(2006) 02 AHC CK 0202

In the Allahabad High Court

Case No : Trade Tax Revision No. 52 of 2006

The Kishan Sahkari Chini Mills Ltd. APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 10, 11, 9(3)

Citation : (2006) 02 AHC CK 0202

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Krishna Agrawal and R.R. Kapoor, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon. J.

1. In respect of the Assessment Year 2001-02, the Assessing Authority, under the U.P. Trade Tax Act, by means of the order dated 25th March, 2004 determined the tax liability of the petitioner to the tune of Rs. 13,97,637/- and after adjusting the amount already deposited, the petitioner was required to deposit a sum of Rs. 2,88,573/-. Feeling aggrieved by the aforesaid order, petitioner preferred an appeal u/s 9(3) of the U.P. Trade Tax Act. One of the plea raised in the aforesaid memo of appeal was that the Assessing Authority had relied upon the ex parte reports of the Central Excise Department (wherein it was mentioned that in respect of removal of certain quantity of molasses excise passes had not been issued) for determination of the liability of the Trade Tax. It was specifically contended that the ex parte reliance cannot be placed upon the report of the Excise Department. The applicant should have been afforded an opportunity to cross-examine the officers of the Excise Department as well as to have notice and knowledge of the records pertaining to the Excise Department, relied upon by the Department for assessing the tax liability.

2. On the aforesaid contention raised on behalf of the Assessee, the First

Appellate Authority by means of the order dated 10th March, 2005 allowed the appeal and remanded the matter to the Assessing Authority for affording fair opportunity with regards to the documents of the Excise Department relied upon as well as an opportunity to cross-examine the officers of the Excise Department, if asked for. Against the aforesaid order of the first Appellate Court, the petitioner preferred an appeal u/s 10 of the Trade Tax Act before the Trade Tax Tribunal.

3. The second appeal filed by the petitioner, being Second Appeal No. 47/50, has been dismissed by the Tribunal by means of the order dated 27.12.2005 with a finding that the appellant has been provided an opportunity to examine the records as well as the officers of the Excise Department under order of remand. It is against this order of the Tribunal dated 27.12.2005 as well as the order passed by the First Appellate Court dated 10th March, 2005, the present Trade Tax Revision u/s 11 of the Trade Tax Act has been filed.

4. On behalf of the revisionist (with reference to the judgment of this Court, reported in 1993 U.P.T.C. 407 Nehru Steel Rolling Mills, Muzaffar Nagar v. Commissioner of Sales Tax and 2004 NTN (24) 333 Walson Paints, Ghaziabad v. Commissioner of Trade Tax, U.P., Lucknow) it is contended that it is only for very strong reasons the First Appellate Authority can remand the matter to the Assessing Authority. Remand orders are not made by the authorities merely to get rid of the case so that the authority could avoid going into the matter deeply and deciding the issue once and for all.

5. I have heard counsel for the parties and have gone through the records of the revision.

6. The legal propositions, as established under the aforesaid judgments of this Court, are well founded and it is therefore to be determined in the facts of the case as to whether order of remand passed by the First Appellate Authority is supported by strong reasons or not and as to whether the authority has only made an attempt to get rid of the case.

7. From the order of remand passed by the First Appellate Authority, it is apparent that the contention raised on behalf of the revisionist, to the effect that documents relied upon by the Department for assessing the tax liability (the report of the Excise Department with regards to removal of molasses without excise passes) should have been disclosed to the petitioner and further an opportunity should have been afforded to cross-examine the officers of the Excise Department, had found favour and therefore the order of the Assessing Authority has been set aside and the matter was remanded to afford such opportunity as has been asked for by the revisionist and thereafter to re-assess the tax liability of the revisionist. The order passed by the First Appellate Authority cannot be said illegal in any manner nor can it be termed as an attempt to get rid of the case. Such an order passed by the First Appellate Authority is in conformity with the powers vested in him u/s 9(3) of the U.P. Trade Tax Act and is supported by strong cogent reasons.

8. The order passed by the First Appellate Authority as well as the order passed by the Tribunal affirming the same is just and legal and calls for no interference. The revision is, therefore, dismissed.

