(2014) 04 AHC CK 0170

In the Allahabad High Court

Case No : Writ Tax No. 258 of 2014

Neeraj Kumar Agarwal — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Value Added Tax Act, 2008 — Section 28, 55, 81

Citation : (2014) 72 VST 438

Hon'ble Judges : Suneet Kumar, J;Dilip Gupta, J

Bench : Division Bench

Advocate : Suyash Agrawal, Advocate for the Appellant; Rakesh Ranjan Agrawal, Advocate for the Respondent

Judgement

1. This petition seeks the quashing of the order dated January 21, 2014 passed by the Commissioner, Commercial Tax, U.P., Lucknow, in relation to the assessment year 2007-08. The petitioner has also sought the quashing of the notice dated March 15, 2014 issued by the Commercial Tax Officer, Sector 1, Meerut for the assessment year 2009-10. It transpires from the records of the writ petition that earlier a recovery certificate dated November 9, 2011 was issued by the assessing officer with respect to the assessment year 2007-08 relating to the period from January 1, 2008 to March 31, 2008. This recovery certificate was issued pursuant to an assessment order of the assessing authority. The petitioner, instead of filing an appeal u/s 55 of the U.P. Value Added Tax Act, 2008 (hereinafter referred to as "the Act"), filed a writ petition (Writ Petition No. 1405 of 2012) under article 226 of the Constitution before the Lucknow Bench of this court. This petition was disposed of by the judgment and order dated February 17, 2012. It was left open to the petitioner to file objections in response to the notice (actually a recovery certificate) dated November 9, 2011 within two weeks. The petitioner filed objections before the Commissioner which have been decided against the petitioner by the order dated January 21, 2014.

2. It also transpires from the records of the writ petition that a notice u/s 28 of the Act has been issued to the petitioner for the assessment year 2009-10 and the petitioner has been asked to submit his reply. This notice has also been assailed in this petition.

3. The learned senior counsel appearing for the petitioner has raised number of submissions for assailing the order passed by the Commissioner, but on a query being put by the court as to under which section of the Act, such objections were filed, learned senior counsel merely stated that these objections had been filed pursuant to the directions issued by the court in its judgment and order dated February 17, 2012 rendered in Writ Petition No. 1405 of 2012 earlier filed by the petitioner.

4. The observations of the court are as follows:

"Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel. With the consent of the parties'' counsel, the writ petition is being finally disposed of at admission stage.

Present petition under article 226 of the Constitution of India has been preferred for issuance of a writ in the nature of mandamus for compliance and implementation of the notification dated November 14, 2000(annexure No. 1 to the writ petition) issued under sub-section (1) of section 3F of the U.P. Trade Tax Act, 1948 which has been saved by section 81 of U.P. Value Added Tax Act, 2008. The petitioner further prays for appropriate direction to the opposite party No. 3 not to recover any value added tax for the assessment year 2007-08 demanded vide notice dated November 9, 2011.

Submission of the petitioner''s counsel is that the petitioner is not liable to pay value added tax.

Controversy involves disputed question of facts and law. Option is open for the petitioner to file objections against the demand notice dated November 9, 2011 (annexure 5 to the writ petition).

Accordingly, the writ petition is finally disposed of with liberty to the petitioner to file an objection in response to the notice dated November 9, 2011 within two weeks from today. In case such objection is filed, the competent authority shall decide the same in accordance with law after providing opportunity of hearing by passing a speaking and reasoned order expeditiously and preferably within a period of three months from the date of receipt of a certified copy of this order and communicate the decision to the petitioner. For the period of three months or till disposal of the objections filed by the petitioner, whichever is earlier, further proceedings in pursuance to the impugned notice shall remain suspended.

Subject to above, the writ petition is finally disposed of.

No order as to costs."

5. It is clear that the petitioner had not challenged the assessment order

pursuant to which the recovery certificate had been issued before the appellate authority. In the writ petition all that was prayed was that an appropriate direction should be issued for not recovering the tax for the assessment year 2007-08 claim under the recovery certificate dated November 9, 2011.

6. The court, as is clear, had only left it open to the petitioner to file his objections and if there was a statutory remedy of an appeal under the Act, the petitioner should have availed of that remedy.

7. The learned senior counsel for the petitioner has, however, submitted that if an appeal is now filed against the assessment order relating to the period 2007-08, the appellate authority will be bound by the order of the Commissioner that has been passed on January 21, 2014 to reject the objections filed by the petitioner. This apprehension of the petitioner can be taken care of by providing that in case an appeal is filed by the petitioner, the appellate authority shall decide the appeal without being influenced by any of the observations made in the impugned order.

8. Even the subsequent notice dated March 15, 2010 which has been issued u/s 28 of the Act for the assessment year 2009-10, the petitioner has been called upon to file his reply. The petitioner can file a reply to the aforesaid notice and if an assessment order is passed, which does not satisfy the petitioner, he would have an adequate remedy of filing an appeal. In this view of the matter, the court declines to entertain this petition. It is, accordingly, dismissed.