(2009) 08 AHC CK 0208

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 493 of 2006

India Grain Merchant APPELLANT

Vs

State of U.P. & Ors. RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(2)

Citation : (2009) 08 AHC CK 0208

Hon'ble Judges : R.K.Agrawal, J and S.K.Gupta, J

Final Decision : Allowed

Judgement

S.K. Gupta, J.—In these writ petitions similar questions of fact and law are involved and with the consent of parties they are taken up together and are being disposed of by a common judgment and order.

2. Writ Petition No. 493(Tax)/06 and 494 of 2006 have been filed for quashing the order dated 1722006 (Annexure7) passed by Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur, respondent No.2 under section 21(2) of the U.P. Trade Tax Act (in short U.P. Act) and consequential reassessment proceeding initiated against the petitioner by respondent No.3 for the assessment P year 19992000 (U.P. and Central).

3. Writ Petition No. 613 (Tax) of 2006 has been filed for quashing the order dated 1832006 (Annexure7) passed by Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur, respondent No.2 under section 21(2) of U.P. Act and consequential reassessment proceeding initiated against the petitioner respondent No.3 for the assessment year 19992000 (U.P.)

4. Initially Writ Petition No. 328 (Tax) of 2007 and Writ Petition No.318 (Tax) of 2007 were filed for quashing the order dated 2022007 passed by Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur, respondent No.2 and consequential reassessment proceeding initiated against the petitioner by respondent No.3 for the assessment year 200001. It appears that reassessment

orders dated 1432007 were passed subsequently by the assessing authority against the petitioner. Therefore, the reassessment orders dated 1432007 for the assessment year 200001(U.P. and Central) have also been challenged.

5. Writ Petition No. 394 (Tax) of 2007 has been filed for quashing the order dated 2022006 (Annexure5) passed by Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur, respondent No.2 and consequential reassessment proceeding initiated against the petitioner by respondent No.3 for the assessment year 19992000 (U.P. and Central) vide notice dated 2222007 (Annexure6 to the writ petition.)

6. Writ Petition No. 395 (Tax) of 2007 has been filed for quashing the order dated 2022007 (Annexure6) passed by Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur, respondent No.2 and consequential reassessment proceeding iniated against the petitioner by respondent No.3 for the assessment year 200001 (U.P.), 200102 (U.P.) and 200203 (U.P.) respectively vide notice dated 2822007 (Annexure7 to the writ petition).

7. The facts of all the writ petitions are more or less the same which ultimately goes to the root of similar controversy, therefore, Writ edition No.493 of 2006 is being treated as the leading case. The facts enumerated in Writ Petition No.493 of 2006 are as follows:

8. The petitioner is a commission agent during the assessment year 1999 2000 it was engaged in the activity of purchase and sale of paddy on commission on behalf of Ex U.P. Principal. During the said assessment year the petitioner purchased paddy on behalf of Ex U.P. Principal M/s. Amir Chand Jagdish Kumar of Delhi and other Ex U.P. Principals.

9. The petitioner at the relevant time laboured under mistake of law that it was liable to be taxed in respect of purchase made on behalf of Ex U.P. Principal on the purchase of paddy. Thus in the assessment proceedings for the assessment year 19992000 (U.P) the petitioner admitted liability of tax @ 4% on the purchase of paddy on behalf of Ex U.P. Principal for the value of Rs.20,00,878.80. However, in respect of remaining purchases of paddy worth Rs.87,21,202.97 the petitioner claimed exemption.

10. The Trade Tax Officer, Unnao/the assessing authority of the petitioner finalised the assessment for the assessment years 19992000 (U.P) and 1999 2000 (Central) by assessment orders dated 2292001 and 2192001 respectively.

11. In the assessment order passed for the assessment year 1999 2000 (Central) the assessing authority of the petitioner specifically held that the petitioner did not purchase or sell paddy in its own account. In that assessment year 19992000 (U.P), the assessing officer again held that the petitioner had transacted purchase of paddy on commission basis on behalf of Ex U.P. Principal. It has been further alleged in the writ petition that the Apex Court in the case of Commissioner of Sales Tax v. Bakhtawar Lal Kailash Chand Arhti reported in

(1992) UPTC page 971 : (1992 All LJ 884) has held that purchase tax cannot be imposed under section 3D of the Act on the commission agent inside the State of U.P. who transacted purchases of goods on behalf of Ex U.P. Principal.

12. On 1012006, the Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur issued a notice to the petitioner under section 21 (2) of the Act to show cause as to why permission be not granted to the assessing authority to initiate reassessment proceeding against the petitioner for the assessment year 19992000 (U.P.).The petitioner vide reply dated 2812006, stated that the entire purchases of paddy made during the assessment year 19992000 was on commission basis on behalf of Ex U.P. Principal. The respondent No.2 by order dated 1722006 had granted permission to the assessing authority of the petitioner to reassess the petitioner for the assessment year 19992000 (U.P. and Central) and consequential notice has also been issued by the assessing authority, respondent No.3 for reassessment proceeding. Hence the present writ petition.

13. The facts of connected writ petitions are almost similar, therefore, facts of the aforesaid petition is not being repeated here again.

14. We have heard Sri S.D. Singh, learned counsel for the petitioner and the learned standing counsel for the respondents and perused the record.

15. Learned counsel for the petitioner apart from inviting attention of the court on merits of the case referred to the notice issued by the Additional Commissioner, Grade1, Trade Tax, Kanpur Zone, Kanpur, respondent No.3 and the objections filed by the petitioner, as also the impugned order passed by respondent No.2 granting permission sanction for reopening of assessment proceeding and submitted that the orders have been passed by respondent No. 2 without application of mind as the objections by the petitioner in its reply had not been dealt with. In fact, the said order does not contain any reasons whatsoever and appears to have mechanically been passed. He submitted that the impugned orders cannot be sustained and therefore consequential notice issued by the assessing authority can not also be sustained. In support of his submission he has relied upon paragraph 49 of the Division Bench judgment of this court in the case of S.K. Traders, Modi Nagar, Ghaziabad v. Additional Commissioner, Grade1, Trade Tax, Ghaziabad and another, 2008 UPTC 392 : (2007 (6) ALJ 302) wherein this Court has held that recording of reasons is a must while granting permission under section 21 of the Act.

16. Sri U.K. Pandey learned standing counsel submitted that it is very difficult and impracticable for the Additional Commissioner to record his own reasons while granting permission as the assessing authority who is normally in the rank of Assistant Commissioner and Deputy Commissioner are officers subordinate to the Additional Commissioner and any reasoning given by the Additional Commissioner would create difficulty in the reassessment proceeding as it would be binding on the assessing authority. He, therefore submitted that the

Additional Commissioner was perfectly justified in not recording reasons for granting permission/sanction.

17. We have considered the rival submissions and we find from the record that to the show cause notice issued by respondent No.2 the petitioner had filed its detailed objection. But the additional Commissioner, respondent No.2 had not given any reason whatsoever nor has dealt any of the objection raised by the petitioner in his reply. In view of the law laid down by this Court in the case of S.K. Traders (supra) the said order passed by Additional Commissioner cannot be sustained and is liable to be set aside.

18. We may mention here that the Court in paragraph 49 of the report in the case of S.K. Traders (supra) has held as follows:

"49. We are in respectful agreement with the view taken by this Court in the aforesaid cases and are therefore, of the considered opinion that opportunity of hearing has to be given to every assessee by the Additional Commissioner or the Commissioner while considering the proposal for sanctioning/issuing of notice for reassessment under the proviso to subsection (2) of Section21 of the Act and reasons are also to be recorded while granting sanction. As the Additional Commissioner has not given any reasons for granting permission/sanction to proposal to reopen the assessment for the assessment year in question and to make the reassessment under the extended period of limitation, the order dated 162001 cannot be sustained and is therefore, set aside. Consequently, all proceedings taken in pursuance of the said order also fails and are set aside."

19. In view of the foregoing discussion the impugned orders passed by Additional Commissioner, Grade1, Trade Tax,. Kanpur Zone, Kanpur and the consequential notices issued by the assessing authority for initiating reassessment proceedings in the leading Writ Petition 493 (Tax) of 2006 and in aforementioned connected writ petitions are set aside. Consequently, the assessment orders dated 1432007 passed separately in Writ Petition No. 328(Tax)/07 and Writ Petition No. 318(Tax)/07 are also set aside.

20. Before parting with the case, we may observe that the limitation for making reassessment might have expired. The question regarding limitation has been taken care of by this Court regarding limitation in the case of M/s. S.K. Traders (supra) and the directions and observations made by the Court in this behalf in the aforementioned case would also apply in the present case. The Additional Commissioner shall pass afresh order in accordance with law after giving opportunity to the petitioners within three months from the date a certified copy of this order is filed before the said authority.

21. The writ petitions succeed and are allowed.

