

Court No. - 5

Case :- SALES/TRADE TAX REVISION No. - 56 of 2018

Revisionist :- M/S Laxmi Doors Vill. Semra Chinhath District Lucknow

Opposite Party :- Commissioner Commercial Tax U.P.Gomti Nagar
Lucknow

Counsel for Revisionist :- Aftab Ahmad

Counsel for Opposite Party :- C.S.C

Hon'ble Abdul Moin,J.

1. Heard Shri Aftab Ahmad, learned counsel for the revisionist and Shri Sanjay Sarin, learned Additional Chief Standing Counsel appearing on behalf of respondents.

2. The instant revision has been filed praying for the following main relief:

"Wherefore, it is most respectfully prayed that this Hon'ble Court may be pleased enough to adjudicate the questions of law framed in the instant revision and may further kindly be pleased enough to quash the judgment and order dated 16.04.2018 passed by the Commercial Tax Tribunal, Lucknow-3, Lucknow under Section 31 of the U.P. Value Added Tax Act, 2008 on Misc Application No. 11/2016 as well as judgment and order dated 09.04.2016 passed by Commercial Tax Tribunal, Lucknow-3, Lucknow in Second Appeal No. 146/2013 for the year 2008-09 as for it relates to failure of cancelling the tax amount of Rs. 7,24,551/- on purchases made from M/s Hina Timber treating the same as purchase from unregistered dealer."

3. Bereft of unnecessary details the contention of learned counsel for the revisionist is that learned Tribunal had decided five second appeals by means of a combined judgement and order dated 29.04.2016, a copy of which is annexure 6 to the petition. Incidentally while deciding the aforesaid appeals so far as Second Appeal No. 143 of 2013 was concerned for the year 2007-2008 Sections 28/26 (State) learned Tribunal has given the benefit of input tax credit and reduced the amount of tax. However with respect to the same facts and circumstances for

second appeal no. 146 of 2013 for the year 2008-09 Sections 28/26 (State) though the benefit of input tax credit has been given, yet learned Tribunal did not grant the benefit of reduction in tax. Also, no any findings were recorded as to why the benefit of reduction of tax has not been given.

4. Claiming the same to be an error apparent on the face of record an application dated 06.06.2016, a copy of which is annexure 7 to the petition was filed by the revisionist praying for being given the aforesaid benefit but the learned Tribunal, vide the order impugned dated 16.04.2018, after placing reliance on provisions of Section 22 of the U.P. Trade Tax held that such an application would only be maintainable where an ex-parte order has been passed but not in the present case and consequently has rejected the said application.

5. Being aggrieved with both the orders the instant revision has been filed.

6. This Court had admitted the revision vide the order dated 27.07.2018. Now the Court proceeds to decide the instant revision on the following question of law:

"vi. Whether the refusal to exercise the jurisdiction under Section 31 has not resulted in the miscarriage of justice and is a failure to exercise a jurisdiction duly vested by the authority of law?"

7. The contention of learned counsel for the revisionist is that the provision for filing of an application before learned Tribunal is given under Section 31 of the U.P. V.A.T. Act, 2008. The said provision nowhere restricts the power of learned Tribunal to only rectify the error apparent from the face of record with respect to ex-parte orders and thus learned Tribunal while passing the order impugned dated 16.04.2018 has patently erred in law in placing reliance on judgement of this Court in the case of **M/s Ram Sewak Coal Depot, Mirzapur vs Commissioner**

of Trade Tax, 2003 U.P.T.C. 608 to arrive at the said finding.

8. He also contended that the said judgement pertains to the provisions of Section 22 of the UP Trade Tax Act, 1948 and in the instant case the application having been filed under provisions of Section 31 of the U.P. V.A.T. Act 2008 would have no applicability.

9. On the other hand, Shri Additional Chief Standing Counsel has justified the aforesaid order.

10. Heard learned counsels for the parties and perused the record.

11. From perusal of record it emerges that five second appeals were clubbed together and decided by learned Tribunal by means of a common judgement and order dated 29.04.2016. So far as it is relevant to the facts of the instant revision, Second Appeals no. 143 of 2013 and 146 of 2013 would be relevant which pertain to the years 2007-08 and 2008-2009 respectively under Section 28/26 (State). Learned Tribunal vide the judgement and order impugned dated 29.04.2016 has given input tax credit and reduction of tax for the year 2007-08 but with regard to similar facts and circumstances though for the year 2008-09 benefit of input tax credit has been given yet the reduction of tax was not given which according to the revisionist was an error apparent on the face of record in as much as no finding had been recorded by learned Tribunal as to why the benefit of reduction of tax was not given.

12. Considering this, the revisionist filed an application dated 06.06.2016 praying for rectification of error which application was filed under the provisions of Section 31 of the U.P. V.A.T., 2008.

13. For the sake of convenience the Section 31 of the Act, 2008 is reproduced below;

"31. Rectification of mistakes

(1) Any officer, authority, the Tribunal or the High Court may on its own motion or on the application of the dealer or any other interested person rectify any mistake apparent on the face of record, in any order passed by him under this Act, within three years from the date of the order sought to be rectified:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period:

Provided further that no rectification which has the effect of enhancing the assessment, penalty, fees or other dues, shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2) Where such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of this Act shall apply as if such notice had been served in the first instance."

14. Learned Tribunal after placing reliance on judgment of this Court in the case of **M/s Ram Sewak Coal Depot (supra)** which pertained to the provisions of Section 22 of the Act, 1948, was of the view that an application for rectification of error would only be maintainable where an ex-parte order has been passed but as in the case of the revisionist, it was not an ex-parte order, as such the application would not be maintainable and consequently the application has been rejected.

15. Perusal of Section 31 of the U.P. V.A.T. Act, 2008 would indicate that there is no such restriction in the learned Tribunal exercising its power of rectifying the mistake in as much as Section 31 of the U.P. V.A.T. Act, 2008 does not provide that such power can only be exercised by learned Tribunal in ex-parte orders rather Section 31 of the Act 2008 goes to the extent of empowering any officer, authority, learned Tribunal or this

Court on its own motion or on the application of the dealer or any other interested person to rectify any mistake apparent on the face of record in any order passed under the provisions of the Act, 2008. Once no such restriction is contained under the provisions of the Section 31 of the Act 2008 as such it is apparent that learned Tribunal has patently erred in law in rejecting the said application vide the order dated 16.04.2018.

16. Keeping in view the aforesaid discussion, the revision is **partly allowed**. The order dated 16.04.2018, a copy of which is annexure 1 to the revision, is set aside.

17. The matter is remitted to learned Tribunal to decide the application of the petitioner filed under Section 31 of the Act, 2008 in accordance with law and keeping in view the discussion made above within a period of two months from the date of receipt of a certified copy of this order.

18. The question of law stands decided accordingly.

Order Date :- 22.2.2024

J.K. Dinkar