(2010) 11 AHC CK 0319

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 299 of 2005

Star Paper Mills Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(1), 21(2)

Citation : (2011) 45 VST 55

Hon'ble Judges : Yatindra Singh, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is a writ petition challenging the reassessment proceeding for the assessment years 1998-99 to 2000-01.

The facts

2. The assessment order for the year 1998-99 under the U. P. Trade Tax Act, 1948 ("the Act") was passed on March 24, 2001. In the order, the burnt coal/coal ash was charged at the rate of four per cent.

3. Subsequently, a survey was conducted on January 9, 2002 and it was found that the calorific value of burnt coal/coal ash ranges from 1000-1500 kilo-calorie per kg. It shows that the burnt coal/coal ash has the burning capacity. The assessment orders for the subsequent assessment years, namely, 1999-2000 and 2000-01 were also passed on March 31, 2002 and February 15, 2003 after considering the survey. It was held that it is used as coal and charged four per cent. of tax.

4. After the period of limitation, a proposal was sent by the Deputy (now Assistant) Commissioner, Saharanpur (respondent 3) to the Additional Commissioner, Saharanpur Zone, Saharanpur (respondent 2) for the assessment years 1998-99, 1999-2000 and 2000-01 to levy the burnt coal/ coal ash as

unclassified item at the rate of 10 per cent on the ground that the High Court has not accepted coal ash in the category of coal in Commissioner of Sales Tax Vs. Modi Spinning and Weaving Mills, and has treated it as unclassified item and not coal liable to be taxed at 10 per cent instead of four per cent.

5. Respondent 2 issued show-cause notice to the petitioner on January 19, 2005 u/s 21(2) of the Act. Hence the present writ petition.

6. The writ petition was entertained and interim order was granted on February 28, 2005, to the effect that the proceeding for the assessment years 1998-99 up to 2000-01 may continue and the petitioner may participate in the same but the respondent shall not pass any final order till further orders of this court.

7. The respondents along with counter-affidavit have filed copy of the order dated March 22, 2005, passed by respondent 2, granting approval.

8. The petitioner has filed an amendment application challenging the order dated March 22, 2005. A statement has been made at the Bar that in pursuance of this approval, notices for reassessment u/s 21(1) of the Act have been issued by respondent 3, though no assessment orders have been passed.

9. We have heard Sri Bharat Ji Agrawal, Sri Shubham Agrawal, counsel for the petitioner and the Standing Counsel for the respondents.

The decision

Assessment years 1999-2000 and 2000-01

10. The assessment orders for the years 1998-99 to 2000-01 are on record of the writ petition. The assessment orders for the years 1999-2000 and 2000-01 reveal that the assessing officer has considered the nature of the burnt coal/ coal ash and also its calorific value and after considering it held it to be in the same category as coal and taxed it at the rate of four per cent. In view of this, the reassessment proceedings are merely on a change of opinion and no reassessment can be done.

11. In view of the above, the approval dated March 22, 2005 in respect of assessment years 1999-2000 and 2000-01 is quashed. Needless to add that the subsequent proceeding in pursuance of the same will also stand annulled. However, the same may not be the case for the year 1998-99.

Assessment year 1998-99

12. The assessment order for the year 1998-99 does not indicate that the calorific value of the burnt coal/coal ash was considered. Information in form of the High Court ruling in Commissioner of Sales Tax Vs. Modi Spinning and Weaving Mills, is there. In view of this it cannot be said that there was any change of opinion or no material to issue notice.

13. There is no illegality in the approval of respondent No. 2 dated March 22, 2005 for the assessment year 1998-99. The proceeding, if any, taken in

pursuance of the same for this assessment year is valid. The petitioner may if he is so advised participate in the reassessment proceeding and in case any assessment order has been passed then may file appeal against the same.

Conclusion

14. Our conclusions are as follows :

(a) The reassessment proceedings for the assessment years 1999-2000 and 2000-01 are illegal and are quashed;

(b) The reassessment proceedings for the assessment year 1998-99 are valid and will continue.

15. With the aforesaid observations, the writ petition is partly allowed.