(2011) 07 AHC CK 0001

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 237 of 2011

Pradeep Pharma	APPELLANT
Vs	
Commissioner of Commercial Tax	RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 10(4), 30

Citation : (2013) 57 VST 381

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Kumar and Praveen Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned counsel for the revisionist and learned standing counsel for the State-respondents. This trade tax revision has been filed for quashing the order of the Trade Tax Tribunal dated December 28, 2010 passed in Second Appeal No. 607 of 1999 and Second Appeal No. 608 of 1999 (assessment year 1993-94).

2. Facts in short giving rise to the present trade tax revision are as follows:

First Appeal No. 2120 of 1998 and First Appeal No. 2121 of 1998 (assessment year 1993-94) were filed by the assessee. First appeal No. 2120 of 1998 was directed against the assessment order under rule 41(8) of the Trade Tax Rules dated March 22, 1997 and Second Appeal No. 2121 of 1998 was filed against the order dated September 19, 1997, whereby the application u/s 30 of the Trade Tax Act was rejected for non-deposit of the requisite amount Both the appeals were clubbed together and decided under common judgment by the Deputy Commissioner (Appeals) dated April 16, 1999. Not being satisfied with the order so passed, the assessee-revisionist filed two second appeals being Second Appeal No. 607 of 1999 and Second Appeal No. 608 of 1999 (assessment year 1993-94). Second Appeal No. 607 of 1999 was filed against the order dated April

16, 1999 arising out of assessment proceedings and Second Appeal No. 608 of 1999 was filed against the order passed in proceedings u/s 30 of the Trade Tax Act.

3. The Trade Tax Tribunal under the judgment and order dated March 23, 2009 decided both the appeals. It was recorded that despite the counsel having recorded May. 22, 2009 as the date by putting signatures on the order-sheet, nobody is present on behalf of the assessee at the time of hearing nor any application for adjournment has been filed. The Tribunal thereafter proceeded to hold that only case pleaded by the revisionist qua non-production of form 3D was that his records were seized by the Central Bureau of Investigation and therefore, he could not obtain the necessary form 3D from the Department to which the supplies were made. It was stated that the records have not been released by the Central Bureau of Investigation till date. The Tribunal Specifically recorded that the plea so raised was misconceived inasmuch as more than 10 years have elapsed from the relevant date. The revisionist assessee had not produced the account books nor had he produced form 3D.

4. So far as the appeal filed against the order passed in proceedings u/s 30 of the Act is concerned, it has been recorded that the petitioner had not deposited the requisite amount as per statutory requirement and therefore, there was no illegality in order rejecting the application u/s 30 of Act. Accordingly, both the appeals were dismissed.

5. Not being satisfied with the order passed, the assessee made an application for recall of the order dated May 23, 2009 on the allegation that on the date fixed he could not attend the proceedings because of ailment. It was further stated in the application that forms 3D have now been received and the same are being submitted along with the application. On the application so made, order dated May 23, 2009 was recalled and both the appeals were restored to their original number.

6. Under the order impugned dated October 28, 2010, it has been recorded that nobody is present on behalf of the assessee nor any application for adjournment has been made. The date fixed in the matter was specifically noticed by the assessee/his counsel, as is clear from the order-sheet. Accordingly, both the appeals have been dismissed u/s 10(4) of the U.P. Trade Act. It is against this order that the present trade tax revision has been filed.

7. It may be recorded that absolutely no reasons have been furnished in the revision for the absence of the counsel or the assessee on the date fixed in the appeals, i.e., October 28, 2010. The recital in paragraph 28 of the present trade tax revision that the order dated October 28, 2010 confirms the order dated May 23, 1999 is wholly misconceived, inasmuch as the order dated May 23, 2009 was recalled on an application being made by the assessee, as is apparent from the impugned order. Both the second appeals have been dismissed u/s 10(4) of the Trade Tax Act. In absence of any justifiable reasons having been disclosed for

non-appearance before the Tribunal on the date fixed in the appeals, this court finds no good ground to interfere with the order of the Tribunal. The present trade tax revision is accordingly dismissed.

