(2006) 11 AHC CK 0004

In the Allahabad High Court

Darshan Agroils Limited APPELLANT

Vs

State of Uttar Pradesh and Another RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Citation : (2009) 20 VST 619

Hon'ble Judges : Sushil Harkauli, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner sought issuance of form IIIB and form IIIC/1 from the trade tax authorities. The issue of such form to a dealer is governed by rule 12B and rule 25B of the U.P. Trade Tax Rules, 1948. Apparently, the guiding factor for the issuance of such forms is mentioned in the aforesaid Rules themselves, namely that demand for the blank forms should be genuine and reasonable in the opinion of the trade tax authorities.

2. The petitioner was not issued forms as desired by it because of which a writ petition was filed by the petitioner being Writ Petition No. 1023 of 2005 which was allowed by the order dated July 26, 2005 requiring trade tax authority to pass a reasoned order regarding issue or refusal of forms sought by the petitioner.

3. Pursuant to that decision of this Court dated July 26, 2005, the Deputy Commissioner, Trade Tax, has passed the impugned order dated September 26, 2005, copy of which has been enclosed as annexure 14 to this writ petition, refusing to issue form IIIB and form IIIC/1.

4. Although it is long order but basically the Deputy Commissioner has attempted to say in justification of refusal, that certain trade tax dues have not been paid by the petitioner. According to the impugned order although the petitioner had realised the trade tax from the customers but the petitioner had not deposited even the tax admitted to be due.

5. Counter-affidavit has been filed by the respondent and rejoinder affidavit has been filed by the petitioner.

6. We have heard both sides.

7. The counter-affidavit filed by the respondents also justifies the refusal on the same ground as has been mentioned above in this judgment. The counter-affidavit also places reliance upon rule 85(4), which relates to the separate form No. XXXI and has apparently no bearing upon either form IIIB or form IIIC/1. In any case, the guiding considerations as mentioned in rule 85(4) are also same with the only difference that the forms issued earlier should be accounted for by the dealer.

8. The contention raised from the petitioner''s side in this writ petition is that the observation in the impugned order about non-payment of admitted tax are factually incorrect. According to the petitioner''s case the entire admitted tax has been paid or deposited and whatever remains is either subjudice in the various departmental proceedings or is not payable. Receipts of certain payments have been enclosed. This contention is basically to meet the equity required in writ jurisdiction.

9. In any case according to the petitioner non-payment of tax dues cannot be a ground for refusing the forms which have been sought as has been done by the impugned order. Some very unusual and rare cases apart, we would be inclined to agree with the petitioner''s contention. The statute and Rules of U.P. Trade Tax provide a complete machinery for determination, adjudication and recovery of tax dues. It would not be appropriate for the tax authorities, without resorting to those recovery proceedings, to exercise such arm twisting pressure tactics on the assessee by resorting to unconnected matters to coerce the assessee to pay tax. Individual form under various rules are issued for different purposes. While issuing or refusing such forms, the trade tax department has to consider the past use of such forms, possibility of future misuse and accordingly determine whether the demand of forms is "genuine and reasonable".

10. The impugned order does not mention any such reason for refusal to issue such forms. There is no allegation or finding that the demand of forms is not genuine and reasonable.

11. The writ petition is accordingly allowed. The impugned order dated September 26, 2005 (annexure 14 to this writ petition) is set aside on the ground that it is based on irrelevant considerations. The matter will be re-examined by the respondent No. 2 within three weeks of the date on which a certified copy of this order is presented before the said respondent. It is needless to say that order to be passed, will be a reasoned order in the light of the observations made above.