(2013) 04 AHC CK 0043

In the Allahabad High Court

Case No : Writ Tax No. 1962 of 2008

Jai Ram Das Deepak Kumar — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2014) 70 VST 493

Hon'ble Judges : Prakash Krishna, J;Manoj Kumar Gupta, J

Bench : Division Bench

Judgement

1. Heard Sri S.D. Singh, learned counsel for the petitioner and Sri C.B. Tripathi, Special Counsel for the State of U.P.-respondent. The petitioner is a proprietorship concern and is duly registered under the provisions of the U.P. Trade Tax Act, 1948. It is engaged in trading jute yarn/sutali, etc. The dispute relates to the assessment year 2002-03 (U.P.).

2. By means of the present petition, the petitioner has challenged the order dated 21st of August, 2008 passed by the Additional Commissioner, Grade-I, Kanpur Zone, Kanpur, granting sanction to reopen the assessment under the proviso to section 21(2) of the U.P. Trade Tax Act.

3. The learned counsel for the petitioner submits that the impugned order is illegal as it does not contain any reason. The further submission is that on the facts of the present case and in view of the judgment of this court in the case of Commissioner of Sales Tax v. Magan Mal Nemi Chand [1995] UPTC 912, it is not a case of escapement of turnover. In reply, the learned counsel for the respondents submits that sanction has been rightly granted by the impugned order.

4. Considered the respective submissions of the learned counsel for the parties and perused the record.

5. A bare perusal of the impugned order would show that it does not contain any

reason for granting the sanction. Time and again, this court has held that the reasons may be in brief, should be recorded before granting sanction under the proviso to section 21(2) of the Act. Reference can be made to S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, .

6. We therefore, while setting aside the impugned order, provide 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.

7. In the result, the writ petition succeeds and is allowed. The impugned order dated October 10, 2008 granting approval as also the notice issued for reassessment, are hereby set aside. The matter is remanded back to respondent No. 2 to decide the matter afresh, keeping in view the objection raised by the petitioner.

8. Since the matter is an old one, the petitioner is directed to file a certified copy of this judgment before respondent No. 2 within 15 days from today. Thereafter, respondent No. 2 shall fix a date for hearing and take appropriate decision, in accordance with law, preferably within a period of one month. It is made clear that if the petitioner fails to file a certified copy of this order before respondent No. 2 within the period stipulated above, the writ petition shall stand dismissed.