(2010) 01 AHC CK 0076

In the Allahabad High Court

Dinesh Chandra Gupta and Sons APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 25(2)

Citation : (2010) 3 AWC 2177

Hon'ble Judges : Subhash Chandra Nigam, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri R. K. Mishra, learned Counsel for the petitioner, learned standing counsel for the department.

2. By means of the present writ petition, the petitioner-is challenging the Provisional Assessment Orders dated 1.9.2009 for the Ist, IInd, IIIrd and IVth quarters for the assessment year 2008-09 on the ground that no provisional assessment order could be passed u/s 25(1) of U.P. V.A.T. Act, 2008 (hereinafter referred as ''the Act'') after the furnishing of annual return.

3. According to the petitioner, the annual return for the assessment year 2008-09 has been filed on 7.8.2009. Learned Counsel for the petitioner submitted that on the issue of notice for the provisional assessment, annual return for the year 2008-09 was filed on 7.8.2009 by the petitioner before the assessing authority and requested him that no Provisional Assessment Order could be made in view of Section 25 (2) of the Act but the assessing authority has rejected the plea of the petitioner on the ground that annual return was filed after the issue of the notice.

4. We are of the view that the impugned Provisional Assessment Orders passed by the assessing authority for Ist, IInd, IIIrd and IVth quarters for the assessment year 2008-09 on 1.9.2009 are illegal and without jurisdiction. Admittedly, the annual return was filed on 7.8.2009. Section 25 (2), U.P. Value

Added Tax Act, 2008 provides that : "No provisional order of assessment, under Sub-section (1), for any tax period of an assessment year, shall be made after the dealer has submitted annual return of turnover and tax, and where such annual return has not been submitted by the dealer, after expiration of the time prescribed or extended by the assessing authority, for submission of annual return".

5. We are of the view that Section 25 (2) of the Act completely prohibits for passing of any Provisional Assessment Order after furnishing of the annual return. It is immaterial that the return has been filed after the issue of the notice. Once the return was filed, the assessing authority was ceased with the power to pass any Provisional Assessment Order. Since in the present case, the return was admittedly filed on 7.8.2009, the assessing authority had no power to pass the Provisional Assessment Order on 1.9.2009.

6. In the result, the writ petition succeeds and is allowed. The Provisional Assessment Order dated 1.9.2009 for Ist, IInd, IIIrd and IVth quarters Annexure-1 to the writ petition are quashed.

7. However, it is open to the assessing authority concerned to pass the final assessment order on the basis of the return filed by the petitioner in accordance with law.

