(2004) 05 AHC CK 0204

In the Allahabad High Court

Kalatmak APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:
Limitation Act, 1963 — Section 5
Uttar Pradesh Trade Tax Act, 1948 — Section 30

Citation : (2008) 11 VST 424

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Refusal to condone delay of about two years five months in filing the appeal before the First Appellate Authority has led to the filing of the present revision against the order of the Tribunal dated December 17, 2003 for the assessment year 1998-99.

2. The applicant is a partnership firm consisting of four persons, namely, Raj Kumar Paliwal, Dinesh Chand Paliwal, Ashok Kumar Paliwal and Smt. Hridesh Paliwal. An ex parte assessment order was passed against the firm by the assessing authority on March 30, 2001 and a demand of Rs. 1,29,000 towards the trade tax was created. It is alleged that the copy of the said ex parte assessment order was not served on any of the partners but was served on Shri Rajiv Paliwal who is not a partner of the firm. Before the authorities below only this much was pleaded that Shri Rajiv Paliwal is not a partner of the firm. But before this Court on an affidavit being filed on April 28, 2004 in pursuance of the order dated March 18, 2004 it has to be admitted that he is brother of the partners of the firm. The case of the dealer-applicant in brief for condonation of delay was that the business of the firm was being looked after by Shri Dinesh Chand Paliwal only and the rest of the partners had no concern. Shri Dinesh Chand Paliwal met with an accident on August 18, 1995 and since then he is confined to bed and has become invalid person even unable to speak and write

and is a paralytic person. It appears that a medical certificate of doctor dated September 13, 2003 was also filed alongwith application for condonation of delay before the First Appellate Authority. In the application it has been further stated that the firm has been dissolved and Its liability and assets have been taken over by Shri Dinesh Chand Paliwal. In absence of service of the assessment order on Shri Dinesh Chand Paliwal the appeal could not be filed against the assessment order and hence the delay in filing the appeal.

3. The first appellate authority called a report from the assessing authority and rejected the application on the basis of the report with the finding that the copy of the ex parte assessment order was served on the dealer-applicant on April 7, 2001 against which an application for reopening of the assessment u/s 30 of the U.P. Trade Tax Act, 1948 was filed and that was dismissed on August 12, 2001. Treating the date of service of the assessment order as April 7, 2001 on the dealer the First Appellate Authority concluded that no case for condonation of delay in filing the appeal on May 15, 2003 has been made out. The aforesaid order was challenged before the Tribunal. Along with the memo of the appeal the dealer submitted a certificate dated September 25, 2003, a copy of which has been filed as annexure No. 3 to the affidavit issued by the Assistant Commissioner, Trade Tax. The Assistant Commissioner, Trade Tax, has certified that the copy of the ex parte assessment order for the assessment year 1998-99 was served on Shri Raj Kumar Paliwal on April 7, 2001 and it was Shri Rajiv Paliwal who was served with the copy of the order passed on the application filed u/s 30 of the Act. The Tribunal by the order under revision dismissed the appeal.

4. Heard the counsel for the parties and perused the record.

There appears to be material contradiction in the report submitted by the Trade Tax Officer, Grade-II, Shikohabad, through letter dated September 11, 2003 and the certificate of the Assistant Commissioner, Trade Tax, dated September 25, 2003, regarding the service of the ex parte assessment order. It was submitted by the learned Counsel that the report of the Trade Tax Officer grade-II, Shikohabad, submitted through the letter dated September 11, 2003 was never confronted to the applicant. In the said report it is mentioned that the original assessment order dated March 30, 2001 was served on the dealer on April 7, 2002. On the other hand from the certificate dated September 25, 2003 of the Assistant Commissioner, Trade Tax, in the first sentence of the said certificate it is mentioned that the notice of the assessment year 1998-99 was served on March 24, 2001 on Shri Raj Kumar Paliwal and the assessment order dated March 30, 2001 was served on April 7, 2001 on Shri Rajiv Paliwal. When the assessment order itself is dated March 30, 2001; where is a question of service of the notice of the assessment order on March 24, 2001 on Shri Raj Kumar Paliwal.

5. Secondly the Trade Tax Officer, Grade-II, has stated that a copy of the assessment order was served on the dealer on April 7, 2001. But in the certificate issued by the Assistant Commissioner, Trade Tax, it is mentioned that

the copy of the assessment order was served on Shri Rajiv Paliwal on April 7, 2001 who is not a partner in the firm. The Trade Tax Tribunal in its order has failed to notice the above contradiction in the report and the certificate and has concluded that since the application u/s 30 of the Act has been rejected of which the notice was given to Shri Rajiv Paliwal, therefore, the delay in filing the appeal is not liable to be condoned. It is strange that two authorities of the same department have submitted different reports qua the service of the ex parte assessment order. It is also not understandable as what was the occasion for the Assistant Commissioner, Trade Tax, to issue the certificate dated September 25, 2003? In what connection the said report was issued has to be examined by the Tribunal.

6. The Tribunal has decided the appeal without noticing the material facts on the record and thus its findings are vitiated. The matter needs reconsideration by the Tribunal.

7. Great emphasis was laid by the learned Counsel for the applicant before this Court that the applicant was declared non-taxable immediately in the preceding year 1997-98 and its account books were accepted. It was also urged that its account books have been accepted in the subsequent assessment year 1999-2000 and the opening stock of the assessment year 1999-2000 has been taken as the same as was the closing stock for the assessment year 1997-98. Meaning thereby it was argued that no business was done by the firm in the relevant assessment year. This is also one of the circumstances for taking a lenient view in the matter if these facts are established from the record. The department is interested to realise the revenue due to it.

8. The Supreme Court time and again has repeatedly laid down that the approach of the court in condoning the delay should be justice oriented. The expression "sufficient cause" employed by the Legislature in the Limitation Act, 1963 u/s 5 of it is adequately elastic to enable the courts to apply the law in a meaningful manner which serves the ends of justice, that being life principles for the existence of institution of courts. The apex court has laid down six principles to be adopted in such matters in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . It may be noticed that again the same view has been reiterated with greater force by the apex court in State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, . It has considered the matter in great detail in paragraph Nos. 11, 12 and 13. The Tribunal shall keep in mind the law as declared by the Supreme Court in the aforesaid pronouncements while reconsidering the matter after remand.

In the result the revision is allowed. The order of the Tribunal is set aside and the matter is remanded for reconsideration to the Tribunal in the light of the observations made above.

