(2009) 08 AHC CK 0204

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1301 of 2009

Rameshwaram Paper Mills Pvt.Ltd., Modi Nagar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Citation : (2009) 08 AHC CK 0204

Hon'ble Judges : R.K.Agrawal, J and S.K.Gupta, J

Final Decision : Allowed

Judgement

S.K. Gupta, J.—This writ petition had been filed, inter alia for the following reliefs:

(i) Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned orders dated 2542009 passed by the respondent No. 2 under the proviso to Section 21 (2) of the Act granting permission/sanction to respondent No. 3 to make reassessment for the assessment year 200506 (U.P./Central) (Annexure4 to this writ petition)

(ii) Issue a suitable writ, order or direction in the nature of Certiorari quashing the impugned notices dated 2842009 issued by respondent No. 3 under Section 21 (2) of the Act for assessment year 200506 (U.P./Central) (Annexure 5 to this writ petition)

(iii) Issue a suitable writ, order or direction in the nature of mandamus or prohibition prohibiting/restraining the respondent No. 3 from any further action for reassessment in pursuance to the impugned orders dated 2542009 passed by the respondent No. 2 and in pursuance of notice dated 2842009 for the assessment year 200506 (U.P./Central)"

2. The facts enumerated in the present writ petition are as follows:

3. The petitioner is a private limited company registered under the Companies Act, 1956 and is also registered dealer under the provisions of U.P. Trade Tax Act (now under U.P. Value Added Act) and the Central Sales Tax Act (in short "CST

Act") for the manufacturing and sale of oil. The petitioner also used to sell castor oil cake (Arandi ki Khali) which is an organic manure (Fertilizer) within U.P. as well as in Central mainly in State of Bihar.

4. The fertilizers other than chemical fertilizers was exempted from tax under notification dated 3111985 which was amended as per Notification dated 1512000 as fertilizer excluding chemical fertilizer and bone meal. During the year in question the petitioner claimed "Arandi ki Khali" under the aforesaid Notification which was sold to solvent units, fertilizer''s dealer farmers as fertilizers. The assessing authority vide assessment order dated 12102006 accepted Arandi ki Khali as an organic manure. The assessing authority by letter dated 2442009 sought permission under Section 21 (2) of the Act from the Additional Commissioner, respondent No. 2 to make reassessment for the assessment year 200506 under U.P./Central Act on the turnover of Arandi ki Khali which was declared exempted from payment of tax in the assessment order.

5. On the basis of proposal of respondent No. 3 a notice was issued by respondent No. 2 calling upon the petitioner to show cause as to why sanction/ permission be not granted to the assessing officer for making reassessment for the assessment year 200506 under Section 21 (2) of the Act. The said notices were served on the petitioner on 2442009 (evening) fixing the date for appearance and explanation on 2542009. In compliance to the notice issued by respondent No. 2 the petitioner appeared and submitted adjournment application to adjourn the date fixed on 2542009 to some other date for the compliance of notice dated 2442009, but the respondent No. 2 did not entertain the application and passed the impugned order dated 2542009 under the proviso to Section 21 (2) of the Act and granted permission to the respondent No. 3 to make reassessment for the assessment year 200506.

6. In pursuance to the aforesaid order dated 2542009 granting permission to reassessment the respondent No. 3 issued notice dated 2842008 under Section 21 of the Act for the assessment year in question. Hence the present writ petition has been filed.

7. Learned counsel for the petitioner has mainly argued that the impugned order dated 2542009 passed by respondent No. 2 granting permission to respondent No. 3 to reassess the case has been passed without affording reasonable opportunity of being heard. Therefore, the order dated 2542009 and the consequential notice dated 2842008 cannot be sustained.

8. On the other hand learned Standing Counsel for the respondent has justified the ex parte impugned order dated 2542009 passed by respondent No. 2 and argued that the notices issued under Section 21 (2) of the Act by respondent No. 3 is in accordance with law.

9. Heard Sri Vishwajeet learned counsel for the petitioner, Sri Avinash Chandra Tripathi, learned Standing Counsel appearing on behalf of respondents and have perused the impugned order dated 2542009 as well as record of the case.

10. It is not disputed that the notice dated 2442009 issued by respondent No. 2 fixing the date for appearance on 2542009 under Section 21 (2) of the Act, calling upon the petitioner to show cause as to why permission be not granted to the assessing authority for making reassessment of the case, was served in the evening of 2442009.

11. It is submitted by the petitioner that on the next date i.e. 2542009 he filed an application for adjournment, but the same was not entertained by respondent No. 2. The said allegation has been denied by the respondent.

12. Be that as it may, this Court fails to understand as to why, by notice dated 2442009, date of hearing was fixed immediately on the next day i.e. 2542009. Atleast some reasonable time should have been given to the petitioner to file his explanation before respondent No. 2. It is not expected from the petitioner to file his reply in less than 24 hours before respondent No. 2. Undue haste and speed with which respondent No. 2 has exercised his Jurisdiction under Section 21 (2) of the Act in our opinion should discouraged. The doctrine of fairness is complementary to the principle of natural justice and to ensure rule of law and to prevent the failure of justice. It is distressing feature and reprehensible and is a matter of great concern. The law frowns upon such conduct and must be deprecated. The respondent No. 2 has committed a manifest error and a serious procedural illegalities.

13. A Division Bench in the case of S.K. Traders v. Additional Commissioner Grade1, Trade Tax Zone, Ghaziabad and another, has clearly held that before grant of permission opportunity of hearing should be afforded to the petitioner. Relevant paragraph 49 of the judgment is reproduced below:

"49. We are in respectful agreement with the view taken by this Court in the aforesaid cases and are, therefore, of the considered opinion that opportunity of hearing has to be given to every assessee by the Additional Commissioner or the Commissioner while considering the proposal for sanctioning/issuing of notice for reassessment under the proviso to subsection (2) of Section 21 of the Act and reasons are also to be recorded while granting sanction. As the Additional Commissioner has not give any reasons for granting permission/sanction to proposal to reopen the assessment for the assessment year in question and to make the reassessment under the extended period of limitation, the order dated 1st June, 2001 cannot be sustained and is therefore set aside. Consequently, all proceedings taken in pursuance of the said order also fails and are set aside."

14. Before parting with the case we may observe that the limitation for making reassessment might have expired. The question regarding limitation has been taken care of by this Court in the case of S.K Traders (supra) and the directions and observations made by the Court in this behalf in the aforementioned case would also apply in the present case.

15. In view of the above, without entering into merit of the case the impugned order dated 2542009 as well as notice dated 2842009 are quashed and the

respondent No. 2 is directed to pass a fresh order after affording opportunity of hearing to the petitioner.

16. The respondent No. 2 shall pass appropriate orders in accordance with law within a period of three months from the date of production of certified copy of this order after issuing proper notice to the petitioner to appear before him for the purposes of granting permission to respondent No. 2 under Section 21 (2) of the Act. The petitioner is directed to file certified copy of this order within ten days from today.

17. In the result writ petition is allowed subject to the aforesaid observation.