(2013) 07 AHC CK 0243

In the Allahabad High Court

Case No : Writ Tax No. 1466 of 2008

Balaji Foods and Others — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2014) 69 VST 119

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Judgement

1. We have heard Shri Krishna Agarwal, learned counsel for the petitioner. Shri C.B. Tripathi appears for the State-respondents. The petitioners have challenged the notice for reassessment u/s 21(2) of the U.P. Trade Tax Act issued by the Additional Commissioner, Grade-1, Commercial Tax, Gorakhpur Zone, dated June 30, 2008 and all subsequent proceedings taken for the said year. They have also prayed for direction to the respondents not to proceed to reassess the petitioner for the assessment year 2002-03 (Central) in pursuance of the aforesaid notice.

2. The notice for reassessment has been challenged on the ground that the petitioner as rice miller made purchase of paddy from within the State of U.P. on which purchase tax was paid. The rice procured out of such tax-paid paddy was sold inside the State as also in the course of inter-State trade. At the time of original assessment for the year 2001-02 (Central), the petitioners claimed reduction of tax on inter-State sales of rice by an amount equal to tax paid on purchases of paddy u/s 15(c) of the Central Sales Tax Act. Long after the assessment was completed, a notice u/s 21(2) was issued, by exercising powers on the change of mind, which is not permissible for initiating proceedings u/s 21 of the Act.

3. The petitioner has relied on Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881, in which this court has held that section 15(c) of the Central Sales Tax Act provides reduction of tax leviable on the turnover of rice under the U.P. Trade Tax Act, on the tax paid on the paddy out of which such

rice was procured. It does not provide any reduction of tax under the Central Act by the tax on paddy under the State law out of which such rice was procured. The court further held that proceedings u/s 21 of the Act were initiated without any material on the basis of which belief could be formed that there was escaped assessment.

4. Shri C.B. Tripathi appearing for the State-respondents submits that this question was considered by this court in subsequent decision dated March 6, 2013 in Gaya Deen Kailash Chand Vs. State of U.P. and Others, and in which this court held that the position of law has been fairly well settled, for a long period of time and that the judgment of the Supreme Court in Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc., , clearly held that the purchase tax paid in the State of U.P. cannot be adjusted against the Central sales tax.

5. In Gaya Deen Kailash Chand Vs. State of U.P. and Others, it was held that the restrictions and conditions in regard to sale or purchase of declared goods within the State u/s 15, on every sale is subject to restrictions and conditions, namely:--

(c) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice produced out of such paddy shall be reduced by the amount of tax levied on such paddy.

6. The words "that law" would mean every sales tax law of the State, and which is so expressly stated in the opening part of section 15.

7. The question of law is thus covered by the reasons given and conclusion drawn in Gaya Deen Kailash Chand Vs. State of U.P. and Others, as follows (page 159 in 59 VST):

Having regard to what has been said above, we are of the opinion that the Additional Commissioner Grade-I/respondent No. 2 has committed no error in exercise of power u/s 21(2) of the Act in granting the impugned permission permitting the assessing officer to initiate the proceeding for reassessment by the order dated February 22, 2008 as contained in annexure 4 of the writ petition. The consequent notice for reassessment u/s 21(2) given by the assessing authority dated March 11, 2008, annexure 6, to the writ petition is also valid.

There is one more aspect of the case yet. The purchase tax paid in the State of U.P. by the petitioner, as held in the case of Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc., and Aryaverth Chawal Udyog [2009] 22 VST 10 (All) : [2008] UPTC 881 cannot be adjusted against the Central sales tax. The assessing officer has, thus, wrongly given adjustment of Rs. 1,22,245. Realizing the mistake, the assessing officer wants to correct it. Whether a writ court can prevent the assessing officer to correct the mistake when law envisages such correction u/s 21 of the Act. The answer is obviously

''No''. No writ can be issued to prohibit a person to correct a legal mistake. A writ jurisdiction is meant for doing justice and not to perpetuate injustice or technicalities.

The writ petition is dismissed. Shri Krishna Agarwal, learned counsel for the petitioner, submits that he may be allowed to take part in the reassessment proceedings. We do not find any occasion to give any such liberty as the petitioner has a right to participate in the reassessment proceedings.