(2013) 05 AHC CK 0078

In the Allahabad High Court

Case No : Writ Tax No. 476 of 2013

Tristar Farms APPELLANT

Vs

Additional Commissioner, Grade-I and Another RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2014) 67 VST 262

Hon'ble Judges : Prakash Krishna, J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Rakesh Ranjan Agrawal and Suyash Agrawal, for the Appellant;

Judgement

Prakash Krishna, J.—By means of the present petition, the petitioner has challenged the sanction order dated March 25, 2013 passed u/s 21(2) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") for the assessment year 2006-07 passed by the Additional Commissioner Grade-I Commercial Tax, Agra Zone, Agra. The facts may be noticed in brief:

The petitioner is a proprietorship firm carrying on the business of purchase and sale of button mushroom. It purchases mushroom from M/s. Krishna Agro Farms Product, Agra. The petitioner claims that the mushroom purchased by the petitioner is exempted from payment of trade tax being fresh vegetable.

2. The assessing authority sought permission to reassess the petitioner u/s 21 of the Act on the ground that the trade tax payable on mushroom has escaped assessment. According to it, mushroom sold by the petitioner is in sealed condition and therefore, in view of the notification dated April 10, 1999, it is liable to be taxed. Before granting sanction, a show-cause notice was issued to the petitioner. The Additional Commissioner/respondent No. 1 after taking into consideration, reply filed by the petitioner has passed the impugned order granting sanction as envisaged in proviso to section 21(2) of the Act.

3. Sri Rakesh Ranjan Agrawal, learned counsel for the petitioner, submits that the view taken by the Commissioner that mushroom is liable to tax, is legally

unsustainable. The impugned order proceeds on wrong footing, according to the petitioner, that mushroom sold by the petitioner is packed mushroom, while it is not so. Further submission is that basis of proceedings for reassessment is the survey dated November 29, 2010. In the said survey, no responsible person was found and at any rate, the said survey cannot be relevant for assessment year 2006-07.

4. In reply, learned counsel for the respondents submits that there is sufficient material on record to form a belief that the turnover of the petitioner has escaped assessment. It was further submitted that mushroom sold by the farmer is exempted and not by the traders like the petitioner. Reference was made to section 2(c) of the Act.

5. Considered the respective submissions of the learned counsel for the parties and perused the record.

6. At the very outset, we may state that while granting sanction, the authority concerned is not required to deal with the matter in great detail. Only brief reasons are required to be recorded to show the application of mind. Whether survey dated November 29, 2010 is relevant for the assessment year in question, i.e., 2006-07 will depend upon the facts as were found in the said survey. The date of survey is not very material. However, copy of survey report has not been placed before us on the pretext that the same has not been made available to the petitioner.

7. Be that as it may, still the petitioner has an opportunity before the assessing authority that the said survey is not relevant for the assessment year 2006-07. So far as, the notification dated April 10, 1999 is concerned, we find that the mushroom has been excluded from category of fresh fruits and green vegetables. The view taken in the impugned order holding that mushroom is excluded from category of fresh fruits and green vegetables is justified.

8. The other aspect of the case is that the present writ petition has been filed against the approval of the proposal sent by the assessing authority to reopen the assessment. In Dhanawat Marketing v. State of U.P. [2011] Tax Law Diary 41, it has been held as follows:

The approval granted by the Additional Commissioner, Kanpur, is not as detailed as one might expect, however, he has approved the proposal sent by the assessing officer. It is not necessary on the part of the approving authority to give detailed reasons lest it may be said he had influenced the reassessment proceedings on merit.

9. In Radico Khaitan Limited v. State of U.P. [2010] 35 VST 280 (All), a Division Bench decision of this court has held that the court can only examine whether there was any material and whether material is relevant to form belief of escape turnover. The relevant paragraph is reproduced below (page 290 in 35 VST):

The Division Benches of this court in the case of S.K. Traders Vs. Additional

Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, and Manaktala Chemicals Pvt. Limited Vs. State of U.P. and Others, have held that before granting the approval under the proviso to section 21(2) of the Act the opportunity should be given to the assessee. We are of the view that under the proviso the Commissioner does not exercise the judicial power in strict sense. He is not supposed to adjudicate the issue. He has to satisfy on the basis of the reasons recorded by the assessing authority that it is just and expedient to authorise the assessing authority to make the assessment or reassessment beyond the period of limitation prescribed u/s 21(2) of the Act. Therefore, we are of the view that a detailed reasoning is not required to be given while granting the authorisation. What is required under the proviso is that there should be an application of mind to arrive at the satisfaction on the consideration of the reasons recorded and the submissions of the assessee. We have gone through the order passed by the Additional Commissioner, Grade-1, Trade Tax, Moradabad Zone, Moradabad, under the proviso to section 21(2) of the Act. The order reveals that he has considered the reasons recorded by the assessing authority and also considered the reply and after being satisfied granted the approval. Therefore, the order cannot be said to be mechanical and without application of mind. Learned counsel for the petitioner has rightly withdrew his submission challenging the order u/s 21(2) of the Act passed by the Additional Commissioner, Grade-1, Trade Tax, Moradabad Zone, Moradabad.

10. The next question as to whether the mushroom sold by the petitioner was in sealed container or it was packed mushroom is a question of fact which will be examined by the assessing authority during reassessment proceedings. It is not appropriate to say anything in this regard at this stage of proceedings. Time and again, it has been said that where there is material in possession of the Department to form an opinion that turnover has escaped assessment, proceedings for reassessment can be initiated. However, it shall be open to the petitioner to place all such materials before the assessing authority in support of his case that there is no escapement of turnover. We do not find any merit in the present writ petition. It lacks merit and is hereby, dismissed, summarily.