

(2009) 07 AHC CK 0156
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 657,658,659 and 660 of 2006

Balaji Traders

APPELLANT

Vs

Additional Commissioner Grade-I Trade Tax, Ghaziabad and
Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(2)

Citation : (2009) 07 AHC CK 0156

Hon'ble Judges : R.K.Agrawal, J and S.K.Gupta, J

Final Decision : Dismissed

Judgement

S.K.Gupta, J.—These aforementioned writ petitions are directed against the order passed by the respondent no.1 under section 21(2) of U.P.Trade Tax Act as well as for quashing the notices dated 2032006 issued by Assistant Commissioner, Trade Tax, Khand3, Hapur for the assessment years 19992000 to 200203.

2 As the points and the parties involved in the writ petitions are one and the same. They are taken up together for disposal by this common order.

3. The background facts of the case in a nutshell essentially are as follows:

4. The petitioner is a firm registered under U.P.Trade Tax Act (hereinafter referred to as the "Act")since 1994. Raj Kumar Agarwal is the proprietor of the firm and was carrying on the business of manufacture and sale of cloth after purchasing the cotton, yarn and weaving the same from the open market. The cloth was exempted from payment of tax. For the assessment year in question the petitioner filed trading account before the authority concerned and disclosed the sale of cloth and claimed exemption. The assessing authority, Hapur passed the orders under section 7(2) of the Act and declared the petitioner as non taxable.

5. It appears that some survey was made by SIB on 2512005 and statement of the nephew of the petitioner was recorded, wherein he has stated that business

of the firm has been closed six years back and the machines were also sold in the year 1999. During the course of survey neither any machinery nor stock of cloth was found. On the basis of survey report, permission was sought from the respondent no.1 for opening the cases of the petitioner under section 21 of the Act.

6. The notices were issued under section 21(2) of the Act by the respondent no.1 and reply to it was submitted by the petitioner before it and the respondent no.1 granted permission to the respondent no.2 to initiate proceedings under section 21 of the Act and in pursuance of same, notices were issued by respondent no.2 under section 21 on 2032006 for reassessment. Hence the present writ petition.

7. Learned counsel for the petitioner has submitted that the notice issued under section 21 of the Act is illegal, arbitrary and without jurisdiction. It was further stated that, infact, petitioner's firm Balaji Traders was closed with effect from 3112005 and information to this effect was also given on 0422005 to the assessing authority. The petitioner had also sold its machinery for Rs.14,000/ to Ghulam Nabi Ansari and tax amounting to Rs.1120/ on such sale was also deposited by the petitioner.

8. It was further submitted that his nephew, who was present, at the time of survey dated 2512005, infact, gave the information to the survey officer in regard to the closure of another Unit M/s Nirmal International which was in the partnership of his brother Late Kailash Chandra Agarwal, and was closed on 30101998. After the closure of the unit (M/s Nirmal International) the machine were also sold out by Late Kailash Chandra Agarwal. It was further submitted that the petitioner had no connection with the business of Sri Kailash Chandra Agarwal Abhishekh Agarwal did not have any knowledge of the business of the petitioner as he was doing service out side the State of Uttar Pradesh. The petitioner appended the affidavit of Abhishekh Agarwal and also a copy of the assessment order of M/s Nirmal International dated 31102000. It was also submitted that the Trade Tax Officer, Hapur also conducted the survey on 2332005 to verify the closure of the petitioner's business and the survey officer was satisfied that the information of the closure of the unit (M/s Balaji Traders), given by the petitioner was correct.

9. Sri Avinash Tripathi, learned Standing counsel appearing on behalf of the respondent, has supported the issuance of notice under section 21 of the Act against the petitioner and has contended that the notices under section 21 of the Act have been issued on the basis of survey made on 2512005, and the statement of Abhishekh Agarwal, nephew of the Proprietor was recorded wherein he categorically admitted the closure of the business around six years back as well as of the sale of machinery in the year 1999 .No stock or any machinery was found in the premises at the time of survey. It was further contended that the defence set up by the petitioner regarding closure of other unit owned by his brother Sri Lal Chandra Agarwal was an after thought in order to escape from his liability to pay tax.. It was further submitted by Sri Tripathi that the petitioner

continued to sell yarn without manufacturing any cloth as such evaded the payment of tax since 1999 onwards although the petitioner claimed to have closed his business in the year 1999.

11. Heard Sri Rakesh Ranjan Agarwal, learned counsel for the petitioner and Sri Avinash Chandra Tripathi, learned Standing counsel appearing on behalf of respondents.

12. The original record pertaining to the case containing SIB report and survey report dated 2512000 was also placed before this Court.

13. It is not disputed that the survey of business premises of the petitioner was made on 2512005 and statement of the nephew of the petitioner was recorded and no stock of cloth or machinery was found in the premises of the petitioner. The defence of the petitioner is that the statement made by Abhishekh Agarwal was in respect of the firm M/s Nirmal International which was closed in the year 1999 and not pertaining to the firm owned by the petitioner

14. The story of the petitioner that nephew Abhishekh Agarwal in his statement had infact made a reference to M/s Nirmal International, also does not inspire confidence and it appears that the so called explanation is just an afterthought. The survey report dated 2512005 also does not support the contention of the petitioner.

15. It has been stated in the counter affidavit that proper opportunity was given to the petitioner to produce Ghulam Nabi Ansari, the alleged purchaser of the machinery for verification. But Ghulam Nabi Ansari was not produced before respondent no.2 and on 1562005 Sri Abdul Kalam Ansari was produced before the respondent no.2, who although accepted the purchase of machinery but could not give any information about the transportation of machinery from Hapur to Moradabad and the mode of payment. It was further stated in the counter affidavit that the survey was conducted on 2581994 when two power looms were found to be installed in the petitioner's factory while the machinery sold to Gulam Nabi Ansari, after closure of machinery, were so called handlooms. This clearly shows that actually no machinery was sold to Ghulam Nabi Ansari.

16. The petitioner has failed to show that during the period between 1999 and 2512005 he carried on the business of manufacture and sale of cloth. The survey dated 2332005 does not in way help the petitioner. The surveying officer had only recorded the statement of Raj Kumar Agarwal, the Proprietor of the firm but had not verified the sale of the machinery.

17. The Apex Court in the case of The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Limited AIR 1973 SC 370 has observed as follows:

"9. The controversy between the parties has centered on the point as to whether the assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for the assessment year 1295758. Question in the circumstances arises as to what is the

import of the words " reason to believe, as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High court or this Court for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue .What can be challenged the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be mere pretence.

10. It may also be mentioned that at the stage of the issue of notice the consideration, which has to weigh is whether there is some relevant material giving rise to prima facie inference that some turnover has escaped assessment. The question as to whether, that material is sufficient for making assessment or re assessment under section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary."

18. Thus the Apex Court in the aforesaid case has clearly held that what can be challenged, is the existence of the belief and not the sufficiency of reasons for the belief. A bare perusal of the record shows that it cannot be said that there was no relevant material to initiate proceeding under section 21 of the Act. At the stage of issuance of notice the considerations which has to weigh is whether there is some relevant material giving prima facie inference that some turnover has escaped assessment. The question as to whether material is sufficient for making reassessment under section 21 of the Act could not be gone into, at the time of issuance of notice. The assessing authority while reassessing has to decide the matter in the light of material already in its possession as well as fresh material which was in possession, procured as a result of inquiry, which may be considered necessary. The respondent no.1 while granting permission under section 21(2) of the Act has recorded his reasoning and no fault can be found in the order of respondent no.1

19. Before parting with the judgement, it is made clear that the respondents will not be influenced by any of the observations made in this judgement. It will be independent exercise of the concerned authority to pass appropriate orders in accordance with law in the proceeding under section 21 of the Act.

20. In view of above discussions we do not find any illegality or infirmity in initiating the proceeding under section 21 of the Act against the petitioner.

21. For the aforesaid reasons, these writ petitions are dismissed.