(2016) 02 AHC CK 0309

In the Allahabad High Court

Case No : Misc. Bench No. 2784 of 2016

M/S Bajaj Exo-Tec Products Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Citation : (2016) 93 UPTC 257

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Rajesh Tewari, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner.

2. A challenge is raised to the order dated 26.12.2015 passed by the Additional Commissioner Commercial Tax, Lucknow in exercise of its powers under sub-section (7) of Section 29 of the U.P. Value Added Tax, 2008.

3. Learned counsel for the petitioner has vehemently urged that the impugned order does not record any satisfaction as to why it was just and expedient to proceed to pass such an order and, therefore, the same is vitiated.

4. Learned counsel for the petitioner has relied on a Single Judge judgment in the case of M/s Tarun Industries v. The Commissioner of Trade Tax, Sales/Trade Tax Revision No.1185 of 2005, decided on 23.3.2015 in support of his submissions.

5. Learned counsel submits that the order impugned does not conform to the ingredients of the aforesaid provision and consequently the same deserves to be quashed. The petitioner cannot be subjected to any such reassessment as sought to be assessed even on the merits of the facts that have been indicated in the order impugned.

6. Section 29 (7) of the U.P. Value Added Tax, 2008 reads as under :-

"(7) Where 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 re-assessment may be made within a period of eight years after expiry of assessment year to which such assessment or re-assessment relates notwithstanding such assessment or re-assessment may involve a change of opinion:

Provided that it shall not be necessary for the Commissioner to hear the dealer before authorising the assessing authority."

7-8. Having considered the submissions raised what we find is that the Commissioner has proceeded to record a satisfaction on the strength of the material produced before him where he has clearly indicated that the realisation at the rate of 2% against Form-C by the petitioner was not in accordance with the provisions and which ought to have been 13.5%.

9. A perusal of the provisions on which the proceedings have been initiated leave no room for doubt that the Commissioner has to record his satisfaction. The order categorically records the satisfaction on certain facts that are mentioned in the order itself.

10. In our considered opinion, this is not a case for interference and it is at the stage of reassessment that the petitioner will have every right to raise his objections in relation to the aforesaid order on the basis whereof the reassessment proceedings have been initiated. Consequently, there is no occasion for this Court to interfere in this matter at this stage.

11. The judgment which has been relied upon by the learned counsel for the petitioner is not on the issue of such a notice having been issued on satisfaction having been recorded. Consequently, the said judgment does not come to the aid of the petitioner.

12. Rejected with the aforesaid observations.