(2013) 07 AHC CK 0068

In the Allahabad High Court

Case No : Trade Tax Revision No. 119 of 2013

U.C. Enterprises APPELLANT

Vs

Commissioner of Commercial Tax RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2014) 70 VST 337

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Heard learned counsel for the petitioner and learned standing counsel. Through this revision u/s 58 of the U.P. Value Added Tax Act, the revisionist has assailed order dated March 20, 2013 passed in Second Appeal No. 86 of 2013 relating to assessment year 2012-13.

2. According to the revisionist, he is a registered dealer and deals in purchase and sales of pukar gutkha and pan masala. The assessing officer, without any material on record, has imposed a penalty, against which, he preferred an appeal along with an application for stay of the disputed tax before the Additional Commissioner (Appeal)-II, who, stayed 70 per cent of the disputed tax, till disposal of the appeal. Feeling aggrieved, the revisionist preferred Second Appeal No. 86 of 2013 before the Trade Tax Tribunal Bench-I, Lucknow. The Tribunal, vide order dated March 20, 2013, partly allowed the appeal and modified the order passed by the Additional Commissioner (Appeal) to the effect that 80 per cent of the disputed tax shall remain stayed during the pendency of the first appeal. Feeling aggrieved, the revisionist preferred the instant revision, inter alia, on the grounds that the Tribunal did not consider the relevant facts and the financial stringency. Further, in a number of decision, this court has held that undue hardship as well as the entire relevant factors are to be considered and if the financial hardship is not considered, then, the purposes of filing the appeal itself becomes nugatory and illusory.

3. The learned counsel for the revisionist submits that the Tribunal decided the

matter without considering the financial stringency shown in the affidavit in support of the application for interim relief as well as the bank account of the revisionist and directed to make payment of 20 per cent of the disputed tax in a most arbitrary and illegal manner and without proper application of mind to the facts of the case. He submits that the power of stay should be judicially exercised and the order should be passed after proper application of sound principles for exercising discretion and the application of stay should be treated casually and the authority should not pass the routine order.

4. In support of the aforesaid submissions, learned counsel for the revisionist has relied upon the judgment of the apex court in the case of Income Tax Officer Vs. M.K. Mohammed Kunhi, , Mehsana Dist. Co-op. Milk P.U. Ltd. Vs. Union of India (UOI), and Shri Kihota Hollohon Vs. Mr. Zachilhu and others, and this court''s judgment in the case of Moriroku Ut India Pvt. Ltd., Noida v. Union of India reported in (2006) UPTC 274.

5. Relying upon the judgment of this court in the case of Tata Coffee Ltd. v. Commissioner of Trade Tax reported in 2002 UPTC 156, learned counsel for the revisionist submits that while considering the waiver-cum-stay, the Tribunal ought to have considered the prima facie merit of the case as well as financial condition of the applicant.

6. During the pendency of the statutory appeal, the Tribunal is required to look into the prima facie merit of the case as well as financial condition of the revisionist. Further, the appellate authority is required to consider the relevant factor like financial hardship and other relevant facts because the condition of deposit will make the purpose of filing of appeal itself nugatory. Considering the peculiar facts and circumstances of the case, the writ petition is partly allowed. The order March 20, 2013 passed by the Tribunal is modified to the extent that 90 per cent of the disputed tax shall remain stayed till disposal of the first appeal and the revisionist shall deposit 10 per cent of the disputed tax within a month and also furnish the security for the remaining amount to the subjective satisfaction of the assessing authority.