(2008) 06 UK CK 0015

In the Uttarakhand High Court

D.S.M. Group of Industries APPELLANT

Vs

State of Uttaranchal and Others RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Constitution of India, 1950 — Article 301, 304

Citation : (2008) 06 UK CK 0015

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Sri Anil Kumar Joshi, learned Counsel for the petitioners, Sri K.P. Upadhyay, learned Additional Chief Standing Counsel for the State-respondent Nos. 1, 3, 5 and 6, Smt. Bina Pande, learned Standing Counsel of the U.P. Government for respondent Nos. 2 and 4 and Sri Arvind Vashist, learned Assistant Solicitor General of India for the Union of India-respondent No. 7 and 8.

2. This writ petition has been filed for the following reliefs:

1) To issue a writ, direction or order in the nature of mandamus commanding the opposite parties No. 1 to 6 not to charge Entry Tax on Sugar holding the same to be "Ultra Virus" the provisions of Constitution of India.

1.(A) Issue a writ, order or direction in the nature of certiorari quashing the Uttaranchal (U.P. Entry of Goods Act 2000) Amendment 2001 (Annexure No. 17) passed by the respondents.

2) To issue a writ of certiorari quashing the order/Act/Ordinance passed by Opposite Party No. 1 to 6 by means of which Entry Tax on Sugar is to be levied as per the provisions of the U.P. Act No. 12 of 2000 as also the show cause notice dated 23-1-2001 (Annexure No. 5) by means of which the Opposite Party No. 6 had required the petitioners to deposit Entry Tax.

2(A) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to recover Entry Tax from the petitioner under the U.P. Tax on

Entry of Goods Act 2000 as applicable to Uttaranchal.

3) To direct the opposite parties to refund the amount of additional excise duty with interest in case Entry Tax is held valid in respect of Sugar.

3(A) Issue a writ, order or direction in the nature of certiorari quashing the final assessment orders dated 24-3-2003, 31-1-2004 and 5-7-2004 passed by Assistant Commissioner Trade Tax Kashipur under the U.P. Tax on Entry of Goods Act 2000 as applicable to Uttaranchal (Annexure No. 16 collectively).

4) To mould and issue any other writ, direction or order which this Hon''ble Court deems necessary keeping in min the facts and circumstances of the case.

5) To award the costs of this petition to the petitioners.

3. I have heard learned Counsel for the parties and perused the record.

4. At the outset, learned Counsel for the petitioner has urged that that similar controversy had arisen before the Allahabad High Court wherein imposition of the same entry tax under the same Act was challenged in Writ Petition No. 251 of 2003, Indian Oil Corporation v. State of U.P. and the Entry Tax has been declared ultra vires and void being violative of Article 301 and 304 of the Constitution of India vide order dated 27-1-2004. The Allahabad High Court has further held that the ''entry tax'' is not a ''compensatory tax''. It has further been submitted that following the verdict of the Allahabad High Court, this Court by order dated 2-6-2008 passed in Writ Petition (M/S) No. 1016 of 2007 Polyplex Corporation Limited v. State of Uttaranchal and two Ors. has taken a similar view and has allowed the said writ petition. Hence this writ petition may also be allowed in terms of the said order dated 2-6-2008.

5. Learned Counsel appearing for the respondents have fairly conceded to the above fact.

6. In the facts and circumstances of the case taking into consideration the fact that the U.P. Tax on Entry of Goods Act, 2000 has been declared ultra vires by the Division Bench of the Allahabad High Court and it has also been held that the ''entry tax'' is not a ''compensatory tax'', referred to above, therefore, the Uttar Pradesh Tax On Entry Of Goods Act (Uttaranchal Amendment) Act, 2001 is liable to be declared violative of Articles 301 and 304 of the Constitution, hence ultra vires. The writ petition is liable to be allowed in terms of the order dated 2-6-2008 passed by this Court in Writ Petition No. 1016 of 2007 (M/S) Polyplex Corporation Limited v. State of Uttaranchal and two Ors.

7. The writ petition is allowed in terms of the order dated 2-6-2008 passed by this Court in Writ Petition No. 1016 of 2007 (M/S) Polyplex Corporation Limited v. State of Uttaranchal and two Ors. The Uttar Pradesh Tax On Entry Of Goods Act (Uttaranchal Amendment) Act, 2001 is hereby declared violative of Articles 301 and 304 of the Constitution, hence is ultra vires. The respondents are restrained by a writ of mandamus not to recover Entry Tax from the petitioner under the

said Act. The show cause notice dated 23-01-2001 issued by Trade Tax Officer, Division-2, Kashipur thereby directing the petitioner to deposit entry tax at the rate of 2% against sale of Rs. 75,29,955/- is quashed. The assessment orders dated 24-3-2003, 31-1-2004 and 5-7-2004 passed by the Assistant Commissioner, Trade Tax Kashipur under the U.P. Tax on Entry of Goods Act 2000 as applicable to Uttaranchal (Annexure No. 16) are also accordingly quashed. Costs easy.

8. All pending applications stand disposed of.