(2007) 12 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1438 of 2007

Bharat Oil Industries APPELLANT

Vs

State of U.P.And others RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 7D

Citation : (2007) 12 AHC CK 0107

Hon'ble Judges : Prakash Krishna, J and Bharati Sapru, J

Final Decision : Dismissed

Judgement

1. The petitioner, a proprietorship concern is carrying on the business of manufacture and sale of mustard oil, oil cake (Khali) etc. It is regularly filing its return of turnover under the U.P. Trade Tax Act and has deposited the tax on the taxable turnover for the months April, May, June and July.

2. In exercise of power conferred on the State Government under Section 7D of the U.P. Trade Tax Act, the State Government promulgated a composition scheme dated 25.7.06. Under the said scheme such dealer is required to pay a fixed amount as provided therein in lieu of trade tax. The petitioner in order to avail the benefit of the said scheme applied there under and deposited the necessary amount of Rs. 3, 33, 334/. The said amount was deposited at the time of making the application and it is being continuously deposited month after month as per the said scheme. The business premises of the petitioner was also surveyed in the light of the application filed by the petitioner under the said scheme. Later on the State Government found that under the said scheme the expected amount of Rs. 750Y Lakhs was not collected as Revenue, which was the essential condition under the said scheme for its continuance, the State Government through the Commissioner of Trade Tax directed the Assessing Authorities to realise the actual trade tax from such dealers who had applied for under the said scheme for payment of lump sum amount in lieu of trade tax and also to recover interest on the deficient amount of tax. A copy of the said circular dated 15th of February,

2007 has been annexed as Annexure4 to the writ petition. In pursuance thereof the Assessing Authority of the petitioner issued the impugned notice dated 27th of July, 2007 under the Rule 41 (6) asking it to deposit the balance trade tax dues with interest. Aggrieved by the said notice dated 27.7.2007 the present writ petition has been filed for quashing the letter dated 15th of February, 2007, Annexure4 to the writ petition as also the notice dated 25.7.2007 (Annexure6 to the writ petition) and mandamus directing the respondents to treat the composition scheme as valid for assessment year 200607 with consequential reliefs.

3. Heard Shri Pavan Shree Agrawal for the petitioner at the admission stage of the writ petition itself. In support of the writ petition he submits that the said scheme was promulgated with direction of the Governor of the State of U.P, it cannot be withdrawn without the concurrence of the Government. He submits that the petitioner having applied for the payment of lump sum in lieu of payment of trade tax itself and has been depositing the sum as required under the scheme month by month, no interest on the deficient amount, if any, can be charged from the petitioner. The petitioner has not realised any trade tax dues from the customers nor he was permitted to do so under the scheme, the impugned demand is liable to be quashed.

4. In response, Shri S.P. Kesarwani, learned Standing Counsel for the respondents submits that the present writ petition is not maintainable as it is directed against a notice which is not jurisdictional in nature. The petitioner should file its objection there first. Adverse order, if any, passed can be successfully challenged by it by filing statutory appeals as provided under Sections 9 and 10 of the U.P. Trade Tax Act. The scheme floated by the State Government was not a concluded scheme and it was just by way of invitation to the traders and was conditional on the collection of Rs. 750 Lakhs or more as revenue. The scheme dated 25th of July, 2007 was conditional one and the State Government found that the amount prescribed under the scheme was not collected, therefore, decided not to give effect to the scheme on 15th of February, 2007. The petitioner if at all aggrieved by the order dated 15th of February, 2007, it should have approached the Court immediately thereafter. The writ petition is liable to be'' dismissed on the ground of laches as the petitioner failed to approach the Court within a reasonable time after the order/circular of the Commissioner dated 15th of February, 2007. On merits it was submitted that liability to pay trade tax as well as interest are the statutory liabilities of the petitioner and in absence of any specific provision granting exemption, no such writ, order or direction can be issued as prayed for by the petitioner.

5. Considered the respective submissions of learned Counsel for the petitioner. Argument of the learned Counsel for the petitioner presupposes that the alleged scheme dated 25th of July, 2006 was concluded scheme applicable to the manufacturers of mustard oil and cake. It is not so. In the scheme there is an inbuilt provision which lays down that the scheme shall be declared effective only

when such dealers who apply within three months from the date of scheme and the minimum collection of trade tax revenue to the extent of Rs. 750 Lakhs or more is assured. On a fair reading of the scheme it is evident that this was a simple proposal by the State Government with the concurrence of the Governor inviting applications from mustard oil manufacturers to apply under the scheme. The enforcement of scheme was dependant and was subject to the minimum collection of Rs. 750 Lakhs or more as tax revenue. This clause is indicative of fact that it was not an unconditional or concluded scheme. At the most the State Government was exploring to promulgate such scheme and for that purpose Government order dated 25th of July, 2006 was published.

6. As a matter of fact, the said scheme is not a scheme of such nature as contemplated under Section 7D of the U.P. Trade Tax Act. The argument of the learned Counsel for the petitioner presupposes that it was a scheme under Section 7D of the Act which is not legally sound.

7. We have learnt that a similar Civil Misc. Writ Petition No. 356 of 2007, Jhamman Lal Oil Mills v. State of U.P., decided by Division Bench consisting of Hon''ble Mr. Justice R.K. Agrawal and Hon''ble Bharati Sapru, JJ. on 26th of March, 2007 has upheld the validity of Commissioner''s letter dated 15th of February, 2007 withdrawing the composition scheme. It has also upheld the consequential notice issued to the dealer for payment of penalty, interest and for provisional assessment.

8. The second limb of the argument is that the State Government has withdrawn the scheme without the concurrence of the Governor has also got no merit. The said Government order/scheme has come to an end ipso facto for the nonfulfilment of its essential condition i.e. collection of revenue at Rs. 750/ Lakhs or more. Then it was submitted that the petitioner is not liable to pay any interest as it has been depositing the composition money as per terms of the scheme month to month. The demand of Assessing Authority towards the payment of difference amount calculated on the basis of the actual no turnover and the amount deposited as composition amount as also the interest on the difference is illegal. Section 7D according to the petitioner opens with an obstinate "clause and it has overriding effect over the other provisions of the Statute, submits the learned Counsel for the petitioner. The petitioner having not realised the tax from the customers, is liable to pay only the composition amount and no other amount over and above the composition amount. This argument on the first flash appears to be attractive but on deeper scrutiny holds no water. We have already pointed out above that the alleged composition scheme was not a scheme as contemplated by Section 7D of the Act. If it is so, the applicability of Section 7D does not arise even remotely. If the argument of the petitioner is accepted, the Court would be compelling the State Government to continue and promulgate the scheme under Section 7D of the Act for manufacturers of mustard oil, cake etc. No such direction can be issued by the Court. It is for the State Government to issue direction in this regard. The assessing authority, as

provided for under Section 7D, subject to direction of the State Government may agree to accept a composition money either inlump sum or at an agreed rate of turnover in lieu of tax that may be payable by a dealer in respect of such goods or clause of goods and for such period as may be agreed upon.

9. In Sales Tax Officer and another v. Dwarika Prasad Sheo Karan Dass, 1977 UPTC 619 (SC) (Para 4); Mahalaxmi Sugar Mills Co. v. Commissioner of Income Tax, Delhi, 1980 UPTC689 (SC) (Para 11); C.I. T. v. Anjum M.H. Ghaswala, 2001 (252) I.T.R. 1 at Page 9 (S.C.); Haji Lal Mohd. Biri Works, Alld. v. State of U.P. and others, 1973 UPTC 690 (SC) (Para 10) and Prahlad Rai and others v. Sales Tax Officer, Meerut and others, 1991 UPTC 1196 (SC), it has been held that payment of interest is mandatory, automatic and liability thereof arises by operation of law. Even no order is required to be passed for payment of interest, in such matters. Thus, we find no merit in the argument of learned Counsel for the petitioner that the petitioner is not liable to pay any interest.

10. Respectfully following the said decision, we are of the view that there is no illegality in the order dated 15th of February, 2007.

11. In the result, we find no merit in the writ petition. The writ petition is dismissed summarily.