(2003) 09 AHC CK 0231

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1480 of 1989

Jain Brass Rolling Mills and Another APPELLANT

Vs

State of Uttar Pradesh and Another RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 10, 11, 21(4)

Citation : (2006) 143 STC 429

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : B.J. Agarwal and Piyush Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of prohibition against the Sales Tax Officer (now known as Trade Tax Officer), Sector-3, Hapur, district Ghaziabad, restraining him from completing the assessment proceedings for the assessment years 1973-74 and 1974-75 under the U.P. Sales Tax Act, 1948 and Central Sales Tax Act, 1956.

2. Heard learned counsel for the parties.

3. The petitioner is a firm registered under the U.P. Sales Tax Act and Central Sales Tax Act, 1956. For the assessment year 1973-74 assessment order was passed on December 31, 1979 by the Sales Tax Officer, both under the U.P. Sales Tax Act and Central Sales Tax Act, 1956. Aggrieved the petitioner filed an appeal before the Assistant Commissioner, who allowed it and remanded the matter to the Sales Tax Officer. Against the order of the Assistant Commissioner, the department filed a second appeal u/s 10 of the U.P. Sales Tax Act before the Trade Tax Tribunal. The same happened in assessment year 1974-75 also. A stay application was filed before the Tribunal for staying assessment proceedings in pursuance of the remand order, but no stay order was passed till May 5, 1985. It

is alleged in paragraph 10 that the period of limitation for completing the assessment proceeding in pursuance of the order of remand as provided u/s 21(4) of the Act had expired. It was only on May 6, 1985 that further assessment proceedings were stayed by the Tribunal. By that time one year limitation period prescribed u/s 21(4) of the Act had expired. The second appeal, however, was allowed by the Tribunal on May 30, 1985 and the case was remanded to the Assistant Commissioner (Judicial). Against the order of the Tribunal the applicant filed a sales tax revision before this Court u/s 11 which was allowed on December 10, 1985. The order of the Tribunal was set aside and that of the Assistant Commissioner (Judicial) was restored. True copy of the High Court''s order is annexure 6 to the writ petition.

4. It is alleged in paragraph 15 of the writ petition that although the period of limitation had expired, the Sales Tax Officer is proceeding with the assessment for the years 1973-74 and 1974-75.

5. We have perused the counter and rejoinder affidavits.

6. In this case an interim order was passed on December 14, 1989 staying proceedings for assessment for both these years.

Section 21(4) of the Act provides :

If an order of assessment is set aside and the case is remanded for reassessment by any authority under the provisions of this Act or by a competent court, the order of reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order remanding the case, or by December 31, 1982 whichever is later.

7. In our opinion in view of Section 21(4) the order of the assessment having been set aside and the case having been remanded the reassessment order could be passed latest within one year from January 28, 1982 (the date of service of the order of the Assistant Commissioner remanding the case). Hence the order of the assessment could have been passed latest by January 28, 1983 but it was not passed and there was no stay order of the Tribunal till May 5, 1985. The High Court has merely set aside the order of the Tribunal and restored that of the Assistant Commissioner (Judicial) remanding the case to the Sales Tax Officer.

8. On the facts of the case this petition has to be allowed as in our opinion the period of limitation mentioned in Section 21(4) had clearly expired.

9. The petition is allowed. A writ of prohibition as prayed for is issued. No order as to costs.

