(2010) 11 AHC CK 0097

In the Allahabad High Court

Case No : Trade Tax Revision No. 932 of 2003

Rathi Industries Ltd. APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Trade Tax Act, 1948 — Section 9

Citation : (2012) 53 VST 526

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Piyush Agrawal, for the Appellant; B.K. Pandey, for the Respondent

Judgement

Rajes Kumar, J.—The present revision arises from the order of the Tribunal dated March 27, 2003, relating to the assessment year 1996-97. The assessing authority passed the penalty order u/s 15A(1)(o) of the U.P. Trade Tax Act, 1948 (called the, "Act" for short) on December 2, 1997 on the ground that on October 1, 1996 when vehicle No. DL.-IG/5076 was intercepted by the trade tax authorities, on physical verification, "twisted ribbed bar" was found, while in the declaration "ribbed bar" was mentioned and on account of the differences in the goods, the same was seized and was released on furnishing of security at Rs. 56,000. The assessee was issued notice which was properly served, but no reply was found. The books of account have also not been produced for the verification. The applicant filed appeal u/s 9 beyond time along with an application u/s 5 of the Limitation Act. The appellate authority, on March 18, 1999, has rejected the application u/s 5 of the Limitation Act and, accordingly, rejected the appeal as barred by time.

2. The applicant moved application u/s 10B of the Act for revision of the penalty order dated December 2, 1997, u/s 15A(1)(o) of the Act. The said application has been rejected by the Deputy Commissioner (Executive) on the ground that against the penalty order the applicant filed appeal which has been dismissed.

3. Being aggrieved by the order of the Deputy Commissioner (Executive) dated July 31, 1999, the applicant filed appeal before the Tribunal. The Tribunal has accepted the plea of the applicant that the application u/s 10B of the Act was maintainable as'' the appeal was rejected as barred by limitation. The Tribunal, however, on merit, ''has held'' that the penalty order was not erroneous or improper as at the time of inspection the "twisted ribbed bar" was found, while on the document "ribbed bar" was mentioned and the books of account have not been produced for verification before the assessing authority.

4. Heard learned counsel for the parties and perused the record.

5. Sri Piyush Agrawal, learned counsel for the applicant, submitted that in the assessment proceeding no adverse inference has been drawn from the seizure of the goods and the books of account have been accepted and since there was no attempt to evade the tax, penalty has been illegally levied.

6. Sri B.K. Pandey, learned standing counsel, submitted that in the penalty proceeding; despite the notice being issued, the assessee could not produce the books of account for verification and, therefore, the penalty has rightly been levied. He further submitted that the assessment order has been passed in the year 1999, subsequent to the penalty order, cannot be looked into for revising the order dated December 2, 1997 as the same was not part of the record at the time of passing of the order. He submitted that u/s 10B the documents which was on record at the time of passing of the order can only be considered and, therefore, the validity of the impugned penalty order cannot be examined with reference to the assessment order.

7. Section 10B of the Act reads as follows:

(1) The Commissioner or such other officer not below the rank of Deputy Commissioner as may be authorised in this behalf by the State Government by notification may call for and examine the record relating to any order (other than an order mentioned in section 10A) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed-

(a) to revise an order, which is or has been the subject-matter of an appeal u/s 9, or an order passed by the appellate authority under that section;

Explanation.--Where the appeal against any order is withdrawn or is dismissed for non-payment of fee payable u/s 32 or for non-compliance of sub-section (1) of section 9, the order shall not be deemed to have been the subject-matter of an appeal u/s 9;

(b) before the expiration of sixty days from the date of the order in question;

(c) after the expiration of four-years from the date of the order in question or after the expiration of two years from the date of commencement of section 19 of the U.P. Sales Tax (Amendment and Validation) Act, 1978,

whichever is latter.

8. u/s 10B of the Act only those document can be considered which are part of the record at the time of passing of the impugned order subject to revision. The documents which came in existence of the record subsequent to the passing of the impugned order cannot be considered u/s 10B of the Act. Reliance is placed on the decision of this court in the case of Commissioner of Sales Tax v. J.K. Satch, Agricultural Machines Ltd. reported in [1999] UPTC 1297. In view of the above, I do not find any merit in the revision. The revision is, accordingly, dismissed.