(2006) 07 AHC CK 0185

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1138 of 2006

Santoshi Enterprises APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(7)
Central Sales Tax Act, 1956 — Section 8(1), 8(4), 9(2)

Citation : (2006) 07 AHC CK 0185

Hon'ble Judges : Vikram Nath, J;Sushil Harkauli, J

Bench : Division Bench

Advocate : Nishant Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ petition has been filed against an order rejecting the application for extension of time straight away alleging that the trade tax authorities will consider themselves bound by the short decision of this Court dated 22nd July 2004 passed by a Division Bench in Writ Petition No. 959 of 2004 Gaurav Printers And Fabricators v. State of U.P. and Ors., and, consequently will not be able, in appellate or other alternative remedies, to grant extension of time for filing declaration beyond the date on which an assessment order has been passed. The submission is that only this Court can examine the correctness of the said decision of the Division Bench.

2. In view of that decision dated 22,7.2004, the writ petition was dismissed in limini by the following order:

There is no provision either under the U.P. Trade Tax or the Central Sales Tax Act which permits the assessing authority to grant time for filing the declaration form E-1 and E-2 or any other declaration forms once the assessment order has been passed. The application for extension of time for filing the declaration form has rightly been rejected.

The writ petition is misconceived and is dismissed.

3. Normally, if we were to take a different view than the view taken by the Division Bench in the above Judgment, we would have to refer the matter to a larger Bench.

4. However, in this case, we find that the petitioner viz. Gaurav Printers and Fabricators, had filed the said writ petition No. 959 of 2004 and, it was the duty of the petitioner or its counsel to bring to the notice of the Division Bench hearing the matter, the relevant provisions which permitted extension of time for filing the declaration even beyond the date of the assessment order. When the relevant provisions were not brought to the notice of the Division Bench, the Division Bench dismissed the writ petition saying that there was no such provision.

5. Obviously, what the Judgment meant was that no such provision has been brought to the notice of the Bench and to that extent, the decision dated 22.7.2004 becomes per incuriam so far as the Central Act is concerned. Thus, it is not necessary to refer the matter to a larger Bench.

6. The question to be considered here is whether under the Central Sales Tax Act the ''assessing authority'', which is also the ''prescribed authority'' by virtue of Section 9(2) of that Act, can grant extension of time for filing declaration form beyond the date of the assessment order or not. In our considered opinion it can. We are frequently coming across assessment orders where total tax liability is assessed upon failure to furnish the declaration forms, and a rider is mentioned in the assessment order itself that if the declaration forms are furnished within the further time fixed in the assessment order, the corresponding part of the tax liability will stand reduced. We have not been shown any good reason as to why the said time granted by the assessment order cannot be enlarged upon sufficient cause being shown. There appears to be no prohibition, either by express words of the Act and Rules or by necessary implication. Procedure is but a handmaid to justice, and all that is not prohibited either expressly or by necessary implication is permissible procedure if it advances the cause of justice.

7. In the pleadings, the petitioner has pointed out that the relevant statutory provisions for the power of extension of time are Section 8(4) {including its proviso} of the Central Sales Tax Act, 1956 read with Rule 12(7) {including its proviso} of the Central Sales Tax (Registration and Turnover) Rules, 1957.

8. For convenience, both these provisions are reproduced below:

Section 8(4) The provisions of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner-

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government:

Provided that the declaration referred to in Clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

Rule 12(7)- The declaration in Form ''C'' or Form ''F'' or the certificate in Form ''E-I'' or From ''E-II'' shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

(emphasis ours)

9. The standing counsel has opposed the argument from the petitioner''s side saying that under the proviso to Rule 12(7), the extension of time can be granted only up to the date of assessment order. The argument is not sustainable, for the simple reason that up to the date of assessment order, the main Rule 12(7) itself permits furnishing of the declaration forms. Therefore, till that stage of the date of the assessment order, there would be no requirement of any extension of time by any authority. In such circumstances, the proviso to Rule 12(7) can only refer to extension beyond the date of the assessment order. It must, therefore, be held that the prescribed authority under Rule 12(7) proviso has the power to extend time for filing declaration form or certificate even beyond the date of assessment order.

10. In view of this legal position, we are of the opinion that the view taken in the impugned order dated 12.4.2006 passed by the Deputy Commissioner, Trade Tax, (Annexure 2 to this writ petition), is the not correct view. The application for extension of time should have been examined on merits with reasons and should not have been rejected for want of power. The writ petition is, therefore, allowed. The impugned order dated 12.4.2006 is set-aside. The Deputy Commissioner, Trade Tax, will re-examine the matter in the light of the above and will pass a reasoned order expeditiously.