(2009) 09 AHC CK 0029

In the Allahabad High Court

Shakti Traders APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2)

Citation : (2010) 30 VST 666

Hon'ble Judges : S.K. Gupta, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Gupta, J.—This writ petition has been filed, inter alia, for the following reliefs:

(i) to issue a writ order or direction in the nature of certiorari quashing the impugned notice u/s 21(2) of the U.P. Trade Tax Act, 1948 dated January 4, 2008 issued by respondent No. 3 for the assessment year 2002-03 (annexure 6 to the writ petition)

(ii) to issue a writ, order or direction in the nature of mandamus directing respondent No. 3 not to initiate reassessment proceedings in pursuance of the notice u/s 21(2) of the Act issued by respondent No. 3 for the assessment year 2002-03

(iii) to issue a writ order or direction in the nature of certiorari quashing the order dated December 18, 2007 passed by respondent No. 2 authorising respondent No. 3 to initiate reassessment proceeding u/s 21(2) of the U.P. Trade Tax Act (annexure 5 already filed to the writ petition).

2. The background facts enumerated in the writ petition are as follows:

3. The petitioner is a registered dealer under the provisions of the U.P. Trade Tax Act, 1948 (in short, "the U.P. Act") and engaged in the business of purchase and sale of '""match boxes" from outside the State of U.P. in its own account as well

as on consignment sale basis outside the State of U.P.

4. For the assessment year 2002-03 the petitioner has disclosed total nontaxable sales at Rs. 3,48,08,600 within U.P. and also disclosed consignment sale of Rs. 35,75,000 for which form F and sale patti and other documents were filed at the time of assessment before the assessing authority, respondent No. 3.

5. After proper verification and deep scrutiny the petitioner''s assessing authority has accepted the books of account and exempted the consignment sale amounting to Rs. 35,75,000 made against form F.

6. The Additional Commissioner, Grade 1, Trade Tax, Kanpur Zone, Kanpur, respondent No. 2 issued a notice u/s 21(2) of the Act on October 11, 2007 requiring the petitioner to show cause as to why permission may not be given to the assessing authority to initiate reassessment proceeding regarding consignment sale of Rs. 35,75,000 made against form F which was not disclosed by the dealer of other State, namely, M/s. Anjani Traders, Faridabad in its return of sale.

7. In response to the aforesaid show-cause notice the petitioner filed reply stating therein that the petitioner has furnished form F which was validly and properly issued by the assessing authority of M/s. Anjani Traders, Haryana and no adverse material was found against the petitioner at the time of original assessment and there was no occasion to initiate the reassessment proceeding against the petitioner, if the dealer of other States and has not disclosed its sale against form F to its assessing authority and if any action is needed can be taken against the dealer who has issued form F and not against the petitioner.

8. Respondent No. 2 vide its order dated December 18, 2007 rejected the reply filed by the petitioner and granted the permission to respondent No. 3, i.e., the assessing authority to initiate the reassessment proceeding against the petitioner u/s 21(2) of the Act for the year 2002-03 under the U.P. Act as well as under the Central Sales Tax Act. Hence the present writ petition.

9. We have heard Sri Rishi Raj Kapoor, learned Counsel for the petitioner and the learned standing counsel for the respondents and perused the record.

10. The learned Counsel for the petitioner apart from inviting attention of the court on merits of the case referred to the notice issued by the Additional Commissioner, Grade 1, Trade Tax, Kanpur Zone, Kanpur, respondent No. 2 and the objections filed by the petitioner, as also the impugned order passed by respondent No. 2 granting permission/sanction for reopening of assessment proceeding and submitted that the orders have been passed by respondent No. 2 without application of mind as the objections by the petitioner in its reply had not been dealt with. In fact, the said order does not contain any reasons'' whatsoever and appears to have mechanically been passed. He submitted that the impugned orders cannot be sustained and therefore consequential notice issued by the assessing authority can also not sustained. In support of his

submission he has relied upon paragraph 49 of the Division Bench judgment of this Court in the case of S.K. Traders, Modi Nagar, Ghaziabad v. Additional Commissioner, Grade 1, Trade Tax, Ghaziabad [2009] 26 VST 601 : 2008 UPTC 392 wherein this Court has held that recording of reasons is a must while granting permission u/s 21 of the Act.

11. Sri U.K. Pandey learned standing counsel, submitted that it is very difficult and impracticable for the Additional Commissioner to record his own reasons while granting permission as the assessing authority who is normally in the rank of the Assistant Commissioner and Deputy Commissioner are officers subordinate to the Additional Commissioner and any reasoning given by the Additional Commissioner would create difficulty in the reassessment proceeding as it would be binding on the assessing authority. He, therefore submitted that the Additional Commissioner was perfectly justified in not recording reasons for granting permission/ sanction.

12. We have considered the rival submissions and we find from the record that to the show-cause notice issued by respondent No. 2 the petitioner had filed its detailed objection. But the Additional Commissioner, respondent No. 2, had not given any reason whatsoever nor has dealt any of the objections raised by the petitioner in his reply. In view of the law laid down by this Court in the case of S.K. Traders [2009] 26 VST 601 : 2008 UPTC 392 the said order passed by the Additional Commissioner cannot be sustained and is liable to be set aside.

13. We may mention here that the court in paragraph 49 of the report (51 in VST) in the case of S.K. Traders [2009] 26 VST 601 : 2008 UPTC 392 has held as follows (at page 635 of VST):

49. We are in respectful agreement with the view taken by this Court in the aforesaid cases and are, therefore, of the considered opinion that opportunity of hearing has to be given to every assessee by the Additional Commissioner or the Commissioner while considering the proposal for sanctioning/issuing of notice for reassessment under the proviso to Sub-section (2) of Section 21 of the Act and reasons are also to be recorded while granting sanction. As the Additional Commissioner has not given any reasons for granting permission/sanction to the proposal to reopen the assessment for the assessment year in question and to make the reassessment under the extended period of limitation, the order dated June 1, 2001 cannot be sustained and is therefore set aside. Consequently, all proceedings taken in pursuance of the said order also fall and are set aside.

14. In view of the foregoing discussion the impugned order dated December 18, 2007 (annexure 5) passed by the Additional Commissioner, Grade 1, Trade Tax, Kanpur Zone, Kanpur and the consequential notice dated January 4, 2008 (annexure 6) issued by the assessing authority for initiating reassessment proceedings for the assessment year 2002-03 are set aside.

15. Before parting with the case, we may observe that the limitation for making reassessment might have expired. The question regarding limitation has been

taken care of by this Court in the case of S.K. Traders [2009] 26 VST 601 2008 UPTC 392 and the directions and observations made by the court in this behalf in the aforementioned case would also apply in the present case. The Additional Commissioner shall pass order afresh in accordance with law after giving opportunity to the petitioners within three months from the date a certified copy of this order is filed before the said authority.

16. The writ petition succeeds and is allowed.

