(2005) 04 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62 of 2005

Allahabad Wire Drawing Industries Private Limited — APPELLANT

Vs

Assistant Commissioner (Assessment)-7, Trade Tax, Deputy Commissioner (Assessment) Ist, Trade Tax and State of U.P. — RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:
Constitution of India, 1950 — Article 19(1), 226
Uttar Pradesh Trade Tax Act, 1948 — Section 15A(1), 28A, 3B, 4B(5)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 45, 85, 85(2), 85(3), 85(4)

Citation : (2005) 04 AHC CK 0063

Hon'ble Judges : Rajes Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Suyash Agrawal and Rakesh Ranjan Agrawal, for the Appellant; K.M. Sahai and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—By means of the present writ petition the petitioner, Allahabad Wire Drawing Industries (P) Ltd., Allahabad through its Managing Director, Smt. Shashi Prabha seeks the following reliefs:

(i) "issue a writ order or direction in the nature of writ of mandamus commanding upon the respondent No. 1-Assistant Commissioner (Assessment) Trade Tax-Sector-7, Allahabad, to issue Form 31 (Declaration of Import) to the petitioner forthwith, as prayed by the petitioner, and also go on issuing the aforesaid Form-31, time to time, as per requirement of the petitioner.

(ii) issue any other writ, order or direction, which, this Hon''ble Court may deem fit and proper in the facts! and circumstance, of the case.

(iii) Award cost of the petition to the petitioner."

2. The writ petition was presented on 12th January, 2005. 18th January, 2005 this Court directed the learned standing counsel to obtain instruction in the

matter. It appears that while the matter was engaging attention of this Court, the Assistant Commissioner (Assessment) Trade Tax- Sector-7, Allahabad-respondent No. 1 passed an order dated 19th January, 2005 rejecting the petitioner''s application for issuance of Form 31, as a result of which an application for amendment was filed which has been allowed by the Court vide order dated 27th April, 2005 and the following relief has been added:

(i-a) issue a writ, order or direction in the nature of certiorari quashing the misc. order dated 19.1.2005 (Annexure 10 to the writ petition) passed by respondent No. 1.

3. Briefly stated the facts giving rise to the present writ petition are as follows:

According to the petitioner it is registered both under the U.P. Trade Tax Act (hereinafter referred to as the Act) as well as the Central Sales Tax Act. It is engaged in the business in trading of iron and steel and manufacturing of iron and steel goods as agricultural implements. For the purpose of its business the petitioner has to import iron and steel froth outside the State of Uttar Pradesh for which a declaration in Form 31 is required. It was allotted 20 Form 31 by the respondent No. 1 on 25th March, 2003 which according to the petitioner had been utilized. Subsequently, on 13th September, 2004 the petitioner again applied for issuance of 5 Form 31. Along with the application it is alleged that the petitioner has furnished details of utilization of earlier 20 Form 31 issued to it. As no order was passed by the respondent No. 1 on the petitioner''s application dated 27th September, 2004 for issuance of 5 Form 31 and the business of the petitioner was suffering, it was left with no other option but to approach this Court by filing the present writ petition. However on 19th January, 2005, as already mentioned herein before the application has been rejected by respondent No. 1. The order dated 19th January, 2005 is also under challenge in the present writ petition. From a perusal of the order dated 19 January, 2005, we find that the Assistant Commissioner (Assessment) Trade Tax-Sector-7, Allahabad has rejected the petitioner''s application for issuance of Form 31 on the ground that in a survey made on 30th September, 2003 at the petitioner''s business premises in which very little stock of agricultural implements were found and further from April, 2003 to September, 2003 the petitioner had imported iron and steel worth of Rs. 88,69,484.00/- and had disclosed sale of agricultural implements for more than a crore of rupees and taxable turnover of Rs. 17,63,776/-. The petitioner was confronted with the details/information and was asked to give the details of the purchasers of agricultural implements, its manufacture and sale. The Assistant Commissioner (Assessment) Trade Tax- Sector-7, Allahabad respondent No. 1 had further rejected the application on the ground that the petitioner was not cooperating with the assessment proceedings as it had not produced the books of account and further the petitioner had misused declaration Forms 3B issued in the Assessment Years 1993-94 and 1994-95 for which demand has been raised to the tune of several crores of rupees under Sections 4B(5) and 3B which is still outstanding

4. We have heard Sri R.R. Agarwal, learned counsel for the petitioner assisted by Sri Suyash Agarwal and Sri K.M. Sahai, learned standing counsel for the respondents.

5. Learned counsel for the petitioner submitted that the petitioner is a duly registered dealer under the provisions of U.P. Trade Tax Act, and the Central Sales Tax Act and for importing iron and steel from outside the State of Uttar Pradesh in connection with its business it is necessary to furnish declaration Form 31 in the absence of which it shall expose, itself to penal consequences as provided u/s 15A(1)(o) of the Act. He further submitted that the petitioner is paying due taxes in accordance with law and further along with the application the petitioner had submitted the details of the utilization of the previously issued Form 31 and, therefore, the respondent No. 1 was not justified in rejecting the application for issuance of 5 Form 31 as prayed for. He further submitted that under Rule 85 of the U.P. Trade Tax Rules, 1948, (hereinafter referred to as the Rules) one of the pre-condition for issuance of the Form 31 is that the dealer has rendered an account of all such forms obtained earlier. According to him, under Sub-rule (4) of Rule 85 of the Rules the declaration form can only be refused if the Assessing Officer is satisfied that the demand for blank declaration form is not genuine and reasonable. He thus submitted that apart from taking the ground that the demand is not genuine and reasonable no other ground can be taken recourse to by the Assessing Officer for or rejecting refusing for issuance of declaration Form 31. He further submitted that the order dated 19th January, 2005 passed by the Assessing Authority does not fulfill the two conditions prescribed under Sub-rule (4) of Rule 85 of the Rules and, therefore, the said order being passed on the basis of irrelevant consideration is liable to be set aside and the petitioner should be held entitled for issuance of declaration Form 31. He further submitted that the ground taken by the respondent No. 1 that huge liability of crores of rupees is outstanding against the petitioner''s business and the demands created for the Assessment Years 1993-94 and 1994-95 under Sections 4B (5) and 3(B) of the Act is not correct as the matter of those years are pending consideration before the Assessing Authority. Even otherwise it is wholly irrelevant. In support of the above Submissions he has relied upon the following decisions:

1. State of U.P. and Ors. v. DSM Group of Industries (2004) 39 STR 527 (SC);

2. Utkal Transformer Repairing Center and Anr. v. State of Orissa and Ors. (1997)104 STC 57 (Ori);

3. Shakti Steel Pipes and Another Vs. State of Bihar and Others, ;

4. Gupta Construction Co, v. A.C. (Assessment) Trade Tax (2004 UPTC 576):

5. Maheshwari Bors Ltd. Vs State of U.P. and Ors. (2005) 41 STR 461;

6. Bharat Sanchar Nigam Ltd, And Ors. v. State of U.P. and Ors. (Civil Misc. Writ Petition No. 979 of 2004) decided on 19th August, 2004 and

7. Vishwanath Jhunjhunwala Vs. State of Uttar Pradesh and Another, .

6. Learned standing counsel submitted that the petitioner is not cooperating with the Department and is indulging in huge evasion of taxes. He further submitted that the petitioner''s Managing Director and her family members are running six units against whom also huge demand is outstanding and, therefore, in order to ensure that the goods which are being imported in the State of Uttar Pradesh are utilized for the purpose of business the Assessing Authority had rightly asked the petitioner to furnish the details of purchasers of agricultural implements and its manufacture. He further submitted that the respondent No. 1 is fully justified in refusing to issue declaration Form 31 on the ground that the huge tax is outstanding. According to him in respect of subsequent assessment years huge demand has been created which is still outstanding and, therefore the respondent No. 1 was justified in rejecting the request of the petitioner for issuance of Form 31. He relied upon a decision of this Court in the case of Krishna Coal Concern, Ballia v. Sales Tax Officer, (1975 UPTC 721) in which it has been held that there is no absolute right to get Form 31 but is subject to the discretion of the Sales Tax Officer. This Court has further held in the aforesaid case that the Sales Tax Officer cannot be compelled to, issue the number of Forms applied for. He further relied upon a decision of this Court in the case of Allahabad Gramodyog Seva Sansthan v. Dy. Commissioner (Assessment)-1, Trade Tax and Anr. since reported in (2004 UPTC 714) wherein this Court had refused to exercise its discretion under Article 226 of the Constitution of India on the ground that large scale evasion of trade tax by issuing fictitious agricultural implements have been detected by the Special Investigation Branch of the Trade Tax Department.

6. As the counter affidavit and rejoinder affidavit have been exchanged between the parties, with the agreement of the learned counsel for the parties, the writ petition is being finally disposed of at the admission stage itself in accordance with the Rules of the Court.

7. Having heard the learned counsel for the parties, we find that it is not in dispute that the petitioner is a registered dealer and is engaged in the business in trading of iron and steel and manufacturing of agricultural implements. For the purpose of trading in iron and steel and also for manufacture of agricultural implements iron and steel is required which its imports from outside of Uttar Pradesh. For facilitating such import from outside State of Uttar Pradesh to inside the State of Uttar Pradesh, u/s 28A of the Act the petitioner has to obtain prescribed form of certificate. The prescribed form of certificate has been given under Rule 85 of the Rules which in the present case would be Form No. 31. Under Sub-rule (2) of Rule 85 the dealer has to make an application to the Trade Tax Officer having jurisdiction over his principal place of business for the issue of the blank declaration form. Under Sub-rule (3) of Rule 85 the dealer is required to deposit the requisite fee. Sub-rule (4) of Rule 85 empowers the Trade Tax Officer to issue such number of forms as he deems fit provided he is satisfied

that the demand of the dealer for issuance of declaration form is genuine and reasonable and the dealer has rendered an account of all such forms obtained earlier.

8. From a bare reading of Rule 85 it is clear that the Trade Tax Officer can decline to issue blank declaration form in case he finds that the demand is not genuine or is unreasonable. In the present case, we find that the petitioner had furnished the details of utilization of all the previously issued declaration form. There is no provision under the Rule to decline issuance of declaration form where any demand is outstanding.

9. This Court in the case of Gupta Construction Company (supra) has held that non-issuance of Form 31 for irrelevant consideration is violative of a citizen, right to do business under Article 19(1)(g) of the Constitution. The purpose of issuing Form 31 is to ensure that Sales Tax is not avoided. The purpose is not to harass the businessmen. However, we find in many cases that Trade Tax Authorities are harassing the businessmen for extraneous considerations and do not issue them the forms under the Sales Tax Rules, because of which business suffers. This Court has further held that in our opinion the authorities must have a positive approach towards business and should not harass the businessmen, unless they violate the law. Businessmen make a valuable contribution to the progress of the nation, as the help in industrialization, which is the main object of the nation. This Court has further held that in the case of Krishna Coal Concern (supra) it has not considered Article 19(1)(g) of the Constitution which gives a citizen a fundamental right to do business (though subject to reasonable restrictions) and the Trade Tax authorities cannot exercise their discretion in a manner so as to obstruct or frustrate this constitutional right.

10. In the case of Maheshwari Bros (supra) this Court has held as follows:

"Having heard the learned counsel for the parties we find that it is not in dispute that the petitioner is a registered dealer under the provisions of U.P. Trade Tax Act. For importing goods from outside the State of U.P. Provisions have been made under the U.P. Trade Tax Act for issuance of Form 31 in absence of which the goods are liable to be confiscated, seized and penalty provisions are attracted. The only requirement for issuance of Form 31 under the Act and Rules framed there under under is to make an application, deposit the requisite fee and also to submit the details of the utilization of the previously issued Form 31. In the present case the petitioner has been complying with the provisions of Rule 85 of the U.P. Trade Tax Rules and therefore, the Respondent No. 3 was not at all justified in declining to issue the requisite numbers of Form 31 to the petitioner"

11. In the case ofBharat Sanchar Nigam Ltd. (supra) this Court has held that moreover, Rule 85(4) of the U.P. Trade Tax Rules, 1948 provides that if the Trade Tax Officer is satisfied that the demand of the dealer for blank declaration form is genuine and reasonable, he may issue such number of form as he deems fit and no declaration form shall be issued unless the dealer; has rendered an account of

all such form obtained earlier. Thus the only requirement is that the Trade Tax Officer should be satisfied that the demand of Form 31 by the petition is genuine and reasonable and the issuance of the declaration forms cannot be refused on the ground of outstanding tax dues.

12. In the case of Shakti Steel Pipes (supra) the Patna High Court has held that admittedly no determination Has been made by the sales tax authorities that the petitioner is liable to pay 4 per cent sales tax on the sockets purchased and sold by it. Unless that determination is made and the demand is made which is not paid by the petitioner, there is no question of breach of the provisions of the Rule 45(b) of the Rules. It is not the case of the department that the petitioner has not filed the return or the amount has not been paid on the basis of said return. Thus the respondent authority was not justified in withholding the form XXVIIIB.

13. In the case of Utkal Transformer Repairing Center (supra) the Orissa High Court has held that if a dealer is disentitled on account of a legal bar, to issue of form 1-B under the Orissa Sales Tax Rules, 1947 for purpose of availing of exemption, the Sales Tax Officer can refuse to issue the forms. But the question whether there is basis for the exemption has to be gone in to at the time of assessment. By making an in-depth study of the factual position, and deciding the question whether any manufacture was in fact involved, the Sales Tax Officer prejudges the issue which is not permissible at the stage of issue of forms. If there is contravention or misuse of the forms, that can be taken care of at the time of assessment.

14. In the case of D.S.M, Group of Industries (supra) the Apex Court has directed the respondent to issue declaration form 31 on furnishing the utilisation information sought for and required under Rule 85 Sub-rule (4) and (9) of the Rules.

15. The decision of the Apex Court in the case of Viswanath. Jhunjhunwala (supra) relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

16. In the case of Krishna Coal Concern, Ballia v. Sales Tax Officer, (1975 UPTC 721) this Court has held that there is no absolute right to get Form 3l but is subject to the discretion of the Sales Tax Officer. This Court has further held in the aforesaid case that that the Sales Tax Officer cannot be compelled to issue the number of Forms applied for.

17. This Court in the case of Allahabad Gramodyog SevaSansthan v. Dy. Commissioner (Assessment)-1Trade Tax and Anr. since reported in (20O4 UPTC 714) has refused to exercise its discretion under Article 226 of the Constitution of India on the ground that large scale evasion of trade tax by issuing fictitious agricultural implements have been detected by the Special Investigation Branch of the Trade Tax Department.

18.Applying the principle laid down in the aforesaid cases to the present case, we find that the requirement of issuance of blank form as provided under Sub-rule (4) of Rule 85 of the Rules have not at all been considered by the respondent while declining to issue declaration form. Therefore, the said order cannot be sustained as having been passed on irrelevant consideration. The said order cannot also be sustained on the subsequent ground taken in the counter affidavit with regard to outstanding dues or non cooperation of the petitioner. It is well settled in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

19. Moreover we find that there is no provision, under the U.P. Trade Tax Act and the U.P. Trade Tax Rule applicable in the State of U.P. which empowers the trade tax authorities to with hold or decline to issue declaration Form 31 on the ground of there being outstanding tax dues unlike the provisions contained in the Delhi Sales tax Act, 1975 and the Delhi Sales Tax Rules 1975, which provisions have been upheld by the Hon''ble Supreme Court in case of Commissioner of Sales Tax, Delhi and Others Vs. Shri Krishna Engg. Co. and Others, .

20. Thus the plea taken by the respondent that there is outstanding dues against the petitioner or that he is not cooperating in the assessment proceedings cannot be made the basis for declining to issue Form 31.

21. In view of the foregoing discussions the writ petition succeeds and is allowed. The order dated 19th January, 2003 passed by the Assistant Commissioner (Assessment) respondent No. 1, filed as Annexure 10 to the write petition is hereby set aside. The Assistant Commissioner (Assessment) respondent No. 1 is directed to reconsider the application of the petitioner for issuance of Form 31 in accordance with law and in the light of the observation made above, within one week from the date a certified copy of this order is filed before him. On the facts and in the circumstances of the case however, the parties are left to bear their own costs.