(2009) 05 AHC CK 0829

In the Allahabad High Court

Swati Gramodyog Seva Sansthan APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Citation : (2009) 26 VST 642

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By means of the present writ petition, the petitioner seeks a writ, order or direction in the nature of certiorari for quashing the order dated March 29, 2004 passed by the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur, respondent No. 2, filed as annexure No. 7 to the writ petition as also the reassessment proceedings initiated by the Assistant Commissioner, Trade Tax, Sector 11, Kanpur against the petitioner for the assessment year 1997-98 (U.P.) vide notice dated March 29, 2004, filed as annexure No. 8 to the writ petition and for other consequential reliefs.

2. Briefly stated the facts giving rise to the present writ petition are as follows:

According to the petitioner it is a registered society certified as Khadi and Village Industry by the U.P. Khadi and Village Industries Board under the provisions of the U.P. Khadi and Village Industries Board Act, 1960. A certificate has been issued to the petitioner on January 10, 1995 by the U.P. Khadi and Village Industries Board certifying the petitioner to be engaged in the business of manufacture of ayurvedic medicines. It is a registered dealer under the provisions of the U.P. Trade Tax Act, 1948, hereinafter referred to as, "the Act". During the assessment year 1997-98 the petitioner prepared and sold certain ayurvedic medicinal preparations by processing forest plants. According to the petitioner, the medicinal preparations prepared and sold by it are only a combination of forest plants processed by the petitioner. It claimed exemption under Notification No. 709 dated February 27, 1997 issued by the State Government u/s 4(c) of the Act as the items manufactured and sold by the petitioner fell under entry No. 34 of the aforesaid notification. While completing the regular assessment for the assessment year 1997-98 the assessing authority vide order dated March 13, 2000 had granted exemption in terms of the notifications dated January 30, 1985 and February 27, 1997. After passing of the assessment order, sometimes in the year 2004 the assessing authority sent a proposal to the Additional Commissioner, Grade I, Trade Tax, Kanpur Zone, Kanpur, respondent No. 2, for granting permission/sanction for initiating proceedings for reassessment u/s 21(2) of the Act. The Additional Commissioner, respondent No. 2, issued a notice on March 27, 2004 calling upon the petitioner to show cause as to why the sanction/permission be not granted for reopening the assessment for the assessment year 1997-98 (U.P.) u/s 21(2) of the Act. The petitioner submitted its detailed reply dated March 29, 2004. However, the Additional Commissioner, respondent No. 2, vide order of date granted permission to the assessing authority for initiating reassessment proceedings. Pursuant to the permission granted by the respondent No. 2, the assessing authority issued a notice dated March 29, 2004 calling upon the petitioner to submit as to why the reassessment be not made. The matter was fixed for March 31, 2004 which was adjourned on the request of the petitioner. The notice dated March 29, 2004 as also the permission granted by respondent No. 2 vide order dated March 29, 2004 is under challenge in the present writ petition.

3. We have heard Sri S.D. Singh, learned Counsel for the petitioner and Sri U.K. Pandey, learned Standing Counsel appearing for the respondents.

4. The learned Counsel for the petitioner apart from inviting attention of the court on merits of the matter referred to the notice dated March 27, 2004 issued by the respondent No. 4 and objections filed by the petitioner on March 29, 2004 as also the order dated March 29, 2004 passed by the Additional Commissioner, respondent No. 2, granting permission/sanction for reopening the assessment and submitted that the order has been passed by the Additional Commissioner, respondent No. 2, without any application of mind as the objections raised by the petitioner in reply dated March 29, 2004 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 as such the said order cannot be sustained and, therefore, consequential notice dated March 29, 2004 issued by the assessing authority can also not sustain. 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 Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, wherein this Court has held that recording of reasons is a must while granting permission u/s 21(2) of the Act.

5. 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 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.

6. We have considered the rival submissions. We find from the record that to the show-cause notice dated March 27, 2004 the petitioner had filed a detailed objections/reply on March 29, 2004 but the Additional Commissioner had not given any reasons, whatsoever, nor has dealt with any of the objections raised by the petitioner in its reply. In view of the law laid down by this Court in the case of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, the said order passed by the Additional Commissioner cannot be sustained and is, therefore, liable to be set aside. We may mention here that this Court in paragraph 49 of the of reports in the case of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, has held as follows : (at pages 635-636 of VST, para 51)

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 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 falls and are set aside.

7. In view of the foregoing discussion, the order dated March 29, 2004 passed by the Additional Commissioner, respondent No. 2, filed as Annexure No. 7 to the writ petition and notice dated March 29, 2004 issued by the assessing authority, filed as annexure No. 8 to the writ petition, are set aside and the Additional Commissioner is directed to pass a fresh order after considering the reply given by the petitioner briefly stating reasons as to why permission is to be granted in case he comes to the conclusion that the permission is required to be given. We may make it clear that the reasons given by the Additional Commissioner would be only for permission to reopen the assessment proceedings and would not adversely affect the merits of the matter in the reassessment proceeding.

8. 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 Vs. Additional

Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, 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 appropriate order in accordance with law within three months from the date a certified copy of this order is filed before the said authority.

9. The writ petition succeeds and is allowed.