(2000) 04 AHC CK 0014

In the Allahabad High Court

Case No : Trade Tax Revisions No''s. 292 and 293 of 2000

Naudurga Enterprises APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 8A

Citation : (2001) 123 STC 327

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agarwal, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jain, J.—Heard Sri Rakesh Ranjan Agarwal, learned counsel for the revisionist and Sri B.K. Pandey, learned Standing Counsel. The revisionist was granted registration both under Central Sales Tax Act as well as U.P. Trade Tax Act u/s 8-A of the U.P. Trade Tax Act. It appears that a survey was conducted by the Trade Tax Officer on the business premises of the revisionist on 13th November, 1999. It was found that business premises were closed and the landlord had told that no business was conducted by the dealer. The Trade Tax Officer passed order of cancellation of the registration u/s 8-A(1-B) of the Act. The revisionist filed appeal against the order; however, the appeal was allowed by the Deputy Commissioner (Appeals) and the matter was remanded to the assessing authority for reconsideration. Both the department as well as the dealer, against the order passed by the Deputy Commissioner, filed second appeals. The Tribunal allowed the appeal filed by the revisionist; but at the same time observed that the Deputy Commissioner had rightly remanded the matter to the assessing authority.

2. Sri Agarwal has vehemently submitted that the two contradictory orders have been passed by the Tribunal and the assessee is aggrieved by the order passed

in the appeal filed by the department whereby the remand order has been justified. Sri B.K. Pandey, learned Standing Counsel has, however, submitted that operative order passed by the Tribunal is not happily worded. As a matter of fact, the appeal filed by the revisionist ought to have been partly allowed in the light of the observations made in the body of the order and the order of cancellation of registration ought to have been set aside.

3. Once the Deputy Commissioner had allowed the first appeal of the revisionist and was of the view that the matter deserves to be remanded, the Deputy Commissioner should have also set aside the order of cancellation of registration. As a matter of fact, once adverse material was found, the Trade Tax Officer was not authorised to pass order of cancellation straightaway without affording an opportunity of hearing to the revisionist. Even though Section 8-A(1-B) does not provide for issuing a notice to the dealer, yet principles of natural justice have to be observed and order of cancellation of registration cannot be passed without affording the dealer a reasonable opportunity of being heard. In the instant case, the Trade Tax Officer cancelled the registration without issuing a notice or without affording an opportunity of being heard to the dealer. The appeal was, therefore, rightly allowed by the Deputy Commissioner and the matter was rightly remanded. However, the Deputy Commissioner had committed error in not setting aside the order of cancellation of registration. Once the matter was remanded after allowing the appeal, the order of the cancellation of registration passed by the Trade Tax Officer should have been set aside and the proper order whether to cancel the registration or not, should have been passed only after hearing the dealer. The Tribunal has also committed error in passing the operative portion, it should have only partly allowed the appeal of the dealer and should have set aside the order of the assessing authority by which the registration was cancelled. Such an intention of the Tribunal is evident from the order passed in the appeal filed by the department wherein the Tribunal justified the order of first appellate authority whereby the assessing authority was directed to reconsider the matter of cancellation of registration after affording opportunity of being heard to the revisionist.

4. In the view of what has been observed above, the order of the Tribunal shall stand modified accordingly. With such a modification both the revisions are dismissed.

