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(2007) 02 AHC CK 0275

In the Allahabad High Court

Continental Cement Factory APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 09-02-2007

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

Citation : (2009) 24 VST 358

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—The 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 March 29, 2006 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 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 an appeal before the Tribunal, who vide order dated March 29, 2006 dismissed the appeal.

3. Heard learned Counsel for the parties.

4. Learned counsel for the applicant submitted that before the Tribunal it was submitted that the initiation of proceeding u/s 21 of the Act was barred by limitation inasmuch as the notice was issued on July 21, 2002, while the

permission under the proviso to Section 21(2) of the Act was given by the Additional Commissioner on August 23, 2002. It was also submitted that at the time of issue of notice, there was no material to form a belief about the escaped assessment, therefore, the initiation of proceeding u/s 21 of the Act was without jurisdiction. It was also submitted that before the issue of notice reasons should be recorded in view of the circulars dated September 2, 2000 and October 3, 2001 issued by the Commissioner of Trade Tax. He submitted that the above disputed issues were submitted before the first appellate authority as well as before the Tribunal but the same have not been adjudicated and, thus the order of the Tribunal is vitiated.

5. Learned standing counsel produced the record of the case. He submitted that though the order sheet shows that the notice was issued on July 21, 2002 but perusal of the notice reveals that the date was fixed for September 9, 2002 and the notice was received by the applicant on September 3, 2002. He submitted that in the notice no date of its issue is mentioned, thus it is not clear when the notice u/s 21 of the Act was issued.

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

7. In my view, the issues raised by the learned Counsel for the applicant referred hereinabove are jurisdictional issues and go to the root of the matter. Therefore, it was incumbent upon the Tribunal to adjudicate the aforesaid issues. A perusal of the order of the Tribunal reveals that the aforesaid jurisdictional issues have not been adjudicated. The Tribunal has not accepted the submissions of the applicant that the proceeding was barred by limitation merely on the ground that no decision of the honourable High Court has been shown by the applicant in which the approval given by the Additional Commissioner has been declared invalid. The other two aspects have not been adjudicated at all. In this view of the matter, the order of the Tribunal is vitiated and liable to be set aside. The Tribunal is directed to decide the 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 a belief that there was escaped assessment ; and (3) whether in view of the circulars, reason should be recorded and in case, the reason has not been recorded whether it invalidates the proceeding u/s 21 of the Act.

8. In the result, the revision is allowed. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the issues as stated above. The applicant may file certified copy of the order and appear before the member Tribunal concerned on February 26, 2007. On that date, the Tribunal may fix the date of hearing. It is made clear that this Court has not adjudicated the issue on the merits.

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