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**(2008) 08 AHC CK 0100**  
**In the Allahabad High Court**

Chandra Prakash

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

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**Date of Decision :** 25-08-2008

**Acts Referred:**

Uttar Pradesh Trade Tax Act, 1948 — Section 11

**Citation :** (2010) 27 VST 105

**Hon'ble Judges :** Prakash Krishna, J

**Bench :** Single Bench

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## Judgement

Prakash Krishna, J.—These three revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") arise out of common order dated March 5, 2001 passed by the Trade Tax Tribunal, Kanpur, whereby and whereunder it has dismissed all the three Second Appeal Nos. 513, 515 and 514 of 2000 filed by the dealer in respect of an order passed u/s 8C of the Act demanding additional security and cancellation of registration both provincial and Central. The controversies involved in these revisions are interconnected and interwoven and as was suggested by the learned Counsel for the parties are being disposed of by a common judgment.

2. The applicant who is engaged in the business of foodgrains, galla, tilhan, bardana, kirana, gur, rab, posta dana and oil cake, etc., applied for and was granted registration u/s 8A of the Act and u/s 7 of the Central Sales Tax Act. The registration was granted on March 22, 1999 and a security of Rs. 15,000 of two registered dealers under the Act was furnished as demanded by the Department. The returns of the turnover were filed regularly and the admitted tax was paid promptly as alleged by the applicant. The applicant has a head office at Farrukhabad and a branch at district Bareilly. For the month of July, 1999 he filed a return of the taxable turnover of Rs. 13,12,740.27 on which he has admitted the tax to the tune of Rs. 65,635. The assessing officer looking to the magnitude of the turnover of the dealer demanded additional security to the tune of Rs. 5 lakhs to safeguard the interest of the Revenue. He was of the opinion that the

dealer has a huge turnover, and to protect the interest of the Revenue, additional security as provided for u/s 8C should be demanded. After serving a pre-show-cause notice, by the order dated August 20, 1999 the Trade Tax Officer, Sector 2, Fatehgarh asked the dealer to furnish an additional security of Rs. 5 lakhs of two registered dealers or in the alternative to furnish a national saving certificate of Rs. 5 lakhs pledged in favour of the Department. The said order was challenged unsuccessfully before the first appellate authority and the Tribunal. It has given rise to T.T.R. No. 116 of 2001.

3. The other two revisions arise out of consequential order cancelling the registration of the dealer under the Act as well as under the Central Sales Tax Act for failure to furnish additional security as demanded by the Department. The learned Counsel for the dealer advanced his argument with reference to T.T.R. No. 116 of 2001 wherein the following questions of law have been sought to be raised:

- (i) Whether additional security could be demanded for reasons extraneous to the provisions of the Act?
- (ii) Whether additional security could be demanded where none of the conditions prescribed under the Acts was present or alleged?
- (iii) Whether additional security demanded is disproportionate to the tax payable?
- (iv) Whether any additional security could be demanded without issuance of the show-cause notice?
- (v) Whether the Tribunal could take into consideration any ground or reason which was not considered by the lower authorities?

4. Shri S.D. Singh, the learned Counsel appearing for the dealer, submits that on the plain language of Section 8C, there was no occasion for the Department to demand any additional security as otherwise it would amount to violation of the right of the dealer to carry on free trade. He submits that on the date when the impugned order was passed there was no material nor is there any material even today with the Department to show that the dealer is in any manner not paying the admitted tax or is a defaulter in paying the legitimate dues of the Department. The high turnover of the dealer in the month of July 1999 of the relevant assessment year has no nexus with the demand of additional security. It was further pointed out by him that this Court while entertaining the revision by way of interim protection directed the dealer to furnish additional security to the tune of Rs. 2 lakhs vide order dated July 22, 2001 which the dealer has furnished and is carrying on the business.

5. The learned standing counsel, on the other hand, supports the order of the Tribunal and submits that the demand of additional security on the facts of the present case is perfectly justified.

6. Considered the respective submissions of the learned Counsel for the parties

and perused the record.

7. It is not in dispute that the dealer applied for and was granted registration under the relevant Act on March 4, 1999 with effect from July 22, 1999 under the Central Sales Tax Act as well on furnishing of security of Rs. 15,000. It is also not in dispute that for the month of July 1999 it admitted tax liability of Rs. 65,637. It is also not in dispute that the said firm is a proprietorship concern and in form 14, the application for registration, the dealer has not disclosed any property. He is an original resident of the district of Bareilly and has declared its head office at Kayamganj and has therefrom carried on the transactions worth only Rs. 10,000 till the passing of the order demanding additional security. It is also not in dispute that he has got a branch at Bareilly from where he has disclosed the taxable turnover at Rs. 13,12,740.27. On these admitted facts a question arises as to whether the demand of additional security is at all justified or not.

8. Section 8C of the Act provides for security in the interest of the Revenue. Sub-section (2) thereof provides where it appears necessary to the assessing authority for proper realization of any tax, penalty or other such dues payable under the Act, it may demand additional security after recording reasons in writing. Clause (c) of Sub-section (2) of Section 8C provides that additional security can be demanded as a condition for continuance of certificate of registration, etc. The argument of the learned Counsel, Shri S.D. Singh, is that proper enquiry was made by the Department before the grant of registration certificate. The business of the dealer-applicant is of recent origin and demand of such exorbitant security may compel the dealer to close down the business. In other words, he submits that the demand is wholly arbitrary and has no nexus with the disclosed return of the turnover.

9. Having given careful consideration to the aforesaid submission of the learned Counsel for the dealer, it is difficult to agree with him. Security, as per terms of Section 8C can be demanded for proper realization of tax or penalty. It may be true that the dealer has deposited the admitted tax along with the return for the month of July 1999. This is one aspect of the matter. However, the other aspect of the case which is also equally important is to protect the interest of the Revenue. The object of demanding security or additional security under the Act is to protect the interest of the Revenue so that in case of default in payment of tax or penalty, the Revenue can realise its dues from the dealer. The amount of security that may be required from any dealer shall in no case exceed the tax payable in accordance with the estimate of the assessing authority on the turnover of the dealer for the assessment year in which such security is required to be furnished. Coming to the facts of the present case, it is not the case of the dealer-opposite party that abruptly the turnover for the month of July 1999 was increased abnormally as a windfall.

10. The circumstances which have been taken into consideration by the assessing officer such as that the dealer has no property at Farrukhabad wherein

he is carrying on the business, that the turnover disclosed at Farrukhabad is very nominal and that the turnover disclosed at its branch at Bareilly is very high, cannot be said to be irrelevant or irrational for demanding the additional security.

11. The learned Counsel, then, submits that Section 8C is not at all attracted as no tax or penalty is due or is payable when the order demanding the additional security was passed. The said argument appears to be attractive but looking to the object behind Section 8C, has got no force. The authority concerned has not asked the dealer to furnish cash security or bank guarantee. A person whose turnover is so high can easily furnish the security of Rs. 5 lakhs of two registered dealers.

12. Strong reliance was placed on K.K. Steel, Agra v. Assistant Commissioner (Assessment) [2000] UPTC 872 particularly paras 4 and 5. The said case was decided on a different fact-situation. The controversy involved therein was also different. No opportunity of hearing in that case was afforded before making the order demanding additional security to the dealer. Security is required for ensuring the payment of tax and as in the impugned order therein it was not mentioned what is the amount of tax leviable on the sales and whether the dealer has paid any tax or whether there are any arrears justifying the demand, the order demanding the additional security was set aside. This case has hardly any application to the controversy involved at present. The order demanding the security is a speaking order and contains reasons which cannot be said to be irrelevant.

13. This Court granted interim relief on the condition of furnishing additional security of Rs. 2 lakhs which has been furnished, submits the learned Counsel for the dealer. Much emphasis was laid by the learned Counsel that the additional security amount may be reduced to that figure, at least.

14. Looking to the facts and circumstances of the case and taking into consideration the fact that the applicant is not a resident of Farrukhabad, the interest of justice would be sub-served if the applicant is required to furnish the additional securities of two registered dealers of Rs. 3 lakhs instead of Rs. 5 lakhs. In other respects the order demanding the additional security remains intact. Six weeks time is granted to furnish the additional security from the date of order.

15. So far as the connected revisions are concerned they are directed against the order cancelling the registration due to failure of filing of the additional security. If the applicant complies with this order within time as stipulated above and furnishes additional security, the order cancelling registration under the Act as well as under the Central Sales Tax Act shall stand cancelled ipso facto.

16. In view of the above discussion, Revision No. 116 of 2001 is allowed in part as indicated above. Revision Nos. 117 and 118 of 2001 are disposed of in the light of the observations made in the body of the judgment.