

(2005) 01 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2209 of 2002

Khalil Ahmed

APPELLANT

Vs

Revisional Authority/Dupty Sugar Commissioner
(Administration) and Khandsari Inspector/Tax Assessing
Officer, Thampur Vth Region

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Sugar Cane Manufacturer Licensing Rules, 1965 — Rule 12(A)
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3, 3B

Citation : (2005) 2 AWC 1401

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : R.C. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present writ petition is under Article 226 of the Constitution of India quashing of the order dated 21.06.2002 passed by Deputy Sugar Commissioner (Administration), Revising Authority, Bareilly.

2. Brief facts of the case are that the petitioner was running a khandsari unit having licence under the provisions of U.P. Khandsari Sugar Manufacturer Licensing Order, 1967. Petitioner was liable to pay sugar cane purchase tax under the provisions of 3 of U.P. Sugar-cane (Purchase Tax Act) 1961 (hereinafter referred to as "Act"). Under the provisions of Section 3 of the Act, two modes were prescribed regarding the payment of purchase tax firstly, the tax was payable on the quantity of sugarcane actually purchased and secondly, at the option of the owner of the unit on the quantity of the sugarcane assessed in accordance with the provisions of the Act. The option referred in the provisions Sub-clause (1) of Section 3 of the Act should be exercised by the owner of the as may be prescribed and should relate to the whole of the assessment year. Option

once exercised shall be irrecoverable for that year.

3. Petitioner exercised the option to pay the purchase tax on optional basis the year 1986-87 under the provisions of the Act. The application in Form-13 required under Rule 12 (A) of the U.P. Sugar Cane Manufacturer Licensing Rules, 1965 was sent by post on 18.12.1986, which was admittedly received in the office of the respondent No. 2 on 20.12.1986. In the application it was mentioned that the production would be started from 03.01.1987. The functioning of the unit was in fact started from 03.01.1987. Petitioner paid the entire purchases tax for whole of the assessment year as prescribed under the provisions applicable on option basis. It appears that the application in Form-13 was acknowledged and the payment of purchase tax on option basis have been accepted. However, on 11.02.1991 after the lapse of more than four years. The respondent No. 2 rejected the petitioner's option for the assessment year 1986-87 on the ground that form-13 was received in the office late by one day and consequently assessed the petitioner unit for the assessment year 1986-87 on the basis of the sugar cane actually purchased. Petitioner challenged the order dated 11.02.1991 in Writ Petition No. 428 (Tax) of 1991, which was admitted but subsequently, dismissed on the 13.12.2000 on the ground of alternative remedy. The petitioner filed appeal before the Assistant Sugar Cane Commissioner Dhamur, Bijnor on 15.01.2001. Said appeal was rejected as barred by limitation vide order dated 01.02.2001. Petitioner filed Writ Petition No. 701 of 2001, which was allowed and the order dated 01.02.2001 was quashed with the direction to the appellate authority to entertain the appeal and decide the same within four months. Thereafter, the appellate authority vide order dated 03.09.2001 allowed the appeal and set aside the order dated 11.02.1991. Appeal was allowed on the ground that the cancellation of the application after more than four years was not justified. It was also held that once the option exercised by the petitioner was accepted, the same was irrecoverable as the petitioner had deposited the tax on optional basis and such application could not be rejected. It was also observed that rejection of application without giving opportunity was illegal. Order was accordingly, quashed and the assessing authority was directed to take the proceedings in accordance to the law. It appears that the assessing authority passed the order dated 10.01.2002 in which was stated that the tax had been deposited under the optional basis and there was no dues against the petitioner and the notice issued from the office has been vacated. Thereafter, a notice dated 01.05.2002 was issued by the respondent No. 1 to revise, the order dated 10.01.2002 on the ground that in the application in Form-13 the date of starting unit was given on 03.01.1987 and, according to the law, the application should have been received fifteen days before the date of the starting of the unit while it was received on 20.12.1986 which is less than fifteen days. Thereafter, vide impugned order the respondent No. 1 has passed the revisional order and cancelled the application by which option was given and directed the assessing authority to pass the assessment order.

4. Heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that the order passed by the revising authority is illegal and without jurisdiction. He submitted that the revising authority had no jurisdiction to cancel the application by which option was given for payment of tax on option basis. He submitted that the order dated 10.01.2002 was in pursuance of the order of the appellate authority by which cancellation of option has been set aside and the claim of the option has been accepted. He submitted that the appellate order has not been challenged and has become final. He submitted that the cancellation of the option application amounts to setting aside and sitting over the appellate order, which is without jurisdiction. Learned Standing Counsel supported the order of the revising authority.

6. Having learned counsel for the parties. I am of the view that the impugned order can not be sustained.

7. Section 3-B of the Act reads as follows :

"3-B. Revision. - The Cane Commissioner, in the case of a factory, and the Sugar Commissioner or any other officer, not below the rank of Assistant Sugar Commissioner, authorised by the Sugar Commissioner in this behalf, in behalf as to the case of a unit, may, in order to satisfy himself as to the legality or propriety of any order passed by an assessing authority under this Act, call for and examine either on his own motion or on the application of the assessee or the State Government, to be made within six months of the date of the order, the record of any proceedings of assessment and pass such orders as he may think fit;

Provided that no such application shall be entertained at the instance of a party which has a right of appeal but does not avail of it:

Provided further that no enhancement shall be made under this section unless the assessee has been afforded a reasonable opportunity of being heard against the enhancement."

8. Once the appellate authority has set aside the order passed by the assessing authority rejecting the application for option and held that application for option could not be rejected and the said order has become final, revising authority in exercise of power u/s 3-B of the U.P. Sugar-cane Khandsari Adhiniyam, 1961 can not reject the option application. Order dated 10.02.2002 passed by the assessing authority was only a consequential order to the appellate order. Once the issue with regard to the acceptance of the option has been adjudicated and has become final from the stage of the appellate authority, it could not be cancelled by the revising authority in exercise of revisional power u/s 3-B of the Act. In fact revision of order dated 10.01.2002 which was passed in pursuance of appellate order amounts to revising the appellate order, thus it is jurisdiction.

9. In the result, writ petition is allowed. Order dated 21.06.2002 is quashed.