

CASE NO.:
Appeal (civil) 1538 of 2007

PETITIONER:
M/s Rashtriya Audyogik Sansthan

RESPONDENT:
Commissioner of Trade Tax, U.P.

DATE OF JUDGMENT: 22/03/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Civil) No. 21383-21384 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in these appeals is to the order passed by a learned Single Judge of the Allahabad High Court disposing of several revision petitions filed by the respondent-Commissioner of Trade Tax, Uttar Pradesh, under the Uttar Pradesh Trade Tax Act, 1948 (in short 'Act').

The factual position which is almost undisputed is as under:

Two petitions for revision under Section 11 of the Act were filed before the High Court questioning correctness of the common order dated 28th May, 1997, passed by the Trade Tax Tribunal, Agra (in short the 'Tribunal'). The disputes related to the assessments for assessment year 1987-88 under the Act and the Central Sales Tax Act, 1956 (in short the 'Central Act'). Demands were raised by orders of the assessment dated 17.9.1993. The demands were challenged before the Assistant Commissioner (Judicial) II, Trade Tax, Agra who remitted the matter to the Tax Assessing Officer for fresh assessment. Appellant (hereinafter described as 'assessee') filed appeals before the Tribunal. The appeals were allowed and the first appellate orders dated 22.7.1996 were set aside. As noted above, Revenue filed two revision applications under Section 11 of the Act before the High Court. By the impugned order dated 20.5.2005, the revisions were allowed and the orders of the Tribunal were set aside and that of the first Appellate Authority restored.

Though many points were urged in support of the appeals it was primarily contended that without formulating any question of law, the exercise of jurisdiction under Section 11 of the Act was impermissible.

The learned counsel for the respondent on the other hand supported the order of the High Court saying that though the questions have not been specifically indicated

the basic issues for determination were taken note of and the impugned orders were passed.

We shall first deal with the power of the High Court in dealing with the revision petition. Section 11 of the Act reads as follows:

"11. Revision by High Court in special cases.\027(1) Any person aggrieved by an order made under sub-section (4) or sub-section (5) of Section 10, other than an order under sub-section (2) of that section summarily disposing of the appeal, or by an order passed under Section 22 by the Tribunal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.

(2) Any person aggrieved by an order made by the Revising Authority or an Additional Revising Authority refusing to state the case under this section, as it stood immediately before April 27, 1978, hereinafter referred to as the said date, may, where the limitation for making an application to the High Court under sub-section (4), as it stood immediately before the said date, has not expired, likewise apply for revision to the High Court within a period of ninety days from the said date.

(3) Where an application under sub-section (1) or sub-section (3), as they stood immediately before the said date, was rejected by the Revising Authority or an Additional Revising Authority on the sole ground that the period of one hundred and twenty days for making the reference, as specified in the said sub-section (1), has expired, such applicant may apply for revision of the order made under sub-section (2) of Section 10, to the High Court within sixty days from the said date on the ground that the case involves any question of law.

(4) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.

(5) Every application for making a reference to the High Court under sub-section (1) or sub-section (3), as they stood immediately before the said date, pending before the Revising Authority or an Additional Revising Authority on the said date, shall stand transferred to the High Court. Every such application upon being so transferred and every application under sub-section (4) as it stood immediately before the said date, pending before the High Court on the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6) Where the High Court has before the said date, required the Revising Authority or an Additional Revising Authority to state the case and refer it to the High Court under sub-

section (4), as it stood immediately before the said date, such authority shall, as soon as may be, make reference accordingly. Every reference so made, and every reference made by such authority before the said date in compliance with the requirement of the High Court under sub-section (4), as it stood before the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(6-A) Where the Revising Authority or an Additional Revising Authority has, before the said date, allowed an application under sub-section (1) or sub-section (3), as they stood immediately before the said date, and such authority has not made reference before the said date, it shall, as soon as may be, make reference, to the High Court. Every such reference, and every reference already made by such authority before the said date and pending before the High Court on the said date, shall be deemed to be an application for revision under this section and disposed of accordingly.

(7) Where an application under this section is pending, the High Court may, on an application in that behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due, under the order sought to be revised :

Provided that no order for the stay of recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(8) The High Court shall, after hearing the parties to the revision, decide the question of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(8-A) All applications for revision or orders passed under Section 10 in appeals arising out of the same cause of action in respect of the same assessment year shall be heard and decided together.

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining application, it may recall such earlier decisions and may thereafter proceed to hear and decide all the applications together.

(9) The provisions of Section 5 of the Limitation Act, 1963, shall, mutatis mutandis, apply to every application, for revision under this section.

Explanation \026 For the purpose of this section, the expression "any person" includes the Commissioner and the State Government."

The parameters for exercising power under the said provision were considered by this Court in Commissioner of Sales Tax, U.P. v. Kumaon Tractors & Motors (2002 (9) SCC 379). It was inter alia noted as follows:

"8. x x x x x

It appears that the High Court ignored the provisions of Section 11 of the Trade Tax Act which confers limited jurisdiction to interfere with the order of the Tribunal only on the question of law, that too the said question of law is required to be precisely stated and formulated. Instead of deciding the question of law, the High Court simpliciter re-appreciated the evidence and ignored the material documents maintained and produced by the assessee, that is, books of accounts, bills and Form 'C' submitted by it. In this view of the matter, the impugned order cannot be sustained."

The aforesaid aspects were also noted by this Court in Commissioner, Sales Tax, U.P. v. M/s Mohan Brickfield, Agra (2006 (2) SCALE 17).

Accordingly, we set aside the impugned order of the High Court and remit the matter to the High Court so that question of law, if any, which arises in the facts of the case can be formulated. We make it clear that we have not expressed any opinion as to whether any question of law arises or not. Only if question of law arises, then only the revisional jurisdiction can be exercised.

The appeals are accordingly disposed of. There will be no order as to costs.