(2006) 10 AHC CK 0200

In the Allahabad High Court

Swadeshi Paper Stores APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 23 VST 295

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") is directed against the order of the Tribunal dated July 25, 2006, relating to the assessment year 1995-96.

2. The applicant was carrying on the business of paper. The original assessment order was passed on December 23, 1997. It appears that on the basis of certain information, proceeding u/s 21 of the Act was initiated and in pursuance thereof, order u/s 21 was passed on September 21, 2002. The applicant filed an appeal before the Joint Commissioner (Appeals), Trade Tax, Varanasi. Before the Joint Commissioner (Appeals) the applicant challenged the proceedings u/s 21 of the Act apart from the merit of the case, inter alia, that the notice u/s 21 of the Act was not served upon it and the entire proceeding was barred by limitation. The Joint Commissioner (Appeals), vide its order dated March 12, 2003, allowed the appeal and set aside the order passed u/s 21 of the Act on the ground that it was barred by limitation. The first appellate authority observed that after serving the notice, approval under proviso to Section 21(2) of the Act has been obtained from the Additional Commissioner, Grade-I, Varanasi and, therefore, raising of the issue regarding the service of notice was not justified. The first appellate authority held that the order u/s 21(2) of the Act was required to be passed by March 31, 2002 and since the order was passed on September 21, 2002 it was barred by limitation. The assessing authority, thereafter, moved an application u/

s 22 of the Act before the Joint Commissioner (Appeals) on the ground that by mistake the period of limitation to pass the order has been taken up to March 21, 2002 and, therefore, order required rectification. Joint Commissioner (Appeals), vide order dated May 30, 2005, allowed the application u/s 22 of the Act and rectified its earlier order and held that the order passed u/s 21 of the Act was within time and accordingly, dismissed the appeal. Against the said order passed u/s 22 of the Act the applicant filed Appeal No. 457 of 2005 before the Tribunal. The Commissioner of Trade Tax has also filed Appeal No. 544 of 2003 against the order dated March 12, 2003. The Tribunal by the impugned order allowed the appeal of the applicant filed against the order u/s 22 of the Act and held that rectification of such mistake was beyond the scope of Section 22 of the Act and, accordingly, set aside the order dated May 30, 2005 passed u/s 22 of the Act. The Tribunal also allowed the appeal filed by the Commissioner of Trade Tax filed against the order dated March 12, 2003 and remanded back the matter to the Joint Commissioner (Appeals) to decide the appeal afresh. The Tribunal held that the first appellate authority has illegally observed that the issue with regard to the service of notice is not relevant, without giving the date of actual service of the notice. According to the Tribunal the date of the service of the notice is relevant for the determination, whether the proceeding was barred by limitation or not. The Tribunal accordingly, directed the first appellate authority to adjudicate the issue in this regard. Being aggrieved by this order, the applicant filed the present revision.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the order of the Tribunal remanding back the matter to the first appellate authority is not justified. He submitted that the order u/s 21 of the Act was patently barred by limitation. I do not agree with the submission of learned Counsel for the applicant. Unless it is to be adjudicated that when the notice u/s 21 of the Act was issued and when it was served and when Additional Commissioner has granted the approval under the proviso to Section 21(2) of the Act, the question of the limitation in passing the order u/s 21 of the Act cannot be adjudicated. The question of limitation has to be adjudicated on the basis of the date of service of the notice u/s 21 of the Act. Therefore, the direction given by the Tribunal cannot be said to be unjustified. The Joint Commissioner (Appeals) is directed to decide the plea of the applicant that the order was barred by limitation on consideration of service of the notice and relevant provision in this regard. In case, if the first appellate authority comes to the conclusion that the order passed u/s 21 of the Act was within time, the first appellate authority is directed to decide the matter on merit also.

5. With the aforesaid observation, revision is dismissed.