

Court No. - 7

Case :- SALES/TRADE TAX REVISION No. - 21 of 2024

Revisionist :- M/S R.S General Stores Pratap Market Lko.
Thru. Partner

Opposite Party :- Commissioner Commercial Tax U.P.
Commercial Tax Bhawan Lko. And Another

Counsel for Revisionist :- Pradeep Agrawal

Counsel for Opposite Party :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Pradeep Agrawal, learned counsel for petitioner as well as learned Standing Counsel for respondents.

2. By means of present revision, the revisionist has assailed the order dated 30.03.2024 passed by Commercial Tax Tribunal, Lucknow Bench-1, Lucknow wherein the application of recall of the order dated 16.03.2017 has been rejected by the Tribunal.

3. It has been submitted by learned counsel for revisionist that present dispute pertains to assessment year 2009-2010 where the assessing authority had concluded the proceedings issuing a demand of Rs. 469391/- upon the revisionist. The revisionist against the aforesaid assessment had preferred a first appeal which was substantially allowed and the tax liability of Rs. 150634/- was reduced. The revisionist has subsequently filed second appeal before the Commercial Tax Tribunal which was decided ex-parte on 16.03.2017.

4. It is the case of the revisionist that the order dated 16.03.2017 was never served upon the revisionist as provided for under the Value Added Tax and Rules made thereunder and consequently he was not aware of the said order till the recovery proceedings were initiated. It has been stated that when the petitioner came to know about the order dated 16.03.2017 he applied for obtaining certified copy of the said order and after obtaining the same on 19.02.2024 he filed an application for recall of the order dated 16.03.2017 along with an application for condonation of delay stating that the state had never served upon him the certified copy of the said order and therefore he was not aware of the same and thereafter as soon as he came to know about the said order, he moved an application for rectification of the said order.

5. The Tribunal had duly recorded his contention in the

impugned order but merely rejected the same stating that the application has been made after a period of 7 years without considering the reasons stated by the petitioner for filing the delay application for rectification.

6. Learned counsel for petitioner has placed reliance upon the judgment of the Supreme Court in the case of **M/S Ram Sewak Coal Depot, Deori Mirzapur Vs. The Commissioner of Trade Tax, U.P., Lucknow, 2003 NTN (Vol.22) - 341**, of the Allahabad High Court where in a proceedings under the Trade Tax Act 1948, this Court had concluded that an application for rectification under Section 22 of the Act of 1948 would be maintainable where the order has been passed ex-parte without giving any opportunity of hearing.

7. He further submits that the duty lay upon the respondents for communicating the order passed by the Tribunal as provided for under Rule 63(7) of U.P. VAT Rules and such a copy has not been received by the revisionist and a valid ground for condonation of delay in moving the application for rectification has been taken.

8. Learned Standing Counsel has opposed the writ petition but could not dispute the aforesaid facts.

9. Accordingly, the facts of the present case are not disputed where initially the assessment relating to the assessment year 2009-2010 was concluded by issuance of a demand of Rs. 469391/- of the revisionist against which the first appeal was substantially allowed and his demand was reduced by Rs. 150634/-. The revisionist being aggrieved by the order of the first appellate authority had preferred a second appeal which was decided ex-parte by order dated 16.03.2017 and an application for rectification was filed on 19.02.2024.

10. It is a case of the revisionist that the order dated 16.03.2017 was never communicated to him as a duty lay upon the State to communicate the same in light of the provisions contained in Rule 63(7) of the U.P. VAT Rules and this ground was taken by him in the application for rectification. Though the grounds taken by the revisionist have been duly stated in the impugned order dated 16.03.2017 but there is no consideration or application of mind by the Tribunal as there is no reason stated in the impugned order from which it can be concluded that the aspect of the matter was duly considered by them while rejecting the application for rectification. It was incumbent upon the Tribunal to consider the reasons stated for filing the delayed application for rectification, it is only after duly considering the grounds raised by him and give a reason to

condone the delay or reject the same.

11. In the present case, it is abundantly clear that none of the grounds raise even considered by the Tribunal and therefore the impugned order suffers for non-application of mind and accordingly arbitrary. This aspect of the matter has already been decided by coordinate Bench of this Court in the case of **M/s Ram Sewak Coal Deori (Supra)**, which are as follows:

"24. Sale Tax Tribunal is empowered to decide an appeal after giving parties a reasonable opportunity to be heard. When a case has been decided in absence without any opportunity to a party, power has to be conceded to Tribunal to set aside the ex parte order and again decide the matter carrying out the mandate as given in Section 10(5). Conceding such a jurisdiction by Tribunal will facilitate decision of a case in accordance with law. When an authority has power or decide an appeal, all such ancillary and incidental power has to be read into the jurisdiction which may help in exercise of jurisdiction in accordance with law.

26. In (1996) 6 SCC 92 (J.K. Synthetics Ltd. v. Collector of Central Excise), the apex Court had occasion to consider jurisdiction of Gold (Control) Appellate Tribunal to set-aside an ex parte order. Under Customs Act, 1962 and under Rule 41 of the CEGAT (Procedure) Rules, 1982, there was no express power. The apex Court after considering relevant provisions laid down that the said jurisdiction has to be read into the Tribunal. Following was said in paragraphs 4, 5 and 6 by the apex Court :

"4. In Grindlays Bank Ltd. v. Central Government Industrial Tribunal [1981] 2 SCR 341 ; AIR 1981 SC 606, the same principles were applied in relation to the Industrial Tribunal constituted under the provisions of the Industrial Disputes Act, 1947. It was held that where a party was prevented from appearing at a hearing due to sufficient cause and was faced with an ex parte award, it was as if the party was visited with an award without notice of the proceedings. Where an industrial Tribunal proceeded to make an award without notice to a party, the award was nothing but a nullity. In such circumstances, the Industrial Tribunal had not only the power but also the duty to set aside the ex parte award and to direct the matter to heard afresh. The rule in question [Rule 22 of the Industrial Disputes (Central) Rules, 1957] provided that without sufficient cause being shown, if any party to proceedings before the industrial Tribunal failed to attend or be represented, the Industrial Tribunal could proceed as if the party had duly attended or had been represented. If, therefore,

there was no sufficient cause for the absence of a party the Industrial Tribunal had the jurisdiction to proceed ex parte. But if sufficient cause was shown which prevented a party from appearing, the Industrial Tribunal had the power to set aside the ex parte award. The power to proceed ex parte, carried with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

5. Rule 20 of the CEGAT (Procedure) Rules deals with cases where the appellant has defaulted. Rule 21 empowers CEGAT to hear appeals ex parte. The fact that Rule 21 does not expressly state that an order on an appeal heard and disposed of ex parte can be set aside on sufficient cause for the absence of the respondent being shown does not mean that CEGAT has no power to do so. Rule 41 gives CEGAT wide powers to make such orders or give such directions as might be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or, most importantly, to secure the ends of justice.

6. If, in a given case, it is established that the respondent was unable to appear before it for no fault of his own, the ends of justice would clearly require that the ex parte order against him should be set aside. Not to do so on the ground of lack of power would be manifest injustice. Quite apart from the inherent power that every Tribunal and court constituted to do justice has in this respect, CEGAT is clothed with express power under Rule 41 to make such order as is necessary to secure the ends of justice. CEGAT has, therefore, the power to set aside an order passed ex parte against the respondent before it if it is found that the respondent had, for sufficient cause, been unable to appear."

28. In view of what has been said above, it is held that the Trade Tax Tribunal has jurisdiction to set aside an ex parte order and re-hear the matter. There being no express provision to that effect does not inhibit the Tribunal in any manner to recall the said judgment."

12, In the present case also the petitioner has also taken the ground that he was never communicated the order passed by the Tribunal and therefore he was never aware about the order dated 16.03.2017 and it is only on the initiation of the recovery proceedings he came to know about the said order and accordingly he moved an application for rectification which is accordingly rejected by impugned order dated 30.03.2024.

13. In view of the aforesaid facts and circumstances, the impugned orders suffer from non-application of mind inasmuch

as the ground taken by the petitioner have not been considered and dealt with accordingly the impugned order dated 30.03.2024 is set aside. The matter is remitted to the Commercial Trade Tax Tribunal to decide the application of the petitioner afresh in accordance with law.

14. Considering that substantial time has lapsed, let the Tribunal decide the said application expeditiously, say, within a period of three months from the date a certified copy of this order is produced before him.

15. The petitioner undertakes to cooperate in the proceedings before the Tribunal.

16. With the above observations / directions, the revision stands **allowed**.

(Alok Mathur, J.)

Order Date :- 15.7.2024

Ravi/