(2002) 11 AHC CK 0152

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 4 and 5 of 1999

Murli Coal Depot APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 23-11-2002

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21(4)

Citation : (2006) 146 STC 536

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Judgement

Ashok Bhushan, J.—Heard counsel for the revisionist and learned Standing Counsel.

2. By this revision, the revisionist has challenged the order of the Trade Tax Tribunal dated July 22, 2002 by which the Tribunal while allowing the second appeal of the assessee has remanded the matter to the assessing authority.

3. Earlier the matter came to this Court by means of Trade Tax Revision No. 5 of 1999 and Trade Tax Revision No. 4 of 1999. Both the revisions were decided by the common judgment dated March 22, 1999 copy of which has been filed as annexure-4 to the revision. This Court remanded the matter to the Tribunal with certain directions as contained in the order. This Court has observed in the judgment that appellate authority as well as the Tribunal has not examined certain aspects of the matter which were required to be examined.

4. The counsel for the revisionist contended that this Court when directed the Tribunal to decide the matter, it was obligatory upon the Tribunal to itself decide the matter and the Tribunal has no jurisdiction to further remand the matter. Learned Standing Counsel opposing the submission of counsel for the revisionist contended that the Tribunal has given cogent reasons for remand and the High Court never prohibited the remand by its judgment.

5. I have considered the submissions of counsel for the parties and perused the

record. It is true that the High Court vide its order dated March 22, 1999 remanded the matter to the Tribunal to examine all the form XXXI and decide the matter as observed in the judgment. The Tribunal in the order has stated that form XXXI has not been produced nor the relevant files are available. The Tribunal recorded a finding that without examining the documents case cannot be decided. The Tribunal with the aforesaid observation has remanded the matter to the assessing authority after setting aside the orders of the appellate authority for deciding the matter.

6. The judgment of the Tribunal shows that second appeal of the assessee has been partly allowed and the orders of the appellate authority have been set aside. The Tribunal has remanded the matter for decision by the assessing authority. The spirit of the judgment of this Court dated March 22, 1999 is not to the effect that it is only the Tribunal which has to decide the matter. There was no fetter on the power of the Tribunal to determine the matter in one way or the other. In view of the facts which have been noted by the Tribunal, I do not find any error in the order of the Tribunal in remanding the matter to the assessing authority after partly allowing the appeal. When the relevant records were not available and without examining the records the matter cannot be decided, the Tribunal rightly remanded the matter.

7. Counsel for the revisionist expressed his apprehension that matter may linger on and take long time due to the remand. Learned Standing Counsel has no objection that the assessing authority be directed to decide the matter in a specified period. Learned Standing Counsel has referred to provisions of Section 21(4) of the U.P. Trade Tax Act, 1948 to the effect that after the remand one year time is provided for reassessment. The aforesaid period of one year is the outer limit for passing the assessment order. However, in view of the facts of the present case the assessing authority may consider and decide the matter expeditiously preferably within a period of three months from the date of production of a certified copy of this order.

8. The prayer of the revisionist for quashing the order of the Tribunal is refused. However, the writ petition is disposed of with the direction as given above.

