(2010) 01 AHC CK 0145

In the Allahabad High Court

United Traders Thru Auth.Signatory APPELLANT

Vs

State of U.P. & Others RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0145

Hon'ble Judges : Rajes Kumar, J and B.K.Narayana, J

Final Decision : Disposed Of

Judgement

Bala Krishna Narayana, J.

By means of this writ petition the petitioner is seeking following reliefs:

1. A. Issue a writ, order or direction declaring subsection (5) of Section 59 of the U.P.VAT Act 2008 being arbitrary , unreasonable and colorable, as ultravires the Constitution of India;

2. In the alternative

3. Issue a writ, order or direction declaring subsection (5) of Section 59 of the U.P.VAT Act, 2008 to be read down as applicable only to the decisions under Section 59 delivered after 28.2.09 i.e. the date of publication of U.P. Act No.11 of 2009.

B. Issue a writ, order or direction in the nature of certiorari quashing the order dated 5.3.08(Annexure 1 to the writ petition) passed by the Commissioner under Section 59 of the U.P.VAT Act, 2008, to the extent it prescribes around 70% sugar in the raw material and also as to the other ingredients mentioned therein all of which are arbitrary and approximate;

C. Issue a writ order or direction in the nature of certiorari quashing the provisional assessment orders dated 15.9.09 (Annexure 5 to the writ petition) passed by the respondent no.3 for the four quarters relating to assessment year 200809 under the U.P.VAT Act 2008.

D. Issue any other writ, order or direction, which this Hon''ble Court may deem fit in the facts and circumstances of the case;

4. Sri Navin Sinha learned senior counsel appearing on behalf of petitioner submitted that in view of the amendment in Section 59 (5) by the U.P.VAT Act 2008 by which the word ''applicant'' has been deleted, the order passed by Commissioner under Section 59 is binding upon the assessing authority and the appellate authority even in the case of other assessee who has not moved any application under Section 59.

5. He submitted that the petitioner is carrying on the business of toffee etc. The dispute relates to the rate of tax on toffee. The claim of the petitioner is that the toffee was liable to be taxed as sugar product which is 4% while the tax was assessed at the rate of 12.5% as unclassified item. He submitted that in the case of U.P.Biscuit Manufacturing Associates Kanpur the commissioner has passed the order under Section 5 9 and held that toffee is liable to be taxed as sugar product, in case it contains following constituents namely Sugar 70%, Liquid glucose 25% Essence colour/ rapper 5% and it will be treated as unclassified item in case such aforesaid ingredients are not available. Relying upon the said decision the assessing authority in the case of petitioner has held that the product which is being manufactured by the petitioner did not contain same constituent , therefore, it is unclassified item and liable to be taxed at 12.5%. He submitted that the petitioner has not filed any application under Section 59 therefore the order of the Commissioner in the case of U.P.Biscuit Manufacturing Associates Kanpur is not applicable in the case of the petitioner and on these facts he submitted that the amended provision of Section 59(5) he interpreted in a manner that the order of the Commissioner may not be binding upon those assessees who were not party before the Commissioner . Learned standing counsel submitted that the argument which the petitioner is raising has no substance because the assessing authority while passing order has only relied upon the observations of the Commissioner in the case of U.P.Biscuit Manufacturing Associates Kanpur and decided the matter independently. The Assessing authority has not held that the decision in the case of U.P.Biscuit Manufacturing Associates Kanpur is binding upon the present petitioner. In this view of the matter no cause arises to interpret the provisions of Section 59 (5) as requested by the petitioner in the present case.

6. We have perused the assessment order and we find substance in the argument of learned standing counsel that in the assessment order the assessing authority has only referred the observation of the order of Commissioner in the case of U.P.Biscuit Manufacturing Associates Kanpur. It has not been held that the order of the Commissioner is binding upon the assessee. In this view of the matter no cause arises to interpret Section 59 as prayed by petitioner.

7. In case the petitioner is aggrieved by the assessment made it is open to petitioner to challenge the same under Section 55 of the Act raising all his pleas in accordance to law.

8. In view of the above the writ petition stands disposed of.

