

(2002) 08 AHC CK 0076

In the Allahabad High Court

Case No : Trade Tax Revision No"s. 322 and 323 of 2002

Commissioner, Trade Tax

APPELLANT

Vs

Chauriha Traders

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Citation : (2003) 129 STC 263

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; S.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.

This trade tax revision has been preferred u/s 11 of the U.P. Trade Tax Act, 1948 (in short called "the Act") against the order dated May 27, 2002, passed in appeal No. 473 of 2002 (2001-02) Section 8-A(I-B) of the Act and in appeal No. 474 of 2002 (2001-02) Section 7(4)(b) of Central Sales Tax Act, 1956.

1. Heard Sri B.K. Pandey, learned Standing Counsel for the Commissioner/ revenue as well as Sri S.D. Singh, learned counsel for the opposite party/ assessee and with the consent of the parties this revision is disposed of finally at this stage under second proviso to Rule 2 of chapter XXII of the Allahabad High. Court Rules, 1952.

2. The opposite party/dealer obtained a registration with effect from January 5, 1993 under the U.P. Trade Tax Act, 1948 as well as with effect from January 12, 1993 under the Central Sales Tax Act. For the assessment year 1999-2000 opposite party/dealer was alleged to have imported the goods in contravention of the provisions of Section 28-A of the "Act" and therefore, security demanded was deposited also for the assessment year 2001-02. The opposite party/ dealer was found to import of 160 bags of supari without genuine documents. Therefore, the

goods were released against the security. In those cases the penalty had already been levied by the trade tax authority over the opposite party/dealer. Taking these transactions of illegalities the Trade Tax Department passed provisional assessment order for the month of April, 2001 creating a tax liability against the opposite party/dealer. The opposite party/dealer was directed by the trade tax authority to produce account books which he did not do therefore, a presumption was drawn that the books of accounts are not being maintained by the opposite party/dealer therefore, a security of Rs. 2,00,000 in the form of bank guarantee was demanded from the opposite party/dealer by its order dated January 3, 2002 (annexure 2) u/s 8-C(2) of the "Act". For non-compliance of the order notices dated January 9, 2002 and March 4, 2002 were issued to the opposite party/dealer demanding security. In response to the notices the opposite party/dealer appeared before the assessing authority on March 15, 2002 and had filed trial balance and summary of stock but could not produce the regular account books, and the bank guarantee demanded from the opposite party was not deposited therefore, the order u/s 8-A(I-B) of the "Act" was passed and registration granted in favour of the opposite party/dealer was cancelled on March 27, 2002 (annexure 4) for U.P. and u/s 7(4)(b) of the Central Sales Tax Act for Central. The first appeal preferred u/s 9 of the "Act" against the above order was rejected by the first appellate authority on April 19, 2002 (annexure 6). In the second appeal learned Tribunal by order dated May 27, 2002 restored the registration granted in favour of the opposite party/dealer while allowing the second appeal (annexure 7).

3. Learned Tribunal has observed that the registration of the opposite party/dealer has been cancelled on different grounds other than grounds mentioned in the notices for cancellation of registration and according to the learned counsel for the opposite party/dealer, notices mentioned are not in consonance to the provisions of the "Act" and as such no ground for cancellation of registration has been existing whereas learned Standing Counsel has vehemently persuaded and justified the stand of revenue and supported the judgment of the assessing officer as well as the first appellate authority.

4. In Section 8-A(I-B) of the "Act" the registration of a dealer could be cancelled when the dealer has failed to pay tax or penalty or other dues within three months from the order of the imposition of penalty or other dues where for not sufficient reason the trade tax authority considers it proper so to do.

5. In the facts and circumstances it appears that the steps for cancellation have been taken well within three months which is in derogation of 1986 ATJ 547 [Mittal Traders, Jalaun through Pramod Kumar (Partner) v. Sales Tax Officer] where in reference to Section 8-C(2) of the "Act" petitioner has a statutory right to file reply within 90 days, whereas in the present case Sales Tax Officer cancelled the registration within 90 days from issuance of notice.

6. Learned counsel for the applicant/revisionist, Commissioner/ revenue has contended that the opposite party/dealer has failed to produce the account books

when demanded and has been repeatedly been involved in import of goods without proper documentation. The additional security demanded was as also not paid by him, therefore, cancellation of registration in U.P. as well as Central Sales Tax Act has been made after providing opportunity of hearing. Whereas, learned counsel for the opposite party/dealer has contended that show cause notice issued in respect of demand of additional security was an order-cum-notice and the notice was different grounds whereas the order of cancellation of registration have been made on different grounds.

7. Learned counsel for the opposite party/dealer has placed reliance on Aditya Trading Company Vs. State of Uttar Pradesh and Another, where it was held :

"The petitioner is a registered dealer and has already furnished security as required u/s 8-C(1) of the Act. By the impugned notice-cum-order, the petitioner has been directed to file additional security in the sum of Rs. 20 lacs in the form of a bank guarantee. Such an order could have been passed in terms of Sub-section (2) of Section 8-C where it appears necessary to do so for the proper realisation of any tax, penalty or other sums due or payable under the Act or for the proper custody or use of the forms, etc. The order demanding additional security adversely affects a dealer and it is necessary before passing an order demanding additional security to give dealer an opportunity of hearing." (para 3)

"The notice-cum-order also does not mention the amount of security already furnished. The extent of the existing or probable tax liability and how the demand of a security of Rs. 20 lacs and that too in the form of a bank guarantee could be justified. In our view, the order-cum-notice is illegal and cannot be sustained." (para 4).

8. I have heard learned counsel for the parties and I find that the notice for cancellation of registration was contemplating different aspects and grounds whereas, the order cancelling registration were comprising of different aspects and grounds other than what were mentioned in the notice. The cancellation of registration on the grounds and for the reasons other than what were contemplated in the notice shall tantamount taking steps in derogation of "rule of audi alteram partem", i.e., indicative of that the opposite party/dealer has not been provided opportunity of hearing. It is therefore, clear that the opposite party/dealer has not been heard before cancellation of his registration certificate both in U.P. as well as in Central. From this point of view I do not find any illegality or impropriety in the order dated May 27, 2002 of learned Tribunal. However, the observation of learned Tribunal in respect of cancellation of registration shall not debar the Trade Tax Department to further initiate any legal action for cancellation of registration of opposite party-dealer, to be made in accordance with law if necessary, in future, after issuing proper notice and passing proper order. The questions of law raised by the Commissioner/revenue is dealt with negatively and the revision is rejected accordingly.