(2012) 09 AHC CK 0017

In the Allahabad High Court

Case No : Writ Tax No. 1084 of 2012

Bihari Prasad APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Citation : (2013) 61 VST 413

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Aloke Kumar, for the Appellant; C.B. Tripathi, for the Respondent

Final Decision : Disposed Of

Judgement

1. We have heard Shri Aloke Kumar, learned counsel appearing for the petitioner. Learned standing counsel appears for the State-respondents. The petitioner had filed a Writ Tax No. 969 of 2012 for a direction to the Deputy Commissioner, Commercial Tax, Sector II, Sonebhadra, to consider the petitioner''s application for amendment in the registration certificate and for issuing form C for import of machinery used in construction works. The writ petition was disposed of on August 13, 2012, with directions that the petitioner''s application for amendment, and for issuance of form C, shall be decided within two weeks of making the representation along with the certified copy of the order. The petitioner presented the order on September 13, 2012 on which the Deputy Commissioner, Commercial Tax, has amended the registration certificate. He has, however, rejected the application for issuance of form C.

2. Shri Aloke Kumar appearing for the petitioner submits that the application for form C has been rejected by giving extraneous reasons. The Deputy Commissioner, Commercial Tax, has in his order referred to the talk with the issuing officer, who was on leave and has refused to give form C. The issuing officer has not passed any order himself either accepting or rejecting the application.

3. Shri C.B. Tripathi, learned counsel appearing for the State of U.P., submits that the application for amending registration certificate has been allowed. So far as application for issuing of form C is concerned, though prima facie the reasons are not valid, this court may not issue any writ of mandamus as under rule 8(3) of the Central Sales Tax (U.P.) Rules, 1957, it is a discretion of the issuing officer to issue blanket form C for importing the goods in the State of U.P. He has relied upon M/S. KRISHNA COAL CONCERN, BALLIA Vs. THE SALES TAX OFFICER, BALLIA., , in which a Division Bench of this court held, in respect of the then existing rule 85(4) of the U.P. Sales Tax Rules, 1948 corresponding to the new Rules, as follows:

3.... Moreover, since the supply of form depends on the discretion of the Sales Tax Officer, guided by the genuine requirement of a dealer, we cannot compel the Sales Tax Officer to issue forms to the petitioner which in the opinion of the Sales Tax Officer are not genuinely required by him. Moreover, the petitioner has an alternative remedy by way of appeal in case he is not satisfied with the order of the Sales Tax Officer with regard to the number of forms to which he is entitled. If the petitioner can satisfy the appellate authority that his genuine need for the forms is greater than sanctioned by the Sales Tax Officer and also that the forms previously issued to him had been properly accounted for, the appellate authority can give him the necessary relief. It is not open to this court to entertain and decide such disputes. In the circumstances we are of the opinion that the proper course for the petitioner is to approach the appellate authority. We make it clear that in the meantime, if the petitioner bona fide utilises the forms already issued to him and if he genuinely needs more forms, he can make a demand from the Sales Tax Officer and we have no reason to believe that the Sales Tax Officer will not issue more forms.

4. The amendment in the registration certificate has been carried out. So far as issuance of form C for blank forms for import of machinery and goods for construction, the issuing officer should have passed the appropriate order in compliance with the order of the court.

5. We are not satisfied with the reasons given by the Deputy Commissioner. He has only referred to the instructions of the issuing officer not to issue form C to the petitioner. If the application has to be rejected, justifiable reasons must be supplied by the issuing officer. The writ petition is accordingly disposed of with directions that the petitioner''s application for form C pending with the issuing officer shall be decided afresh within three days from the date of production of certified copy of this order before him. In case he rejects the application, he shall give sufficient justifiable reasons in his order.