
(2006) 01 AHC CK 0148
In the Allahabad High Court
Case No : Trade Tax Revision No. 2132 of 2005

V.K. Enterprises

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Uttar Pradesh Sales Tax Act, 1948 — Section 10, 7
Uttar Pradesh Sales Tax Rules, 1948 — Rule 41
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 12B, 9

Citation : (2006) 01 AHC CK 0148

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Kunwar, for the Appellant; B.K. Pandey and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 23rd July, 2005 relating to the assessment year. 1999-2000 under the Central Sales Tax Act.

2. Brief facts of the case-giving rise to the present revision are that the assessment order dated 19th February, 2002 was passed u/s 9(2) of the Central Sales Tax Act for the aforesaid assessment year in which the assessing authority has rejected the books of account and enhanced turnover. Assessing authority has also levied the higher rate of tax in absence of Form C. Against the said order, applicant filed appeal before the Deputy Commissioner (Appeals) Trade Tax, Allahabad. Before the Deputy Commissioner (Appeals) the applicant filed two Forms C in original which were claimed to have been obtained after passing the assessment order. On the strength of Form C, benefit of concessional rate of tax was claimed. Assessing officer accepted the two forms-C u/s 12B of the Act and directed the assessing authority to make enquiry and verification in respect

thereof. For this purpose, the case has been remanded back to the assessing officer. Appellate authority, however, confirmed the rejection of the books of account. When the matter came up for consideration before the assessing authority for the examination of Form-C, which were filed before the assessing authority, the applicant appears to have challenged the rejection of the books of account and enhancement of the turnover. It appears that show cause notice in this regard has also been issued by the assessing authority, which was duly replied. Assessing authority, however, rejected the books of account and also upheld the enhancement of the turnover, which was made earlier. Assessing authority, however, allowed the benefit of the concessional rate of tax on the basis of Form C. Being aggrieved by the assessment order, applicant filed appeal before the Joint Commissioner (Appeals), Trade Tax, Allahabad which has been dismissed vide order dated 31st March, 2004. Applicant further filed second appeal before the Tribunal, which has been rejected by the impugned order. Before the Tribunal, the applicant has challenged the rejection of the books of account and the enhancement of the turnover. Tribunal has rejected the appeal on the ground that the appellate authority vide its order dated 26th August, 2002 has upheld the rejection of the books of account and the matter was remanded back to the assessing authority only for limited purposes to verify and allow the benefit of two Forms C which were filed before the appellate authority. Thus, the issue with regard to the rejection of the books of account has become final inasmuch as the order of the Deputy Commissioner (Appeals), Trade Tax, Allahabad dated 26th August 2002 confirming the rejection of the books of account could not be challenged. Tribunal held that the assessing authority has no jurisdiction to examine the issue with regard to the rejection of the books of account.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that once the case has been remanded back by the appellate authority in exercise of powers u/s 9 of the Act to the assessing authority, assessing authority has power to pass the assessment order only u/s 7 read with Rule 41. He submitted that after the remand of the case by the first appellate authority, the earlier assessment order is deemed to be set aside and the entire assessment proceeding became reopen for passing fresh assessment order and, therefore, it was open to the assessing authority to adjudicate the issue with regard to the rejection of the books of account. He submitted that in the present case, the assessing authority issued show cause notice on the point of rejection of books of account and adjudicated the issue, therefore, the Tribunal was not right in refusing to consider the submissions of the applicant on the rejection of the books of account. In support of his contention, he relied upon the Full Bench decision of this Court in the case of *Ram Dayal Har Vilas v. CST* reported in 1979 UPTC 999.

5. Learned Standing Counsel submitted that vide order dated 26th August, 2002, the appellate authority had not set aside the entire assessment order, but had

only remanded back the matter for the examination of two Forms-C. He submitted that in the appellate order, rejection of the books of account has been confirmed and against the finding of the appellate authority confirming the rejection of the books of account, no appeal was filed by the applicant before the Tribunal. Thus, the order of the first appellate authority so far as rejection of the books of account is concerned had become final and it was not open to the applicant to raise the issue with regard to the rejection of the books of account before the assessing authority inasmuch as the assessing authority had no jurisdiction to adjudicate the issue with regard to the rejection of the books of account which had already been adjudicated upon by the first appellate authority and the rejection of the books of account had been upheld. In support of his contention, he relied upon the decision of this Court in the case of *Guru Nanak Brick Fields v. CST* reported in 1987 Allahabad Tax Judgments 162, *CST v. Babulal Parmanand* reported in 1981 UPTC 204 and *Shadi Ram Ganga Prasad v. CST* reported in 2004 (41) STR 246.

6. Having heard learned Counsel for the parties. I do not find any substance in the argument of the learned Counsel for the applicant. It is not correct to say that vide order dated 26th August, 2002, the appellate authority set aside the entire assessment order. In the appellate order, rejection of the books of account has been specifically upheld and the matter has been remanded back to the assessing authority for the examinations of two Forms -C only. Applicant has not challenged the order of the first appellate authority confirming the rejection of the books of account. Thus, so far as finding of the first appellate authority confirming the rejection of the books of account is concerned has become final between the parties. It is true that after the remand of the case by the first appellate authority to the assessing authority, assessment order has to be made u/s 7 read with Rule 41 and it is open to the assessing authority to consider and rely upon the fresh material which was not considered or available at the time of original assessment proceeding, while adjudicating the issue, but it is not open to the assessing authority to reopen the issue which has been adjudicated in appeal and has become final between the parties. After the remand of the case, the assessing authority has to pass order in consonance with the order passed by the appellate authority and not in contradiction to the order passed by the appellate authority.

7. In the case of *Guru Nanak Brick Fields v. CST* (supra), dealer was running a brick kiln. The firing period was rejected by the assessing authority. In appeal, Assistant Commissioner (Judicial) remanded back the matter to the assessing authority with certain directions and findings recorded by it. One of the finding recorded by the appellate authority was that he had fixed the firing period of 100 days only. None of the parties challenged the fixation of 100 days by the first appellate authority and, thus, the fixation has become final. It appears that after the remand, assessing authority redetermined the firing period. This Court held that under the law, it was not open to the authorities below to redetermine the firing period which had already determined by the Assistant Commissioner

(Judicial) and which had become final between the parties.

8. In the case of CST v. Babulal Parmanand (supra), in appeal, the assessee disputed the levy of tax on the value of bardana i.e. 34,051.73 paise and denial of concessional rate of sale of Rs. 7,555A. Appellate authority agreed with the assessing authority with regard to the taxability of bardana. but as regard assessee's claim of concessional rate of tax in respect of sale amount to Rs. 7,555/- matter had been remanded back to the assessing authority to provide opportunity to the assessee to establish that the purchasers were registered dealers on the date when the sales were made, After the remand, when the case was taken up by the Sales Tax Officer, the assessee raised the contention that the alleged sales of bardana should not be treated as inter-State sales. Sales Tax Officer repelled the contention on the ground that the order of the appellate authority in this regard has become final. The order of the first appellate authority had been confirmed in appeal. However, in revision. Additional Judge (Revisions) accepted the assessee's contention and held that the disputed turnover of bardana could not be subjected to tax under the Central Act. Revision filed by the Commissioner of Trade Tax has been allowed and the order of the Additional Judge (Revisions) has been set aside. This Court has considered the Full Bench decision of this Court in the case of Ram Dayal Har Bilas v. CST reported in 1979 UPTC 999 and held as follows:

In my opinion, there is considerable merit in what has been submitted by the learned Standing Counsel. As has been stated above, the finding of the Sales Tax Officer that the disputed turnover was liable to be taxed under the Central Act was confirmed by the appellate authority and the case was remanded only for decision in so far as the assessee's claim of concessional rate of tax in respect of sales of food grains of Rs. 7,555/-made to certain registered dealers was concerned. The assessee's claim had been negatived on the ground that it had failed to prove that at the time of those sales those purchasing dealers were registered dealers. The appellate court accepted the assessee's contention that the assessee should have been given an opportunity to establish this act and for that purpose only the case was remanded to the Sales Tax Officer. In other words, it was not a case where the assessment was set aside as a whole and the case was remanded for making a fresh assessment, but it was a case where a part of the assessment was confirmed and only in regard to a certain question involved the matter was remanded with a certain direction. After that remand the Sales Tax Officer was required only to decide that part of the case keeping in view the directions given by the appellate court. N other question in respect of which the order of the appellate authority had been allowed to become final could have been allowed to be reagitated after remand. On this view the Sales Tax Officer and the Assistant Commissioner (Judicial) were right in repelling the attempt of the assessee to reagitate this point and unfortunately the Additional Judge (Revisions) gave a finding on it on merits without keeping this aspect in view.

The decision of the Full Bench M/s Ram Dayal Har Bilas (supra) does not help the assessee in this behalf. In that case on assessee's appeal against the assessment order the Judge (Appeals) Sales Tax, Allahabad, set aside the assessment and remanded the case for reassessment after fresh enquiries and in the light of the observations made by him. While the assessment proceedings as a result of the remand order were pending certain material came to the notice of the assessing authority which indicated that quite a substantial quantity of purchases had been suppressed by the assessee and the assessing authority acting on the basis of the material collected prior to the remand order as also the material procured subsequent to it, enhanced the taxable turnover of the dealer which was very much beyond the enhancement which had been made in the original assessment. The dealer questioned this fresh assessment made in pursuance of remand order on the ground that after remand it was not open to the assessing authority to take any fresh material into consideration and it should have confined itself to the directions given in the remand order. This contention did not find favour with the appellate authority. However, the appellate authority accepted the dealer's contention that proper opportunity had not been afforded to the assessee for being heard on the question of import of vegetable oil from outside the State and accordingly the assessment was set aside and the matter was remanded for making assessment afresh.

Not being satisfied the dealer filed a revision which failed and then at his instance the following question was referred to this Court for its opinion:-

Whether having regard to the language of the remand order made by the appellate authority, the assessing authority was competent to examine the case afresh and to assess tax on enhanced turnover in the reassessment proceedings after remand?

Ultimately the case was referred to the Full Bench because there was a conflict of opinions on this question in some decisions of this Court and the question referred to be Full Bench was:

whether The order of assessment is set aside by the appellate court or revising authority which remands the case to the assessing authority with certain directions for making a fresh assessment, has the assessing authority subject to carrying out such directions, the same power as it had originally in making an assessment u/s 7 of the U.P. Sales Tax Act ?

The answer giving to this question by the Full Bench is that where an order of assessment is set aside by the appellate authority which remands the case to the assessing authority with certain directions for making a fresh assessment, the assessing authority has, subject to carrying out such directions, the same power as it originally had in making the assessment u/s 7 of the U.P. Sales Tax Act. But where the order of assessment is set aside by a revisional authority u/s 10 of the U.P. Sales Tax Act, the jurisdiction of the Sales Tax Officer to make the assessment can be circumscribed by the specific directions given by the

revisional authority, the jurisdiction of the Sales Tax Officer to make the assessment has been limited, the Sales Tax Officer will have the jurisdiction to make the assessment only to the extent to which he has been permitted to do so under the orders of the revising authority.

It would be seen that the Full Bench has addressed itself to a case where assessment had been set aside by the appellate authority and had been remanded for being made afresh. The question was about the powers of the Sales Tax Officer while making afresh assessment after remand. After this decision it is established that if an assessment has been set aside by the appellate authority and has been remanded with a direction for making a fresh assessment, the assessing authority, has the same powers to make assessment as it originally had in making an assessment u/s 7 of the Act. However, where as assessment has been set aside and remanded for making it afresh by a revising authority, the jurisdiction of the assessing authority is confined to the direction given by the revising authority. In the present case, as noted above, the assessment had not been set aside and the case had not been remanded for making a fresh assessment. A part of the assessment was confirmed while in regard to a particular question the case was remanded with a direction to decide it afresh after giving an opportunity to the assessee to establish its case. Therefore, after remand the jurisdiction of the assessing authority was confined only to the subject matter which was remanded to it. Since the assessee did not challenge the order of the appellate authority by way of a revision, that order became final and that being so the assessee could not have reagitated that part of the case which had become final, in proceedings after remand. The Sales Tax Officer as well as the appellate authority, therefore, were right in repelling the attempt of the assessee to reagitate the question of the liability to tax under the Central Act of the disputed turnover while the Additional Judge (revisions) erred in law in taking a contrary view.

9. In my view, the decision in the case of CST v. Babulal Parmanand (supra) squarely covers the issue involved in the present case. The decision of the Full Bench in the case of Ram Dayal Har Bilas v. CST (supra) has been considered at length and thereafter it has been held that in a case where a part of the assessment has been confirmed and with regard to the particular issue, the case was remanded for direction to decide it afresh, after the remand jurisdiction of the assessing authority was confined only to the subject matter which was remanded to it and has no jurisdiction to reopen the issue which had become final.

10. In the present case, in the appellate order dated 26th August. 2002. rejection of the books of account has been upheld by the appellate authority. The applicant has not challenged the said finding of the appellate authority in appeal and this part of the order of the first appellate authority has become final. Thus, it was not open to the assessing authority to examine the question with regard to the rejection of books of account after the remand. Tribunal has rightly held that

the issue of the rejection of the books of account once has become final could not be reagitated after the remand.

11. For the reasons stated above, I do not find any merit in the present revision.

12. In the result, revision fails and is, accordingly, dismissed.