(1997) 09 AHC CK 0216

In the Allahabad High Court

Case No : Writ Petition No. 183 of 1996

Keshav Dev Radha Raman and Another — APPELLANT

Vs

Assistant Commissioner (Assessment) Trade Tax — RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(4)

Citation : (2003) 133 STC 70

Hon'ble Judges : R.S. Gulati, J;C.P. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner has inter alia, sought a writ of prohibition, restraining the respondent-Assistant Commissioner (Assessment) Trade Tax, Mathura from completing the assessment for the assessment year 1980-81. It appears that against the initial assessment order for the said assessment year, the petitioner had preferred an appeal before the Assistant Commissioner, (Judicial) where the assessment order was set aside with the direction to make a fresh assessment. Against the directions of the appellate authority to make the assessment de novo the petitioner preferred a further appeal before the Sales Tax Tribunal which stayed the assessment proceedings in pursuance of the remand order during the pendency of the appeal to it. Eventually, on March 27, 1989 the appeal filed by the petitioner was dismissed by the Tribunal. Against the order passed by the Tribunal a revision was filed before this Court which was also dismissed on January 3, 1994. During the pendency of the proceedings in revision before this Court, there was no stay order in operation.

2. When the respondent-Assistant Commissioner (Assessment) took up the proceedings for fresh assessment in pursuance of the remand order, the petitioner objected that the assessment proceedings had become barred by time, inasmuch as, assessment if any,'' in pursuance of the remand could be within one year of the receipt of remand order in terms of Sub-section (4) of Section 21

of the U.P. Trade Tax Act.

3. We have heard learned counsel for the parties.

4. On August 19, 1997 this Court directed the Standing Counsel to file a supplementary counter-affidavit stating clearly amongst other information as to when the order passed by the Tribunal in appeal was received in the office of the respondent-assessing authority.

5. The learned Standing Counsel stated before us that in compliance of the order of this Court a supplementary counter-affidavit has been filed, a copy of which was also served on the learned counsel for the petitioner. However, the supplementary counter-affidavit is not available on record but a copy of that affidavit was made available to the court which has been placed on record. Paragraph Nos. 7, 8, 9 and 10 of the said affidavit are material for our purposes. In those paragraphs it has been admitted that the order of the Sales Tax Tribunal dated March 27, 1989 passed in Second Appeal No. 39 of 1988 for the assessment year in question was received in the office of the respondent on May 27, 1989. Further, the assessment proceedings in pursuance of the remand ought to have been completed by March 8, 1990. However, the assessment proceedings after the remand were initiated on February 11, 1994 and by that time the assessment proceedings had become time-barred. In paragraph 10 of the supplementary counter-affidavit it is averred that the facts given in the counter-affidavit, filed earlier were incorrect and for which an unconditional apology has been tendered.

6. Now in view of the averments made in the supplementary counter-affidavit, it is apparent that the assessment proceedings for the assessment year in dispute had become barred by time. The respondent-assessing authority, therefore, cannot be permitted to proceed with the assessment. Consequently, the assessment proceedings for the assessment year 1980-81 are quashed. The respondent is restrained from making any assessment for the said assessment year in consequence of the orders passed by the appellate authorities as indicated above.

7. In the result, the petition succeeds and is allowed.