(2009) 10 AHC CK 0232

In the Allahabad High Court

Samtel Electron Devices Limited APPELLANT

Vs

Commissioner of Trade Tax and Another RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Citation : (2010) 30 VST 603

Hon'ble Judges : S.C. Nigam, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Raising a short controversy, the present writ petition has been filed challenging the illegality and validity of the permission granted by the authority concerned to initiate the reassessment proceedings for the assessment years 1993-94, 1994-95 and 1995-96 (U.P. and Central).

2. The petitioner is a public limited company registered under the Companies Act. The petitioner is carrying on the business of manufacture and sale of electron gun, which is used in colour picture tubes. Its assessments under the U.P. Trade Tax Act for the assessment years 1993-94, 1994-95 and 1995-96 were completed. After expiry of the period of limitation for reopening the assessment, the Commissioner of Trade tax was approached by the assessing authority for permission to reopen the assessment order. The Commissioner of Trade Tax vide impugned order dated March 13, 2000 permitted the assessing authority to reopen the assessment for the assessment years 1993-94, 1994-95 and 1995-96 (U.P. and Central). The said order dated March 13, 2000 is under challenge in the present writ petition.

3. Sri Bharat Ji Agrawal, learned senior advocate appearing on behalf of the petitioner, invited the attention of the court towards paragraph Nos. 8 and 11, 13 and 14 of the writ petition wherein it is stated that before passing of the impugned order no opportunity of hearing was afforded to the petitioner by the authority concerned. Elaborating the arguments, he submits that the impugned

order has been passed against the principles of natural justice and submits that in view of the authoritative pronouncement of this Court in S.K. Traders, Modi Nagar, Ghaziabad v. Additional Commissioner, Grade 1, Trade Tax Zone, Ghaziabad [2009] 26 VST 601 : [2008] UPTC 392, it was mandatory to the authority concerned to have afforded an opportunity of hearing to the petitioner. The learned standing Counsel, on the other hand, supports the impugned order dated March 13, 2000.

4. Considered the respective submissions of the learned Counsel for the parties and perused the record.

5. Specific averments have been made in the aforestated paragraphs of the writ petition that neither any notice was ever received from the office of Trade Tax Commissioner nor any opportunity of hearing was ever afforded to the petitioner by the Commissioner of Trade Tax before passing the impugned order dated March 13, 2000 for extending the limitation. The said order was passed behind the back of the petitioner in clear violation of the principles of natural justice. Reply thereof has been given in paragraphs 10 and 11 of the counter-affidavit filed on behalf of the respondent sworn by Sri Krishna Mohan Pandey. In the said reply, it has been stated that Section 21(2) does not provide that the dealer should be given an opportunity of hearing before permission is granted under the said section. It has been stated that the Commissioner of Trade Tax, before passing the impugned order dated March 13, 2000 neither imposes any tax nor directs the assessing authority to impose any tax. Section 21(2) does not provide for issuance of notice to the dealer before passing of an order under the said section.

6. In S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, the said controversy has been covered by this Court in great detail and it has been held that opportunity of hearing has to be given to every assessee by the authority concerned while considering the proposal for sanctioning issuance of notice for reassessment under the proviso to Sub-section (2) of Section 21 of the Act and reasons have also to be recorded while granting the permission. Learned standing Counsel could not point out any fact to distinguish the ratio as laid down in S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax,

7. In our considered opinion, the controversy is squarely covered in favour of the petitioner by the judgement of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax,

8. In view of the above, without going into merits of the case on a short ground that no opportunity was afforded before passing the impugned order, we hereby set aside the order dated March 13, 2000 and restore back the matter to the Commissioner, U.P. Trade Tax, to re-hear and re-decide the question of grant of sanction, after giving an opportunity of hearing to the petitioner.

9. The writ petition is accordingly allowed. No order as to costs.

