO (SIB) report. Perusal of TTO (SIB) report shows that the opportunity had been given to the applicant to appear and to produce the books of account for verification, which could not be availed, and in the absence of verification, TTO (SIB) had rightly drawn an inference that the documents sent by the Central Excise Department were relating to the clandestine removal and were not recorded in the books of account and were of the suppressed sales.

7. In my opinion, TTO (SIB) report which stated about non verification of the entries of the seized documents and about the suppressed sales was the relevant material to form believe about the escaped assessment. On the facts and circumstances of the present case, various decisions cited by the learned Counsel for the applicant are not applicable and are distinguishable. Orders of Tribunal in this regard are up held.

8. On the perusal of order for the assessment year 1992-93, it appears that the proper opportunity has not been given to the applicant. In the subsequent year for the want of reasonable opportunity, the case has been remanded back to the Assessing Authority to decide the matter afresh, in my opinion, for the assessment year 1992-93 also the matter should be remanded back to the Assessing Authority to pass assessment order afresh after giving proper opportunity of hearing alongwith the assessment orders for the subsequent years.

9. In the result, revision no. 2683 of 2004 for the assessment year 1992-93 (U.P.) is allowed in part. Order of Tribunal is set aside and the matter is remanded back to the Assessing Officer for passing assessment order afresh. Revision nos. 2682 of 2004, 2684 of 2004, 2685 of 2004 and 2686 of 2004 relating to the assessment years 1993-94 (UP), 1994-95 (UP), 1994-95 (Central), 1995-96 (U.P.) are dismissed.