

(2004) 11 AHC CK 0105
In the Allahabad High Court
Case No : Trade Tax Revision No. 861 of 1995

The Commissioner, Trade Tax

APPELLANT

Vs

Dhampur Sugar Mills Ltd.

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 21, 22

Citation : (2004) 11 AHC CK 0105

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : S.C, for the Appellant; Rakesh Kumar Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—By means of present revision u/s 11 (1) of the U.P. Trade Tax Act, hereinafter referred to as the Act, the Commissioner of Trade Tax has challenged the order of the Tribunal dated 29th March, 1995, passed on an application u/s 22 of the Act filed by the assessee/respondent. The Tribunal by the impugned order has allowed the application u/s 22 of the Act for the assessment year 1985-86 on the ground that there was no material before the assessing authority on the date of issuance of the notice u/s 21 of the Act to believe that the tax on the turn over amounting to Rs. 3,88,182.13 in respect of manufacturing bran sugar, though realized by the assessee, has escaped assessment.

2. The facts of the present case in brief are as follows :-

The assessee carried on the business of manufacture and sale of sugar, shira, bran sugar, straw board etc. The original assessment for the assessment year 1985-86 was completed on 11th June, 1989. Subsequently on receipt of certain information the proceedings u/s 21 of the Act was initiated to tax the escape turn over of bran sugar sold to M/s Shyam Lal Mahendra Kumar, Muzaffarnagar. The assessee during the course of original assessment proceedings came out with a

case that the said sale was exempted and no tax was realized.

3. In the reassessment proceedings, the Sales Tax Officer examined the account books of the dealer with respect to the aforesaid transactions and found that the aforesaid transactions is recorded in the account books of the dealer. The dealer has realized the sales tax on the said turn over from the purchasing dealer but has not deposited the tax thereon. No explanation was given by the dealer/ opposite party in reply to show cause notice issued u/s 21, on that point. The only reply given that the assessee has filed a writ petition in the High Court challenging the validity of the reassessment proceedings and the matter is pending before the High Court. It may be noted here that that the dealer/ opposite party had filed a writ petition in the High Court and obtained stay order, which was subsequently dismissed. On these premises the assessing authority by the order dated 8th February, 1991 levied tax on the turnover of Rs. 3,88,182.13 of bran sugar. The said order was confirmed by the appellate authority in the appeal by the order dated 3rd April, 1991. The order of the first appellate authority was challenged before the Tribunal. The Tribunal by its order dated 25th June, 1992, dismissed the appeal. Thereafter an application for rectification of the mistake purporting to be u/s 22 of the Act was filed which was also dismissed by the Tribunal by the order dated 10th February, 1995. Subsequently, another application purporting to be u/s 22 of the Act for rectification of the mistake on identical pleas was filed which has been allowed by the Tribunal, this time, by the order dated 29th March, 1995. The Tribunal has set aside the proceedings u/s 21 of the Act.

5. Aggrieved against the aforesaid order the present revision has been filed.

6. Heard learned counsel for the parties and perused the record.

7. he Tribunal has allowed the application u/s 22 of the Act on the ground that the notice dated 21.2.1990 u/s 21 of the Act was issued, although in the earlier orders it was held that the date of issue of notice u/s 21 was 3rd of March, 1990. From the order sheet the Tribunal concluded in the rectification proceedings that the basis of issuing the notice was the letter of the Assistant Commissioner (Assessment), Muzaffarnagar, being letter No. 1047, dated 24.2.1990. The basis for issuing the notice dated 21 st February, 1990 is not mentioned in the order sheet. Therefore, the Tribunal this time found force in the contention of the assessee that the notice was issued u/s 21 even prior to the receipt of the information and there was no material before the Assessing Authority for issuing a notice on the date it was issued. Consequently, according to Tribunal the entire proceedings u/s 21 of the Act was vitiated. The validity of this order has been questioned by the Commissioner of Trade Tax on the ground that the Tribunal had no jurisdiction while exercising power u/s 22 of the Act to review its judgment or order on merits. It was a debatable question that by notice dated 21.2.1990 the proceedings u/s 21 was initiated. The Tribunal as well as the first Appellate Authority on earlier occasions recorded a finding that the proceedings u/s 21 of the Act was initiated by means of notice dated 5th March, 1990, which

was served on the assessee on 5th March, 1990 and 7th March, 1990 was the date fixed for hearing.

8. The jurisdiction conferred by Section 22 on the concerned authority has been subject matter of discussion and interpretation by this Court on numerous occasions. In (1969) 24 STC 48, *Concrete Spun Pipe Works v. The Sales Officer*, the Division Bench of this court has observed as follows :-

"The jurisdiction of the assessing authority u/s 22 is confined to the rectification of a mistake apparent on the face of the record of the assessment. It must be a mistake and it must be apparent on the face of the record. Clearly Section 22 does not envisage rectification of an error of judgment. The mistake must be apparent on the face of the record, it must be a mistake which will appear upon a glance at the record and not a mistake which emerges after a prolonged debate on the merits of the questions.... There is another qualification namely, such an error must be apparent on the face of the record, that is to say it is not an error which depends for its discovery, elaborating arguments on the questions of law of fact."

9. The distinction in between the power of review and power of rectification is well defined and well understood in tax matters. An authority in the guise of exercise of power of rectification can not review its order on merits. While exercising a jurisdiction to rectify an error the authority should keep in mind that such power does not empower it to rewrite the judgment. Coming to the facts of the present case it is important to notice that no such arguments which were raised by the assessee in the rectification proceedings was ever raised before the assessing authority in reply to the show cause notice issued u/s 21 of the Act. The assessing authority in the reassessment order has recorded a categorical finding that the assessee did not furnish any explanation with regard to the question as to whether the turn over in question escaped assessment of tax or not? The transaction is recorded in the account books of the dealer. The transaction is taxable, but it could not be taxed in the original proceedings due to omission. The appellate court has found that the notice dated 24.2.1990 was not a notice u/s 21 of the Act. It was an ordinary notice making certain enquiries with regard to the Bardana (packing material). The further finding recorded that the notice u/s 21 was issued by notice No. 6828, dated 3rd March, 1990. Before the appellate authority only the plea of limitation that the proceedings is barred by time was pressed, which was repelled. The plea in the form it was raised before a Tribunal in the proceedings u/s 22 of the Act was not raised either before the assessing authority or before the first appellate authority. The order of the first appellate authority was confirmed by the Tribunal in the appeal filed by the dealer, even then the plea that the notice u/s 21 was issued on 21st February, 1990 and there was no material in possession of the assessing authority for entertaining to believe that the turn over as escaped assessment was not raised before the Tribunal in the appeal. Only two pleas were raised before the Tribunal by the assessee that the proceedings are time barred and the

authority which framed the reassessment order had no territorial jurisdiction to pass an order u/s 21 of the Act. Both pleas were repelled by the Tribunal and the appeal was dismissed.

10. Thereafter an application u/s 22 of the Act was filed which was rejected on 10th February, 1998. This time a plea was raised that a notice u/s 21 of the Act is dated 21st February, 1990, while the information was received by the assessing officer on 24th February, 1990. The Tribunal examined the matter and has come to the conclusion that the notice dated 21 st February, 1990 was not a notice u/s 21 of the Act but it was an ordinary notice in respect of verification of the Bardana. A categorical finding was recorded that the proceedings u/s 21 of the Act was issued by means of notice No. 6828, dated 3rd March, 1990. The Tribunal has also recorded a finding that since in the original assessment order dated 11.8.1989 the disputed turn over was declared as non taxable, therefore, it is reasonable to conclude that this fact was within the knowledge of the assessing authority that the said turn over has escaped assessment from tax. Alternatively the Tribunal found that it is not necessary that the information in possession of the assessing authority should be in writing. The information may be oral one. With these findings rectification application was rejected. Reiterating the same pleas the second rectification application was filed which has been allowed by the Tribunal this time. From the order of the Tribunal, it is clear that it reexamined the matter a fresh and reached to a different conclusion. The question arises as to whether in rectification proceedings the Tribunal could have reexamined the matters a fresh. Could it reach to a different conclusion than the one arrived at earlier by the long drawn process of argument? The answer is obviously in negative. In view of Division Bench judgment of this Court in the case of Concrete Spun Pipe Works (supra), the Tribunal has exceeded in its jurisdiction on many counts. First the Tribunal could not entertain the second rectification application on the identical pleas, secondly, the scope of jurisdiction in rectification proceedings is a very limited one to correct a mistake apparent on the face of the record. Meaning thereby debatable issues can not be re-agitated in rectification proceedings. There was a debate as to when the reassessment proceedings were initiated. The Tribunal's earlier finding on the basis of the material on record could not review and it could not reach to a different conclusion in rectification proceedings. Thirdly, an authority can not in rectification proceedings rewrite its order on merits. Fourthly the Tribunal in its earlier order has recorded a finding that looking to the facts of the case, it can be concluded that the escape of tax was in the knowledge of the assessing officer, while issuing the notice u/s 21 of the Act. This finding has not been set aside subsequently in the rectification proceedings. The irresistible conclusion is that the order of the Tribunal can not stand and the revision is on terra ferma.

11. In the result, the revision is allowed and the order dated 29th March, 1995, passed on the rectification application is set aside and the rectification application stands dismissed.