(2012) 05 AHC CK 0075

In the Allahabad High Court

Case No : C.M.W.P. No. 30971 of 2011

Mohan Kumar Varshney and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Citation : (2012) 5 AWC 4751

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Vinod Kumar Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Sri Vinod Agrawal, learned counsel for the petitioner and Sri Nimai Das, learned standing counsel.

Pleadings exchanged between the parties have been perused and with the consent of the parties the writ petition is being finally decided.

The challenge made in the writ petition is to the order dated 24.12.2009 passed by the Collector. Mahamaya Nagar and the appellate order thereto dated 20.4.2011 passed by the Chief Controlling Revenue Authority.

2. The argument advanced by the learned counsel for the petitioner is that the authorities could not have determined the deficiency in stamp duty in excess of the amount shown in the show cause notice.

3. The show cause notice is on record. It requires the petitioner to submit explanation as to why deficiency in stamp duty of Rs. 8,37,000 may not be determined in connection with the instrument dated 13.7.2005. It means that the authorities were themselves satisfied that there was deficiency of Rs. 8.37,000 and not more. The petitioner as such was given opportunity only in that regard. There was no notice to the petitioner to submit reply as to why penalty of Rs. 30,11.160 may not be imposed.

The show cause notice was never modified and no corrigendum in that regard was issued.

4. In view of the above, determination of deficiency in excess of the amount mentioned in the notice is clearly in violation of the principles of the natural justice and cannot be sustained in law. The authorities could not have travelled beyond the show cause notice in determining the deficiency. Accordingly, the impugned orders dated 24.12.2009 passed by the Collector and 20.4.2011 passed by the Chief Controlling Revenue Authority are quashed and the matter is remanded to the Collector for determining the deficiency afresh keeping in view the show cause notice issued to the petitioner.

The writ petition is allowed.

