**Saraswati Engineering and Traders, Noida Vs. State of U.P. and Others.**

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**SooperKanoon Citation** : sooperkanoon.com/918951

**Court** : Allahabad

**Decided On :** Aug-28-2010

**Judge** : Rajes Kumar; Bharati Sapru, JJ.

**Appeal No.** : CIVIL MISC. WRIT PETITION NO. 151 (Tax) OF 2003

**Appellant** : Saraswati Engineering and Traders, Noida

**Respondent** : State of U.P. and Others.

**Advocate for Pet/Ap.** : Sri. Kunwar Saksena

**Judgement** :

1. In the present petition the petitioner seeks the following relief :

> **"(i) to ssue a writ, order or direction in the nature of mandamus directing respondent no. 2 to stay proceedings initiated under Section 10-B of the U.P. Trade Tax Act for the assessment year 1999-2000.**
>
> **(ii) to issue a writ, order or direction in the nature of mandamus directing respondent no. 3 to stay proceedings for realisation of tax assessed for the assessment year 2001-2002 in so far as it related to levy of tax in excess of 4%.**

**(iii) to issue a writ, order or direction in the nature of mandamus directing respondent no. 3 to stay assessment proceedings for the assessment year 2002-2003.**

**(iv) to issue any other and further writ, order or direction as may be deemed fit and proper in the circumstances of the case.**

**(v) to award cost of the petition to the petitioner as against the respondents."**

2. The brief facts giving rise to the present petition are that the petitioner is a partnership firm and carries on the business of manufacture and sale of specially designed plastic covers for Audio/Video Cassettes. For the assessment year 1999-2000 the petitioner filed monthly return as required under Section 7 of the U.P. Trade Tax Act (called the 'Act' for short) read with Rule 41(1) of the U.P. Trade Tax Rules (called the 'Rules' for brevity) and admitted tax at the rate of 2.5% on such plastic covers under the notification No. TIF-II/2375 DATED 23.11.1998 and deposited tax accordingly. The assessing authority passed the provisional assessment order for the months from April 1999 to September 1999 and has not accepted the claim of the petitioner that such plastic covers were liable to tax at the rate of 2.5% and levied tax at the rate of 10% as an unclassified item.

3. Aggrieved against the provisional assessment order, the petitioner filed appeal before the Deputy Commissioner (Appeals), Trade Tax, NOIDA. The Deputy Commissioner (Appeals) accepted the contention of the petitioner and held that such plastic covers for Audio/Video Cassettes were liable to tax at the rate of 2.5% under the notification dated 1.12.1998.

4. Being aggrieved by the order of the Deputy Commissioner (Appeals), the Commissioner, Trade Tax, filed appeals before the Trade Tax Tribunal, Ghaziabad. During pendency of the appeal before the Tribunal the assessing authority passed final assessment order for the year 1999-2000. When the appeals came up for consideration before the Tribunal, it was informed that the final assessment orders have been passed. The Tribunal though held that such

appeals had become infructuous but has expressed his opinion that such plastic covers of Audio/Video Cassettes were not covered under the notification No. 2375 dated 23.11.1998.

5. Following the decision of the Commissioner of Income-Tax (Appeals), arising from the provisional assessment proceeding, the assessing authority in the assessment order for the assessment year 1999-2000 has accepted the contention of the petitioner and levied tax on such plastic covers at the rate of 2.5%.

6. After passing the assessment order for the year 1999-2000 the Deputy Commissioner has issued the impugned notice under Section 10-B of the Act. It appears that the assessing has also passed the assessment order for the year 2001-02 wherein the contention of the petitioner has not been accepted and the tax has been assessed at the rate of 10%. It appears that the petitioner has filed Trade Tax Revision No. 1 of 2003 challenging the order of the Tribunal wherein the Tribunal has expressed its opinion that such plastic cassettes were not liable to tax at the rate of 2.5% under notification No. 2375 dated 23.11.1998 and liable to tax as an unclassified item. The said Trade Tax Revision has been admitted on 6.1.2003 and operation of the order dated 27.9.2002, passed by the Trade Tax Tribunal, Saharanpur, has been stayed.

7. In the present writ petition the petitioner has sought the aforesaid reliefs on the ground that the proceeding under Section 10-B of the Act has been initiated on the basis of opinion expressed by the Tribunal in its order dated 27.9.2002, which has been challenged in T.T.R. No. 1 of 2003 and the operation of the said order has been stayed by this Court. It may be mentioned here that T.T.R. No. 1 of 2003 has been dismissed, being infructuous, on 8.3.2010 since the final orders have been passed.

8. Heard Sri Kunwar Saksena, learned counsel for the petitioner, and Sri U.K. Pandey, learned Standing Counsel.

9. The contention of the petitioner is that the initiation of proceedings under Section 10-B of the Act is based on the observation made by the Tribunal, while

no such observation should be made by the Tribunal, inasmuch as the appeals filed by the Commissioner of Trade Tax had become infructuous in view of the final order being passed. He further submitted that Section 10-B proceeding is barred by limitation. We are afraid that the contention of the petitioner cannot be accepted. The relief sought in the petition is very limited, which has been sought on the ground that the notice under Section 10-B of the Act has been issued on the basis of observation made by the Tribunal and the order of the Tribunal has been challenged in the revision. In relief no. (i), a prayer has been made only for a mandamus to respondent no. 2 to stay the proceeding initiated under Section 10-B of the Act for the assessment year 1999-2000. No relief has been claimed for quashing of the notice under Section 10-B of the Act. Further by prayer no. (ii) a mandamus has been sought for the stay of proceedings for realisation of tax assessed for the assessment year 2001-02 and no prayer has been made for quashing of the assessment order for the assessment year 2001-02. By relief no. (iii) a prayer has been made for the mandamus to respondent no. 3 to stay the assessment proceedings for the assessment year 2002-03. No prayer has been made for quashing of the notice issued for the assessment proceedings for the year 2002-03. Now Revision No. 1 of 2003 challenging the order of the Tribunal has been decided by a learned Single Judge of this Court on 8.3.2010 and the revision has been dismissed as infructuous. The relief claimed in the present writ petition has also become infructuous and they do not survive.

10. In the result, the writ petition fails and is dismissed. The interim order stands vacated. There shall be no order as to costs.