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(2012) 03 AHC CK 0290

In the Allahabad High Court

Case No : Writ Tax No. 324 of 2012

Total Fina-Elf (India) Ltd. — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2)

Citation : (2013) 58 VST 542

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Ashok Kumar and Praveen Kumar, for the Appellant; S.P. Kesarwani, for the Respondent

Judgement

1. Heard counsel for the petitioner and Shri S.P. Kesarwani, learned standing counsel. By this writ petition, the petitioner has prayed for quashing the order dated February 15, 2012 passed by the Additional Commissioner u/s 21(2), proviso of the U.P. Trade Tax Act, 1948 by which authorisation has been granted to the assessing authority for reassessment for the years 2005-06 and 2006-07.

2. The petitioner was assessed by the assessing officer by assessment orders dated February 13, 2009 and March 4, 2009, which were ex parte. Subsequently, the ex parte orders were recalled and fresh assessment orders have been passed on February 18, 2010 and March 11, 2010. A notice was issued to the petitioner on January 16, 2012 u/s 21, sub-section (2), proviso asking him to show cause as to why the permission be not granted for reassessment u/s 21, sub-section (2), proviso. The notice mentioned that all kind of lubricants are to be taxed at the rate of 20 per cent, whereas the petitioner, who is dealing in brake fluid/ brake oil was assessed at the rate of 10 per cent only. The petitioner filed a reply in which he stated that he sold articles as brake fluid. Thereafter order has been passed by the Additional Commissioner on February 15, 2012 granting permission.

3. The learned counsel for the petitioner submits that the order of the Additional

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Commissioner does not contain any reason for passing the order. He submits that when the petitioner had already filed a reply to the show-cause notice, it was incumbent upon the Additional Commissioner to have given reason. The learned counsel for the petitioner/relying on the judgments of the Division Bench of this court in the cases of S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, , Vikrant Tyres Limited Now known as J.K. Industries Limited Vs. State of U.P. and Deputy Commissioner (Assessment) IV, Trade Tax, , India Grain Merchant v. State of U.P. reported in [2009] 41 NTN 205 and Manaktala Chemicals Pvt. Limited Vs. State of U.P. and Others, , has submitted that in the aforesaid cases the Division Benches have taken the view that reasons are to be recorded while granting permission by the Additional Commissioner in exercise of power u/s 21(2), proviso.

4. Shri S.P. Kesarwani, learned counsel appearing for the State, refuting the submissions of learned counsel for the petitioner, contends that the requirement under proviso to section 21(2) is that if the Commissioner on his own or on the basis of reasons recorded by the assessing authority is satisfied that it is just and expedient to do so, he may authorise the assessing authority for such assessment or reassessment. He submits that the recording of reason by the assessing authority seeking approval under proviso to sub-section (2) of section 21 is sufficient compliance and even if no reason is there in the order of the Commissioner, the permission cannot be vitiated. He has placed reliance on the judgments of the apex court in the case of S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, and in the case of Union of India (UOI) and Others Vs. Seth R. Dalmia, . He submits that in the Division Bench judgments relied by counsel for the petitioner the aforesaid judgments of the apex court, have not been considered, therefore, the Division Benches have erred in holding that recording of reason is mandatory. He further submits that in the present case in view of the fact that in the reply the petitioner does not deny that he is dealing in break fluid or break oil, non-recording of reason does not vitiate the order.

5. We have considered the submissions and perused the record.

6. In the present case, the Commissioner has passed the order on February 15, 2012 granting permission for reassessment in pursuance of which notice was issued by the assessing authority on February 25, 2012 and proceedings before the assessing officer have not yet proceeded any further. We are of the view that ends of justice shall be served in directing the Additional Commissioner to consider afresh and take appropriate decision giving reasons. As far as the submission of learned counsel for the respondent that the Division Bench judgments relied on by the petitioner need to be referred, is not necessary to be considered in fact of the present case where notice was given to the petitioner which was replied and order has been passed recently, i.e., on February 15, 2012. We, however, make it clear that we are not expressing any concluded opinion on the issues raised in the writ petition and the questions are left open.

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7. In result, the order dated February 15, 2012 is hereby set aside. Respondent No. 3 is directed to take a fresh decision on the proposal, which was submitted by the assessing authority after considering the reply of the petitioner dated February 14, 2012. We make it clear that in view of the fact that it is a proceeding u/s 21(2), proviso and the order has been passed within the period of limitation, passing of subsequent order in no way shall give any benefit to the petitioner regarding limitation. The Additional Commissioner shall endeavour to pass fresh order within two weeks from the date of production of a certified copy of this order. With the aforesaid direction, the petition is disposed of.

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