(2016) 04 AHC CK 0257

In the Allahabad High Court

Case No : Writ Tax No. 288 of 2016

M/S Vishnu Eatables (India) Ltd. — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Citation : (2016) 93 UPTC 241

Hon'ble Judges : Dilip Gupta and Ravindra Nath Kakkar, JJ.

Bench : Division Bench

Advocate : Ashok Kumar and Praveen Kumar, Advocates, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

1. This petition seeks the quashing of the order dated 11 March 2016 passed by the Assistant Commissioner of Commercial Tax, Sector-3, Bareilly by which the registration of the petitioner has been suspended under the provisions of section 17(12) of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as the ''Act''). The petitioner has also sought the quashing of the seizure order dated 12 March 2016 issued by the Assistant Commissioner (Incharge), Commercial Tax (Mobile Squad), Bulandshahr under section 48 of the Act.

2. The contention of learned counsel for the petitioner is that under sub-section (12) of section 17 of the Act, it is only when the cancellation proceedings are pending under subsection (11) that the registering authority can suspend the registration certificate but as in the instant case, no proceedings for cancellation of the registration certificate were pending initially under section 17(11) of the Act when the order of suspension was passed, the order deserves to be set aside.

3. On 6 April 2016, time was given to the learned Standing Counsel to seek instructions in the matter. Learned Standing Counsel, on instructions, states that the proceedings for cancellation of the registration certificate were initiated after the passing of the suspension order and not prior to that.

4. We have considered the submissions advanced by learned counsel for the parties.

5. Section 17 of the Act deals with the registration of dealers. Sub-section (11) of section 17 deals with the cancellation of the registration certificate. Sub-section (12) of section 17, which provides for suspension of the registration certificate, is as follows :

"17(12). During cancellation proceedings under sub-section (11), where the registering authority is satisfied that the dealer will succeed in causing revenue loss, pending action for cancellation under sub-section (11), it may, after assigning reasons therefor, suspend the registration certificate by passing an order in writing, for the period during which the proceedings are pending:

Provided that if the dealer, by furnishing adequate security to the satisfaction of the registering authority, satisfies that revenue loss, if any, shall be made up by him, the registering authority may revoke the suspension of registration certificate."

6. It is an admitted position that when the order of suspension was passed on 11 March 2016, cancellation proceedings were not pending against the petitioner. This is in the teeth of the provisions of section 17(12) of the Act. The suspension order dated 11 March 2016, therefore, cannot be sustained.

7. So far as the seizure order is concerned, the petitioner has a statutory alternative remedy of filing a representation under section 48(7) and thereafter an appeal under section 57 of the Act. We are, therefore, not inclined to examine the order seizing the goods of the petitioner. However, in view of the peculiar facts and circumstances of the case, we deem it proper that in the event the petitioner files a representation, with a certified copy of the order passed by the Court, a decision shall be taken expeditiously and not later than a week from the date of filing of the representation.

8. In the result, the order dated 11 March 2016 passed by the Assistant Commissioner of Commercial Tax, Sector-3, Bareilly is quashed. The writ petition is, accordingly, allowed to the extent indicated above and with the aforesaid observations.