
(2011) 05 AHC CK 0022

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 813 of 2010

Trinity Tapes Pvt. Ltd.

APPELLANT

Vs

Commissioner of Commercial Tax

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 22

Uttar Pradesh Value Added Tax Act, 2008 — Section 58

Citation : (2012) 51 VST 112

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Ashok Kumar and Praveen Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—The instant revision u/s 58 of the U.P. Value Added Tax Act, 2008 is directed against the order of the Commercial Tax Tribunal dated August 5, 2010 passed in Appeal No. 37 of 2009. The revisionist as a new industrial unit was granted tax exemption u/s 4A of the U.P. Trade Tax Act, 1948. An eligibility certificate was accordingly issued to the revisionist on March 12, 1992 which was amended on September 2, 1994. Thereafter the revisionist established another unit and applied for eligibility certificate in respect thereof which was granted on July 18, 2000. Subsequently, the revisionist applied u/s 22 of the U.P. Trade Tax Act, 1948 for rectification of the eligibility certificate dated July 18, 2000 vide application dated nil alleged to have been received in the office of the District Industries Centre, Kanpur Nagar on August 12, 2000. When the aforesaid application was not considered, the revisionist submitted another application allegedly by way of reminder on May 21, 2004. The Divisional Level Committee vide order dated August 18, 2009 rejected the above application holding that it has no power u/s 22 of the Act to rectify the eligibility certificate and further that the aforesaid application dated August 12, 2000 was not received in the office and the application dated May 21, 2004 is barred by time.

2. Aggrieved, the revisionist preferred Appeal No. 37 of 2009 before the Tribunal. In appeal revisionist brought on record the opinion of a handwriting expert dated April 22, 2010 to prove that the application for rectification submitted by it on August 12, 2000 was actually received by the officer concerned in the office of the District Industries Centre on the said date and, as such, it cannot be rejected as barred by time. An affidavit of the officer concerned who had received the application was also brought on record denying his signatures of having received the same.

3. The Tribunal by the impugned order dated August 5, 2010 held that the application u/s 22 of the Act for rectification of the eligibility certificate was maintainable but rejected the same as time-barred on the ground that no such application was filed within the prescribed period, i.e., three years.

4. I have heard Sri Ashok Kumar, learned counsel for the revisionist and the learned standing counsel representing the respondents.

5. The only question of law which arises for consideration in this revision is whether the Tribunal was justified in not relying upon the opinion of the handwriting expert with regard to the signatures of the officer concerned on the alleged application of August 12, 2000 and in forming its own opinion on bare perusal of his signatures.

6. The submission of learned counsel for the revisionist is that the Tribunal had not assigned any reason for discarding the report of the handwriting expert and in holding that the signature of receipt of the above application is not that of the officer concerned.

7. In other words, the dispute in the present revision is only about the submission of the application for rectification u/s 22 of the Act on August 12, 2000. The revisionist is relying upon the copy of the application which allegedly contains the signatures of Vishnu Kumar Chaurasia, an officer of the District Industries Centre, who has allegedly received the same. The signatures on the said application has been denied by the officer concerned. In order to prove that the signatures on the said application are that of Vishnu Kumar Chaurasia, revisionist has filed a report of the handwriting expert Rakesh Trivedi. The said report is annexure 9 to the revision. The handwriting expert on comparison of the admitted signatures of Vishnu Kumar Chaurasia with the signatures appearing on the copy of the application of August 12, 2000, after comprehensive discussion concluded that the signatures on the application tallies with the specimen signatures, meaning thereby that the application bears the signatures of Vishnu Kumar Chaurasia. There is no contrary opinion on record.

8. The opinion of an handwriting expert is undoubtedly a relevant piece of evidence but the court is not bound by it. It has to give reason for accepting or discarding the report of an expert. It is equally well known that comparing of handwriting by the court is a hazardous job and it should not be resorted to without the aid of experts. In fact the court should avoid to assume the role of

an expert.

9. A plain reading of the impugned order of the Tribunal shows that the aforesaid report of the handwriting expert had not been considered and has been discarded solely on the ground that when the officer concerned is denying the signatures by means of an affidavit, the solitary opinion of the handwriting expert has no meaning. Therefore the Tribunal itself took the task of comparing the signatures and formed an opinion that the signatures of the officer concerned do not tally with the signatures appearing on the copy of the application. The Tribunal accordingly ignored the application of August 12, 2000 treated the reminder dated May 21, 2004 to be an application u/s 22 of the Act and held it to be beyond time of three years.

10. The Tribunal in recording the above finding regarding the signatures of Vishnu Kumar Chaurasia on the copy of the application has not stated that the signatures were compared by the Tribunal whereupon an opinion was framed that the report of handwriting expert is incorrect. In fact there is no finding by the Tribunal that the report of the handwriting expert is incorrect. It was not given any weightage as it happened to be only opinion of the expert on record. In the event the Tribunal was not satisfied with the said report or was of the opinion that single opinion, of the handwriting expert was not sufficient it could have obtained another report of the hand-writing expert so as to come to an independent conclusion. However, it was not open for the Tribunal to have taken upon itself, the task of the handwriting expert and to have substituted its own opinion about the genuineness of the signatures of Vishnu Kumar Chaurasia contrary to the opinion of the expert.

11. The legal question formulated above is thus answered in favour of the revisionist and against the Department and it is held that the Tribunal was not correct in substituting its own opinion about the genuineness of the signatures discarding the opinion of the handwriting expert on the ground that it was the only opinion on record.

12. In view of the aforesaid facts and circumstances, the impugned order passed by the Tribunal dated August 5, 2010 only to the extent it rejects the application of the revisionist as barred by time on the ground that it was not submitted on August 12, 2000 as its receipt is not proved for the reason that it does not bear the signatures of the officer concerned, is set aside. The matter is remanded to the Tribunal on the above limited question to decide the same in accordance with law and, if necessary, by calling for an additional report of an independent handwriting expert, as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order. Petition allowed accordingly.