

(2014) 02 AHC CK 0148
In the Allahabad High Court
Case No : Writ Tax No. 220 of 2006

Laxmi Transmissions Private Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2)

Citation : (2014) 69 VST 418

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : S.D. Singh, Senior Advocate, Advocate for the Appellant; U.K. Pandey, Standing Counsel, Advocate for the Respondent

Judgement

Mahesh Chandra Tripathi, J.—Heard Sri S.D. Singh, learned senior advocate for the petitioner and Sri U.K. Pandey, learned counsel for the respondents. The petitioner has filed the present writ petition with the following prayers:

(i) Issue a writ, order or direction in the nature of certiorari and to quash the order dated December 17, 2005 passed by the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur (annexure 5) and the reassessment proceedings initiated by the Assistant Commissioner, Sector 19, Trade Tax, Kanpur, vide notice dated December 26, 2005 (annexure 6) for the assessment year 1999-2000 u/s 21(2) of the Act.

(ii) Award cost of this petition to the petitioner.

(iii) Pass such other and further writ, order or direction in the favour of the petitioner as this honourable court may deem fit and proper in the circumstances of the case.

2. The petitioner is challenging the order dated December 17, 2005 passed by the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur, for the assessment year 1999-2000, under the Central Sales Tax Act.

3. The contention of the petitioner is that the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur had issued a notice u/s 21(2) of the U.P. Trade Tax Act, 1948 on November 11, 2005, the petitioner filed a reply of the aforesaid notice on November 23, 2005 (annexure No. 4 to the writ petition), the petitioner had replied the notice dated November 11, 2005 in detail, but while passing the impugned order dated December 17, 2005 the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur had not considered the grievance of the petitioner and by means of an order dated December 17, 2005 had granted the approval only in the interest of Revenue.

4. Sri S.D. Singh, learned senior advocate for the petitioner, submits that the impugned order is vitiated inasmuch as the submissions made by the petitioner in his detailed reply on November 23, 2005, had not been considered and, therefore, it is liable to be set aside. In support of his contention Sri S.D. Singh, learned senior counsel for the petitioner has placed reliance on the decision of this court in case of Hind Agro Industries Limited Vs. State of U.P. and Others, and also S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, .

5. Sri U.K. Pandey, learned standing counsel, fairly states that let the matter be remanded back to the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur, to pass a fresh order in accordance with law.

6. We have perused the impugned order dated December 17, 2005. It is apparent on the face of the record that the petitioner in response of the notice dated November 11, 2005 has submitted a detailed reply dated November 23, 2005 to the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur, but ignoring the submission made by the petitioner in his detailed reply and without considering the material facts, the approval had been granted mechanically.

7. A Division Bench of this court in the matter of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, , while considering scope and ambit of section 21(2) laid down the following (paras. 45, 46, 47, 49, 50, 51, pages 632, 635 and 636 in 26 VST):

44. The first proviso to sub-section (2) of section 21 or in that matter provisions of section 21 of the Act do not provide for any opportunity of hearing to the dealer by the Additional Commissioner/Commissioner before he grants approval to the proposal, if any made by the assessing authority for making the reassessment.

45. In the case of Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others, , the apex court was considering the provisions of section 142(2A) of the Act which empowers the assessing officer after obtaining the approval of the Commissioner to direct for special audit of the books of account of the assessee. The provisions of section 142(2A) of the Act did not provide for giving of any opportunity of hearing by the Commissioner to the assessee. The apex court has

held as follows (at page 110 of ITR):

53. The factors enumerated in section 142(2A) of the Act, thus, are not exhaustive. Once it is held that the assessee suffers civil consequences and any order passed by it would be prejudicial to him, principles of natural justice must be held to be implicit. The principles of natural justice are required to be applied, inter alia, to minimize arbitrariness.

54. It is trite, even if there is a possibility that the Tribunal would correctly follow the statutory provisions, still compliance with principles of natural justice would be required. (See R. v. Kensington and Chelsea Rent Tribunal ex p. MacFarlane [1974] 1 WLR 1486 (QB))

55. Justice, as is well known, is not only to be done but manifestly seem to be done. If the assessee is put to notice, he could show that the nature of accounts is not such which would require appointment of special auditors. He could further show that what the assessing officer considers to be complex is in fact not so. It was also open to him show that the same would not be in the interest of the Revenue.

It has further held as follows (at page 112 of ITR):

61. The hearing given, however, need not be elaborate. The notice issued may only contain briefly the issues which the assessing officer thinks to be necessary. The reasons assigned therefore need not be detailed ones. But that would not mean that the principles of justice are not required to be complied with. Only because certain consequences would ensue if the principles of natural justice are required to be complied with, the same by itself would not mean that the court would not insist on complying with the fundamental principles of law. If the principles of natural justice are to be excluded, the Parliament could have said so expressly. The hearing given is only in terms of section 142(3) which is limited only to the findings of the special auditor. The order of assessment would be based upon the findings of the special auditor subject of course to acceptance by the assessing officer. Even at that stage the assessee cannot put forward a case that power u/s 142(2A) of the Act had wrongly been exercised and he has unnecessarily been saddled with a heavy expenditure. An appeal against the order of assessment, as noticed hereinbefore, would not serve any real purpose as the appellate authority would not go into such a question since the direction issued u/s 142(2A) of the Act is not an appellable order.

. . .

47. The same view has been taken by this court in the case of Olympic Zippers Pvt. Ltd. v. Commissioner of Trade Tax [2009] 26 VST 638 (All.) [App.] : [2007] UPTC 146.

48. In the case of Manaktala Chemicals Pvt. Limited Vs. State of U.P. and Others, this court has held that reasons are required to be given by the Additional Commissioner while granting sanction. The apex court in the case of Rajesh

Kumar and Others Vs. D.Commissioner of Income Tax and Others, has held as follows (at page 180 of ITR):

20. The principles of natural justice are based on two basic pillars:

(i) Nobody shall be condemned unheard (*audi alteram partem*).

(ii) Nobody shall be judge of his own cause (*nemo debet esse judex in propria sua causa.*)

. . .

23. We, however, need not dilate on the said question being not very necessary for the purpose of this case. But it is beyond any cavil that ordinarily unless excluded by operation of a statute, the superior courts while exercising power of judicial review shall proceed on the basis that assignment of reasons is imperative in character. When an authority be it administrative or quasi-judicial adjudicates on a dispute and if its order is appealable or subject to judicial review, it would be necessary to spell out the reasons therefore. While applying the principles of natural justice, however, the court must also bear in mind the theory of useless formality and the prejudice doctrine.

49. We are in respectful agreement with the view taken by this court in the aforesaid cases and are, therefore, of the considered opinion that opportunity of hearing has to be given to every assessee by the Additional Commissioner or the Commissioner while considering the proposal for sanctioning/issuing of notice for reassessment under the proviso to sub-section (2) of section 21 of the Act and reasons are also to be recorded while granting sanction. As the Additional Commissioner has not given any reasons for granting permission/sanction to the proposal to reopen the assessment for the assessment year in question and to make the reassessment under the extended period of limitation, the order dated June 1, 2001 cannot be sustained and is therefore set aside. Consequently all proceedings taken in pursuance of the said order also fall and are set aside.

8. As we have already found that the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur, has not given any reason in his order dated December 17, 2005 for granting approval, the order dated December 17, 2005, cannot be sustained and is hereby set aside and, consequently, the notice dated November 11, 2005 is hereby set aside.

9. The Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur-respondent No. 2 is hereby directed to pass a fresh order in accordance with law after giving an opportunity of hearing to the petitioner and after recording reasons. In view of the above discussions, the writ petition succeeds and is allowed to the above extent.