(2009) 03 AHC CK 0016

In the Allahabad High Court

Yadav Traders APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Citation : (2010) 29 VST 107

Hon'ble Judges : Rajes Kumar, J;Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—In this writ petition the petitioner has challenged the sanction/ authorization order dated February 14, 2009 passed by Additional Commissioner, Grade-I, Commercial Tax, Jhansi Zone, Jhansi, respondent No. 2 herein, for the assessment year 2002-03 for reopening the assessment and also the notice dated March 4, 2009 issued by Deputy Commissioner (Assessment), Commercial Tax, Sector-II, Banda, respondent No. 3 herein, u/s 21(2) of the U.P. Trade Tax Act, 1948. The petitioner has prima facie established a case before us that no material is available for the purpose of issuance of notice and has further made out a case that in the impugned order passed by the Additional Commissioner no material with regard to escaped assessment has been referred.

2. We have heard at length both the learned Counsel appearing for the petitioner and learned Additional Chief Standing Counsel. We wanted to go into the matter in detail but since the Additional Chief Standing Counsel and the learned Counsel appearing for the petitioner both are relying upon the judgment dated February 18, 2009 delivered by this Bench in Civil Misc. Writ Petition No. 460 of 2009 (Jagdish Rolling Works v. State of U.P.), similar order can be passed hereunder. However, such order dated February 18, 2009 is quoted hereunder:

Heard Sri Kunwar Saxena, learned Counsel appearing for the petitioner and learned standing Counsel appearing for the respondents.

It appears to this Court that the order impugned dated May 19, 2007 purportedly communicated to the petitioner on February 5, 2009, for the assessment year

2002-03, under the U.P. Trade Tax Act, 1948, appears to be hit by the principle laid down by the Division Bench of this Court in a case Ramayan Traders v. Assistant Commissioner (Assessment III), Trade Tax, Bareilly reported in [2007] 35 NTN 31. Paras 17 and 18 of such judgment are important, which are quoted hereunder:

From a perusal of the aforesaid order, it would be seen that he has not dealt with any of the grounds given in the reply submitted by the petitioner. He has only given his conclusion. No finding has been recorded nor any reason has been assigned as to why the approval/sanction should be granted. Except for the aforesaid order dated July 12, 2001, which has been brought on record by the petitioner, the respondents have not brought any other order passed by respondent No. 2, which may show that any other reasons have been assigned. The order dated July 12, 2001 does not contain any reason and, therefore, as held by this Court in the case of Manaktala Chemicals Pvt. Limited v. State of U.P. reported in [2007] 5 VST 284 : [2006] UPTC 1128 and S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, (Civil Misc. Writ Petition No. 483 of 2002), decided today, reasons have to be assigned by the Additional Commissioner while granting sanction/approval for initiating proceeding u/s 21(2) of the Act. As no reason has been assigned, the authorisation/sanction dated July 12, 2001 cannot be sustained and is hereby set aside.

As the authorisation itself has been set aside, the proceedings taken in pursuance thereof also cannot be allowed to stand and are set aside.

We have perused the order impugned. According to us, no reason is available, even the reply of the petitioner has not been referred to and considered. Therefore, we are of the view. that the order impugned is to be set aside and accordingly set aside and the matter is remanded back to the Additional Commissioner to pass the order afresh within a period of two weeks from this date.

However, the consequential notices issued by the assessing authority as per the order impugned cannot be sustained in view of the circumstances, therefore, the same are also quashed. However, it is open to such authority to issue the fresh notices after the decision by the Additional Commissioner, since the respective period as provided under the proviso to Sub-section (2) of Section 21 of the U.P. Trade Tax Act, is available.

With the aforesaid observation, the writ petition stands disposed of, however, without imposing any cost.

3. In view of such circumstances, both the sanction/authorization order dated February 14, 2009 as well as the notice dated March 4, 2009 issued u/s 21(2) of the U.P. Trade Tax Act for the assessment year 2002-03, being annexures 4 and 5 to the writ petition, respectively, are hereby quashed. However, it is open to the authority concerned to issue fresh notice after taking the decision by the

Additional Commissioner in accordance with law.

4. Accordingly, the writ petition is disposed of, however, without imposing any cost.

Rajes Kumar, J.

5. I agree.