(1985) 09 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 514 of 1982

Chandra Shekhar Shashi Shekhar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-09-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961 — Rule 13A(1)

Citation : (1985) AWC 912

Hon'ble Judges : S.K. Dhaon, J

Bench : Single Bench

Advocate : Raisul Hasan Zaidi, for the Appellant;

Judgement

S.K. Dhaon, J.—The Petitioner invokes the jurisdiction of this Court under Article 226 of the Constitution and prays that the orders passed by the authorities below refusing to accede to its request to adjust the excess payment made by it towards purchase tax may be quashed.

2. The Petitioner is a unit within the meaning of the U.P. Sugarcane (Purchase Tax) Act, 1961 (hereinafter referred to as the Act). It exercised an option of being taxed on the purchases of sugarcane made by it on assumed basis. In compliance with Rule 13-A(1) of the Sugarcane Purchase Tax Rules, 1961 (hereinafter referred to as the Rules) it had, on 25th November, 1981, submitted a declaration in form XIII stating therein that unit would commence functioning from 4th January, 1982. It was also indicated therein that the two crushers installed in the unit would function. On 2nd December, 1981, the Petitioner made a fresh declaration in Form XIII stating therein that the crusher would commence functioning from 4th January, 1982. However, it made it clear that during the current crushing season only one of its crushers would be used. It is not disputed that the Petitioner in fact used only one crusher. This is evident from the fact that on inspections made on several occasions only one crusher was found working. Despite this, the Petitioner was called upon to pay the tax on the footing that

both the crushers worked and it deposited the amount. Thereafter it made an application to the appropriate authority praying that the excess amount may either be refunded to it or necessary adjustments may be made towards the tax which the Petitioner was liable to pay in future. This application was rejected by the Assessing Authority by an order dated 30th January, 1982. The Appellate Authority on 11th March, 1982, dismissed the appeal of the Petitioner and confirmed the order of the Assessing Authority. These orders are the subject matter of this writ petition.

3. The authorities below have proceeded on the assumption that the declaration given by the Petitioner on 25th November, 1981 with respect to the number of crushers to be used by it during the current year became sacrosanct and could not be changed by the Petitioner under any circumstance. It appears that the authorities have taken this view on account of a decision given by this Court which is reported in 1980 U.P.TC 64. Incidentally, this happens to be a Full Bench decision of this Court. Having considered the facts of the instant case and having read and re-read the Full Bench decision, I am of the opinion that the authorities have clearly misread and misapplied the decision of this Court. In the Full Bench case the owner of the unit concerned had given a declaration that the unit would commence functioning from a specified date. At that stage the owner of the unit concerned had three licences for three different crushers. The number of crushers to be used was not at all specified in the declaration. The crushing of the sugarcane commenced on the specified date. Thereafter, during the course of the crushing season, an information was given by the owner of the unit that on account of some mechanical defect in some crushers the number of crushers to be used would stand reduced. This Court took the view that the declaration having become effective in so far as the unit there having commenced crushing sugarcane from the specified date, the change in the number of crushers to be used during the course of crushing season was not permissible under the statute.

4. So far as the present case is concerned, the facts are entirely different. As already stated, before the declaration given on 25th November, 1981 became effective the Petitioner gave a fresh declaration on 2nd December, 1981. It is to be remembered that in both the declarations the date fixed for the commencement of the crushing operation was 4th January, 1982. The first declaration remained a mere proposal as before the due date, namely, 15 days before the date specified, viz., 4th January, 1982, a fresh declaration was given. Therefore, in the eye of law the declaration which was effective for the purposes of the exercise of the option by the Petitioner was the declaration given on 2nd December, 1981.

5. The order dated 30th January, 1982, passed by the Assessing Authority as well as the order dated 11th March, 1982, pasted by the Appellate Authority are quashed. The Respondents are directed to either refund the excess payment made by the Petitioner towards the tax on the footing that the second crusher too had worked or make the necessary adjustment towards the payment of the

tax for which the Petitioner may be liable in future. There shall be no order as to costs.

