(2007) 09 AHC CK 0231

In the Allahabad High Court

Continental Cement Company — APPELLANT

Vs

Commissioner, Trade Tax — RESPONDENT

Date of Decision : 17-09-2007

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

Citation : (2009) 24 VST 361

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated June 22, 2007 relating to the assessment year 1999-2000.

2. The applicant was engaged in the business of manufacture and sales of cement. The assessing authority passed the original assessment order u/s 7 read with Rule 41 on February 28, 2001. It appears that thereafter proceeding u/s 21 of the Act was initiated after the expiry of two years. After giving opportunity of hearing to the applicant, the assessing authority passed the assessment order on June 25, 2004 estimating the suppressed sales. Aggrieved by the order passed u/s 21 of the Act, the applicant filed an appeal before the Joint Commissioner (Appeals), Trade Tax, Saharanpur. The Joint Commissioner (Appeals), Trade Tax, Saharanpur, vide order dated August 2, 2004 allowed the appeal, set aside the order passed u/s 21 of the Act and remanded back the matter to the assessing authority for fresh adjudication. Being aggrieved by the order of the Joint Commissioner (Appeals), Trade Tax, Saharanpur, the applicant filed appeal before the Tribunal, who vide order dated Mach 29, 2006 dismissed the appeal. Being aggrieved by the order of the Tribunal, applicant filed Trade Tax Revision No. 801 of 2006. In the aforesaid revision, it was submitted that initiation of proceeding u/s 21 of the Act was barred by limitation inasmuch as the notice u/s 21 of the Act was issued without obtaining the sanction from the Additional Commissioner.

It was further submitted that at the time of issue of notice, there was no material which led to form the belief that there was escaped assessment and the reason has not been recorded while issuing the notice u/s 21 of the Act which is required to be recorded in view of the Circular issued by the Commissioner. This Court vide order dated February 9, 2007 [Reported as Continental Cement Factory Vs. Commissioner, Trade Tax, allowed the revision, set aside the order of the Tribunal and remanded back the matter to the Tribunal to decide the three issues, namely, (1) whether the notice u/s 21 of the Act was issued before obtaining the approval from the Additional Commissioner and if it is so, what is its effect, (2) whether at the time of issue of notice, there was material which led to form the belief that there was escaped assessment and (3) whether in view of the circulars, reason should be recorded and in case, if the reason has not been recorded whether it would invalidate the proceeding u/s 21 of the Act. After the remand of the case, the Tribunal has decided the appeal by the impugned order dated June 22, 2007 and dismissed the appeal.

3. Heard Sri Bharat Ji Agrawal, learned Senior Advocate assisted by Sri Shubham Agrawal, learned Counsel appearing on behalf of the applicant and Sri B.K. Pandey, learned Standing Counsel.

4. Learned Counsel for the applicant submitted that the Tribunal has not considered the direction given by this Court. He submitted that the Tribunal has admitted that the sanction was granted by the Additional Commissioner on August 23, 2002, but there is no reference of any notice issued u/s 21 of the Act thereafter. He submitted that the order of the Tribunal itself shows that the notice u/s 21 of the Act was issued by the assessing authority on July 21, 2002 fixing the date of hearing on September 9, 2002. This prima facie shows that the notice u/s 21 of the Act was issued prior to the grant of sanction by the Additional Commissioner and, therefore, the entire proceeding was illegal and without jurisdiction. In support of his contention, he relied upon the decision of the Division Bench of this Court in the case of Manaktala Chemicals Pvt. Limited v. State of U.P. reported in [2007] 5 VST 284 : [2006] UPTC 1128, in which the notice issued u/s 21 of the Act prior to obtaining of the sanction by the Additional Commissioner under the proviso to Section 21(2) of the Act has been held illegal.

5. Sri B.K. Pandey, learned Standing Counsel, submitted that the Tribunal has completely failed to record any finding about any notice issued subsequent to sanction of the order dated August 23, 2002 passed by the Additional Commissioner. He very fairly submitted that the Tribunal has not adjudicated issue No. 1 as directed by this Court, and, therefore, the order of the Tribunal is liable to be set aside and the matter may be remanded back to the Tribunal to adjudicate issue No. 1 afresh.

6. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

7. A perusal of the order of the Tribunal reveals that the Tribunal has not

adjudicated issue No. 1 as directed by this Court, though the Tribunal has held that the sanction has been granted by the Additional Commissioner on August 23, 2002, but the Tribunal completely failed to record the finding that whether any notice u/s 21 of the Act has been issued after the grant of sanction by the Additional Commissioner on August, 23, 2002. The Tribunal has also not considered the effect of the issuance or non-issuance of the notice after the sanction granted by the Additional Commissioner. In my view the order of the Tribunal is illegal and liable to be set aside. It is not fair on the part of the Tribunal to ignore or avoid to follow the direction given by this Court. If the court gives any direction to the Tribunal it should be strictly followed without any fail. A legal duty is cast on the Tribunal to comply with the direction of the court. The issue No. 1 which was directed to be decided goes to the root of the matter. The question involving jurisdiction and validity of the proceeding u/s 21 of the Act ought to have been decided with all seriousness.

8. In view of the above, the order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide issue No. 1 afresh as directed by this Court in the order dated February 9, 20071 passed by Trade Tax Revision No. 801 of 2006. The Tribunal is directed to record a categorical finding whether after the grant of sanction by the Additional Commissioner on August 23, 2002 any notice u/s 21 of the Act was issued by the assessing authority. If not issued, matter may be decided in the light of the decision of the Division Bench of this Court in the case of Manaktala Chemicals Pvt. Limited v. State of U.P. [2007] 5 VST 284 : [2006] UPTC 1128. In view of the above, there is no need to decide other issues. However, it will be open to the applicant to challenge the decision of the Tribunal with regard to other issue Nos. 2 and 3 in case, the applicant prefers to file any revision against the order of the Tribunal which may be passed in pursuance of the order of this Court.

9. In the result, the revision is allowed. The order of the Tribunal is set aside and the Tribunal is directed to decide issue No. 1 in the light of the observations made above.