(1999) 11 AHC CK 0032

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1026 of 1999

Aditya Trading Company — APPELLANT

Vs

State of Uttar Pradesh and Another — RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 8C(2)

Citation : (2000) 119 STC 331

Hon'ble Judges : S.K. Jain, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Kunwar Saxena, for the Appellant; R.D. Gupta, for the Respondent

Final Decision : Allowed

Judgement

1.By this petition under Article 226 of the Constitution of India, the petitioner is aggrieved of a notice-cum-order dated October 30, 1999 by which the petitioner, a dealer under the U.P. Trade Tax Act, 1948, has been directed to furnish additional security in the form of a bank guarantee for Rs. 20,00,000.

2. We have heard Sri Kunwar Saxena, learned counsel for the petitioner and Sri R.D. Gupta, learned Standing Counsel for the respondents. No counter-affidavit was proposed to be filed and the petitioner has been heard finally and is disposed of on merits.

3. The petitioner is a registered dealer and has already furnished security as required u/s 8-C(l) of the Act. By the impugned notice-cum-order, the petitioner has been directed to file additional security in the sum of Rs. 20 lacs in the form of a bank guarantee. Such an order could have been passed in terms of Sub-section (2) of Section 8-C where it appears necessary to do so for the proper realisation of any tax, penalty or other sums due or payable under the Act or for the proper custody or use of the forms, etc. The order demanding additional security adversely affects a dealer and it is necessary before passing an order demanding additional security to give the dealer an opportunity of hearing. That

is why the impugned order purports to be a show cause notice as well though in fact it does not give any opportunity to the petitioner to show cause and a final order had been passed. The order mentions that on the examination of the records, it has come to notice that the dealer was claiming that it was selling iron scrap on which tax had already been paid and that on the verification of the dealer''s so-called tax paid purchases for the years 1997-98 and 1998-99, the dealer''s claim did not appear to be proper. It is also stated that for the year 1998-99 the result of enquiry by the special investigation branch made out a case of tax evasion. Thus, the notice is extremely vague and does not contain any facts brought out from the record or from the investigation against which the dealer may make an effective representation.

4. The notice-cum-order also does not mention the amount of security already furnished, the extent of the existing or probable tax liability and how the demand of a security of Rs. 20 lacs and that too in the form of a bank guarantee could be justified. In our view, the order-cum-notice is illegal and cannot be sustained.

5. The writ petition is allowed and the impugned order-cum-notice dated October 30, 1999 is hereby quashed. It will be permissible to the assessing officer to proceed afresh, in accordance with law, if necessary.

6. A copy of this order be furnished to the learned counsel for the petitioner today itself on payment of usual charges.