(2014) 01 AHC CK 0260

In the Allahabad High Court

Case No : Writ Tax No. 24 of 2014

Rathi Super Steel Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 18A, 9(2)
Constitution of India, 1950 — Article 226
Uttar Pradesh Value Added Tax Act, 2008 — Section 55, 57, 57(9)

Citation : (2014) 73 VST 469

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, Senior Advocate assisted by Piyush Agrawal, Advocate for the Appellant

Judgement

Sudhir Agarwal, J.—Heard Sri Bharat Ji Agarwal, Senior Advocate, assisted by Sri Piyush Agrawal, learned counsel for the petitioner and learned standing counsel for the respondents. This writ petition under article 226 of Constitution of India has questioned order dated December 26, 2013 passed by the Commercial Tax Tribunal, Ghaziabad in Second Appeal No. 1596 of 2013 passed on petitioner''s application seeking dispensation of requirement of pre-deposit in filing appeal u/s 57 of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as "the Act, 2008") read with sections 9(2) and 32 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act, 1956").

2. The dispute relates to assessment year 2010-11 under the Act, 1956. The petitioner is registered under the U.P. Trade Tax Act now Act, 2008 and Act, 1956 and engaged in manufacture and sale of tor steel, TMT wire rods/iron, MS ingots, cutting and miscroll. It has a branch at Delhi also and sell its products within the State of U.P. and also makes stock transfer of goods to its branch at New Delhi. It is said that the petitioner also makes stock transfer of its goods to various agents located in Delhi, Haryana, Gurgaon and Uttaranchal.

3. The petitioner claimed certain transfer of stock to the Delhi Depot and filed form F for the assessment year. However, survey was conducted in the petitioner''s premises on February 21, 2011, in reference whereto a show-cause notice was issued to the petitioner, which was replied vide annexure 2.

4. The assessing officer, however, passed an assessment order dated September 30, 2013 (annexure 3 to the writ petition) but did not accept stock transfer in consignment made to Delhi Depot for value of Rs. 54,16,58,748 and imposed tax at four per cent, i.e., Rs. 2,16,66,350. Similarly, consignment transfers to various agents were rejected, imposing tax liability of Rs. 25,56,247 and the sale made by company was consequently enhanced. The petitioner preferred an appeal before the Commercial Tax Tribunal u/s 18A of Act, 1956 raising a ground that once form F has been furnished by the company as conclusive proof of stock transfer, any enquiry beyond that is impermissible. The petitioner also filed a stay application seeking stay of disputed tax of Rs. 4,31/54,597. By means of the impugned order dated December 26, 2013, the Tribunal has required the petitioner to deposit 10 per cent of disputed tax within 25 days whereafter his stay application would be considered and till that time, recovery of disputed amount has been stayed.

5. Sri Bharat Ji Agrawal, learned counsel for the petitioner, submitted that it is incumbent upon the Tribunal to consider merits of the matter and not to direct assessee to deposit any part of disputed tax under appeal unless it apply its mind to the ground taken by assessee and finds that such deposit is necessary.

6. Section 57(9), second proviso, of Act, 2008 says that no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless applicant has furnished satisfactory proof of payment of not less than one-third of disputed amount in addition to the amount required to be deposited under sub-section (3) of section 55. But clause (b) thereof provides that Tribunal may, for special and adequate reasons, to be recorded in writing, waive or relax requirement of clause (a) regarding payment of one-third of such disputed amount.

7. Thus the first condition for considering stay of recovery of disputed amount of tax, fee or penalty is that not less than one-third of the such disputed amount in addition to the amount required to be deposited under sub-section (3) of section 55 is paid by the applicant but this entire pre-deposit condition of one-third of such disputed amount can be relaxed or waived by the Tribunal by giving a reasoned order in writing.

8. In the present case, the applicant-petitioner requested the Tribunal to exercise its power of waiver or relaxation under proviso to clause (b), but even for considering that request, the Tribunal has required applicant to pay 10 per cent of disputed amount, which approach of the Tribunal, in my view, is not correct, inasmuch as, whether Tribunal is agreeable to waive or relax requirement of clause (a) regarding payment of one-third of disputed amount is one thing, which

it can do so on passing a reasoned order, but it cannot say that even before exercising its power of waiver or relaxation, certain amount must be deposited, inasmuch as, for exercise of power under proviso, clause (b), there is no such requirement that any amount must be deposited by the assessee.

9. What has been done by Tribunal in the present case is something which is not contemplated in the statute. As a matter of fact, I can understand if Tribunal would have said, passing final order under clause (b) that instead of one-third, some lessor amount must be deposited so as to satisfy requirement of clause (a), but for this purpose also the Tribunal is required to record special and adequate reasons since it amounts to partial waiver or relaxation of requirement of clause (a) but statute does not authorise the Tribunal that even before considering application of the appellant-assessee, for exercise of power of waiver or relaxation, it would require the assessee to deposit some amount. This part of the order of the Tribunal has resulted in doing something which is not provided in the statute. In my view, to this extent the impugned order need be modified. The Tribunal must pass final order on the stay application of the petitioner considering whether the appellant is entitled for any waiver or relaxation under second proviso to section 57(9) of Act, 2008 with regard to compliance of requirement of clause (a) regarding payment of one third of disputed amount or not.

10. The impugned order of the Tribunal dated December 26, 2013 (annexure 1 to the writ petition), to this extent, is therefore, set aside. It is directed to pass an appropriate order in accordance with law and in the light of the observations made above. The writ petition is disposed of accordingly.