(2007) 07 AHC CK 0245

In the Allahabad High Court

Sanneer Electricals APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 4, 5
Uttar Pradesh Trade Tax Act, 1948 — Section 3F(2B)(I)

Citation : (2008) 16 VST 130

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—Heard learned Counsel for the parties. With the consent of the learned Counsel for the parties, this revision is being disposed of finally at the admission stage itself in view of the peculiar facts and circumstances of the case.

2. The dispute relates to the assessment year 1998-99. The questions of law framed by the applicant are as follows:

Substantial questions of law:

I. Whether the Trade Tax Tribunal, Bench-I, Ghaziabad, was justified in allowing the appeal, filed by the Trade Tax Department, and remanding the matter back to the assessing authority despite the fact that it is the last court for finding of fact.

II. Whether the Trade Tax Tribunal, Bench-I, Ghaziabad, was justified in remanding back the matter to the assessing authority although the whole material and record were placed before it.

III. Whether the Trade Tax Tribunal, Bench-I, Ghaziabad, erred in law in remanding back the matter to the assessing authority on the ground of opportunity to the Trade Tax Department despite the fact that on the said ground the matter can only be remanded to the first appellate authority.

3. In effect the question of law which arises for determination is as to whether

the Tribunal was justified in remanding the matter to the assessing officer instead of remanding it to the appellate authority, in view of the fact that the ground taken by the department before the Tribunal was that it had not been afforded due opportunity by the appellate authority.

4. The submission of the learned Counsel for the applicant is that the assessing officer by order dated March 13, 2001 levied tax on the transformer at the rate of 10 per cent. On appeal by the dealer, the Deputy Commissioner (Appeal), Trade Tax, Ghaziabad held that there was no liability of tax either u/s 3F(2B)(l) of the U.P. Trade Tax Act, 1948 and as per provisions of Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 and accordingly deleted the tax liability. The department filed a second appeal before the Tribunal. The Tribunal has allowed the appeal of the department and has remanded the matter to the assessing officer by the impugned order dated March 15, 2007.

5. The submission of the learned Counsel for the applicant is that the Tribunal has recorded the contention of the department that it was not afforded due opportunity before the Deputy Commissioner (Appeal) and the departmental representative had not been heard by the said authority and, therefore, the matter ought to have been remanded to the appellate authority for fresh decision after affording due opportunity. This submission of the departmental representative before the Tribunal has been accepted that it had not been heard before the Deputy Commissioner (Appeal).

6. Learned Counsel for the applicant also does not dispute the fact that departmental representative had not been heard before the Deputy Commissioner (Appeal). However, the Tribunal after recording the said finding has further recorded that the applicability of Section 3F of the U.P. Trade Tax Act and Sections 3, 4 and 5 of the Central Sales Tax Act have not been correctly applied by the Deputy Commissioner (Appeal) and in fact the business of the dealer which falls under the category of works contract which requires further enquiry and verification by the assessing officer and accordingly remanded the matter to the assessing officer. According to the learned Counsel for the dealer all the material was already on record and a final decision could have been taken by the Tribunal itself.

7. On the other hand, the learned Standing Counsel has submitted that in view of the observations of the Tribunal that further enquiry and verification is required, no prejudice is being caused to the dealer if the matter is sent back to the assessing officer to make necessary enquiry and verification as directed by the Tribunal.

8. In my opinion once the Deputy Commissioner (Appeal) had decided the matter ex parte against the dealer, it would be to the satisfaction of the Deputy Commissioner (Appeal) to record firstly as to whether any further enquiry is necessary or not. Further the Tribunal had observed with regard to the verification and further enquiry without going into the material available on

record and without giving any specific instance or reference to the documents which need to be verified. The observation appears to be casual. Order of remand should not be passed in a casual or cursory manner. There are settled principles which may necessitate an order of remand. Broadly speaking, where any fresh material or evidence is to be brought on record for proper and just adjudication of the matter or where any relevant issue has not been addressed to by the authorities below which may require additional material, in such event an order of remand may be said to be justified.

9. The order of remand must be speaking and precise and the higher authority remanding the matter must record its inability or difficulty in deciding the matter itself. In the present case, I find that the necessary ingredients for remand are lacking in the impugned order. It cannot be, therefore, sustained. Further on the ground of denial of opportunity the best course would have been to send the matter to the authority before whom it is alleged that opportunity was not given. On this score also the impugned order of the Tribunal cannot be sustained. Thus a question of law does arise in this revision calling for interference in revisional jurisdiction.

10. In view of the aforesaid discussion the order of the Tribunal dated March 15, 2007 and the Deputy Commissioner (Appeal) dated July 4, 2001 are set aside. The Deputy Commissioner (Appeal) is directed to decide the matter afresh after affording opportunity to the department and the dealer. Further it would be open to the Deputy Commissioner (Appeal) to examine as to whether any further enquiry or verification of record is necessary or not. If it is found that such verification or any further enquiry is necessary, it would be open to it to either remand the matter to the assessing officer or to call for any further report of the assessing officer on any particular issue.

11. The revision is allowed as above. There shall be no order as to costs.

