(2006) 12 AHC CK 0131

In the Allahabad High Court

Mohan Steel Limited APPELLANT

Vs

Commissioner, Trade Tax and Another RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

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

Citation : (2007) 10 VST 792

Hon'ble Judges : U.K. Dhaon, J;S.K. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri Bharat Ji Agrawal, Senior Advocate assisted by Sri Section M.K. Chaudhary for the petitioner and Sri Rakesh Bajpai, the learned Additional Chief Standing Counsel for the respondents.

2. The petitioners have approached this Court against the order dated February 20, 1997 passed by the Additional Commissioner, Trade Tax, U.P., Lucknow, u/s 21(2), proviso of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act").

3. The brief facts of the case are that the assessment proceedings in respect to the assessment year 1989-90 were completed by the assessing authority after hearing the affected parties and the assessment order was passed on March 25, 1994. Thereafter on September 20, 1997 an order was passed by the Additional Commissioner granting the permission to proceed u/s 21(2) of the Act for reassessment for the year 1989-90.

4. Learned Counsel for the petitioners submits that in view of Section 21(2) of the Act as it was applicable at the relevant time, the period of limitation of four years for the assessment year 1989-90 expired on March 31, 1994 and the impugned order passed by the Additional Commissioner is against the principles of natural justice as no opportunity or show cause notice was issued before according permission for reassessment of the case. He further submits that

although under the Act, there is no provision for notice to the assessee by the Commissioner, Trade Tax, but the principle of natural justice requires issue of a show cause notice to the petitioner before granting the permission for reassessment after expiry of the period of four years as a valuable right had accrued to the petitioners after four years from the end of the assessment year.

5. Learned Counsel for the petitioners has relied upon the decisions of this Court in Manaktala Chemicals Pvt. Limited v. State of U.P. reported in [2007] 5 VST 284 : [2006] UPTC 1128 and Modi Xerox Ltd., Rampur v. Addl. Commissioner of Trade Tax, Moradabad reported in [2000] UPTC 502 and the decision of the honourable apex court in Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others,

6. Sri Rakesh Bajpai, the learned Additional Chief Standing Counsel appearing on behalf of the opposite parties, submits that there is no illegality in the impugned order as the Commissioner has power u/s 21(2), proviso of the Act to accord permission for reassessment. He further submits that no notice before granting permission is required under the statute and as such there is no illegality in the impugned order. He has relied upon the decisions of the honourable Supreme Court in Additional Commissioner (Legal) v. Jyoti Traders reported in Vikrant Tyres Limited Now known as J.K. Industries Limited Vs. State of U.P. and Deputy Commissioner (Assessment) IV, Trade Tax, 7. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

8. Section 21(2) of the U.P. Trade Tax Act, 1948 as it was applicable in the year 1997 is as under:

Section 21(2). Except as otherwise provided in this section, no order of assessment or reassessment under any provision of this Act for any assessment year shall be made after the expiration of three years from the end of such year or March 31,1996 whichever is later:

Provided that if the Commissioner on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do authorises the assessing authority in that behalf, such assessment or reassessment may be made after the expiration of the period aforesaid but not after the expiration of eight years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion:

Provided further that if the eligibility certificate granted u/s 4A has been amended or cancelled by the Commissioner under Sub-section (3) of Section 4A, the order of assessment or reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or within one year of the commencement of the Uttar Pradesh Sales Tax (Amendment) Ordinance, 1994, whichever is later:

Provided also that if the eligibility certificate granted u/s 4A has been amended or cancelled by the Commissioner under Sub-section (3) of Section 4A, the order of assessment or reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, whichever is later:

Provided also that the assessment or reassessment for the assessment year 1989-90 may be made by March 31, 1995.

9. There is no dispute that the assessment order was passed by the assessing authority for the assessment year 1989-90 on March 25, 1994. The period for reassessment by the assessing authority had expired on March 31, 1994. There was reference by the assessing authority to the Commissioner for granting permission under the provisions of Section 21(2) of the Act. Since a valuable right had accrued to the petitioners after the expiry of four years, it was the obligation of the Commissioner either to afford an opportunity or issue show cause notice to the petitioners before according permission for reassessment of the case. In the instant case, notice was issued by the assessing authority after the permission was granted by the Additional Commissioner, Trade Tax, but no notice was given to the petitioners before passing the impugned order dated February 20, 1997. The question whether a notice is required to the assessee before according permission u/s 21(2) of the Act by the Commissioner was considered by this Court in the decision in Manaktala Chemicals Pvt. Limited [2007] 5 VST 284 : [2006] UPTC 1128 and it was held by this Court that Section 21(2) though specifically does not say that opportunity is to be afforded to the dealer before granting the sanction by the Commissioner but the principle is well-recognised, that even if there is no specific provision in the Statute, such opportunity need be given, to make the action taken or order passed in consonance with the principles of natural justice, unless, of course, the statute specifically excludes the applicability of principle of natural justice, such an opportunity is deemed to be inbuilt in the provision. The case law relied upon by the learned Counsel for the respondents are not applicable to the facts of the present case. The instant case is squarely covered by the decision of this Court in Manaktala Chemicals Pvt. Limited [2007] 5 VST 284 : [2006] UPTC 1128.

10. In the result, the writ petition succeeds and is hereby allowed. The impugned order dated February 20, 1997 passed by the Additional Commissioner, Trade Tax, U.P., Lucknow, is hereby quashed. However, it will be open for the Commissioner/Additional Commissioner to pass a fresh order, in accordance with law, after affording opportunity to the petitioners. Under the circumstance of the case, there shall be no order as to costs.

