(2010) 02 AHC CK 0081

In the Allahabad High Court

Hind Agro Industries Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 29 VST 110

Hon'ble Judges : Rajes Kumar, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri Bharatji Agrawal, learned Senior Advocate appearing on behalf of the petitioner and Sri U.K. Pandey, learned Standing Counsel.

2. By means of the present writ petition, the petitioner is challenging the order dated 20.01.2010 passed by Additional Commissioner, Commercial Taxes, Ghaziabad Zone, Ghaziabad for the assessment years 2003-04 to 2006-07 under the U.P. Tax on Entry of Goods Act (herein after referred as Act).

3. The contention of the petitioner is that Additional Commissioner, Commercial Taxes, Ghaziabad Zone, Ghaziabad has issued the notices u/s 21(2) of the U.P. Trade Tax Act (herein after referred as Trade Tax Act). The petitioner filed the reply to the aforesaid notices, annexure 6 to the writ petition but while passing the impugned orders, the submissions made in the reply have not been considered at all and the approval have been granted only in the interest of revenue. He submitted that the orders are vitiated, inasmuch as the submissions have not been considered and, therefore, they are liable to be set aside. It is stated that provision of U.P. Trade Tax Act has been adopted by Section 13 of the Act.

4. The contention of the petitioner is that Additional Commissioner, Commercial Taxes, Ghaziabad Zone, Ghaziabad has issued the notices u/s 21(2) of the U.P. Trade Tax Act. The petitioner filed the reply to the aforesaid notices, annexure-13

to the writ petition but while passing the impugned orders, the submissions made in the reply have not been considered at all and the approval has been granted only in the interest of revenue. He submitted that the orders are vitiated, inasmuch as the submissions have not been considered and, therefore, they are liable to be set aside.

5. In support of the contentions reliance has been placed on the Division Bench decision of this Court in the case of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, in the case of Ramayan Traders and Anr. v. Additional Commissioner (Assessment III), Trade Tax, Bareilly reported in 2007 35 NTN 31 and in the case of Yadav Traders v. State of U.P. and Ors. reported in 2009 UPTC 576.

6. Learned Standing Counsel states that let the matter be remanded back to the Additional Commissioner, Commercial Taxes, Ghaziabad Zone, Ghaziabad to pass fresh order in accordance to law and the limitation should be saved as has been saved in the case of S.K. Traders v. Additional Commissioner, Grade-I, Trade Tax, Zone, Ghaziabad and Anr. (Supra).

7. We have perused the impugned orders. The impugned orders reveal that the submissions made in the reply have not been considered at all and the approval has been granted mechanically only in the interest of revenue. Such orders can not be sustained in the eye of law and are liable to be set aside.

8. In the case of Ramayan Traders and Anr. v. Additional Commissioner (Assessment III), Trade Tax, Bareilly (Supra), which has been relied by the subsequent Division Bench of this Court in the case of Yadav Traders v. State of U.P. and Ors. (Supra) held as follows:

From a perusal of the aforesaid order, it would be seen that he has not dealt with any of the grounds given in the reply submitted by the petitioners. He has only given his conclusion. No finding has been recorded nor any reason has been assigned as to why the approval/sanction should be granted. Except for the aforesaid order dated 12th July, 2001, which has been brought on record by the petitioner, the respondents have not brought any other order passed by the respondent No. 2, which may show that any other reasons have been assigned. The order dated 12th July, 2001 does not contain any reason and, therefore, as held by this Court in the case of Manaktala Chemicals Pvt. Ltd. v. State of U.P. and Ors. reported in 2006 U.P.T.C. 1128 and S.K. Traders v. Additional Commissioner, Grade-I, Trade Tax, Zone Ghaziabad and Anr. Civil Misc. Writ Petition No. 483 of 2002, decided today, reasons have to be assigned by the Additional Commissioner while granting sanction/approval for initiating proceeding u/s 21(2) of the Act. As no reason has been assigned, the authorization/sanction dated 12th July, 2001 cannot be sustained and is hereby set-aside.

9. In view of the above, we set aside the impugned orders passed u/s 21(2) of the Trade Tax Act for the assessment years 2003-04 to 2006-07 under the Act

and the matters are remanded back to the Additional Commissioner, Commercial Taxes, Ghaziabad Zone, Ghaziabad to pass the orders afresh in accordance to law. The Additional Commissioner, Commercial Taxes, Ghaziabad Zone, Ghaziabad is directed to consider the submissions made in the reply to the notices.

10. So far as the limitation is concerned, the Division Bench of this Court in the case S.K. Traders v. Additional Commissioner, Grade-I, Trade Tax, Zone, Ghaziabad and another held as follows:

Recently a Division Bench of this Court in Civil Misc. Writ Petition No. 563 of 2007 (King Agency v. State of U.P.) decide don May 11, 2007 had followed the aforesaid decision and had held that where proceeding has been set aside by this Court in exercise of powers under Article 226 of the Constitution the period of limitation shall not apply while initiating proceeding thereafter. We are therefore of the considered opinion that the period of limitation provided under the first proviso to Sub-section (2) of Section 21 or Sub-section (4) of Section 21 would not be attracted in the present case both for passing a fresh order of sanction and reassessment. However, it would not mean that they could be passed at any time at the sweet will of the authorities. They are to be passed within a reasonable period and what would be the reasonable period would depend upon the facts of each case.

11. We follow the aforesaid view expressed by the Division Bench of this Court.

12. In view of the aforesaid law laid down by the Division Bench of this Court, the limitation provided in the Act may not be a bar in passing the fresh orders.

13. In the result, the writ petition is allowed as stated above.