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(2011) 09 AHC CK 0431

In the Allahabad High Court

Case No : Writ Tax No. 1295 of 2010

Hamdard (Wakf) Laboratories APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 25(1)

Citation : (2012) 277 ELT 33 : (2013) 29 STR 99

Hon'ble Judges : Surendra Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Krishna Agrawal, for the Appellant; N. Siddharth, CSC, for the Respondent

Judgement

1. By means of the present writ petition the petitioner seeks a writ, order or direction in the nature of certiorari quashing the order of attachment of bank account dated 28th August, 2010 passed by the Assistant Collector (Recovery), Grade-1, Commercial Tax Department, Ghaziabad, respondent No. 4, filed as Annexure No. 6 to the writ petition and also a writ of mandamus directing the respondent authorities to refund the amount of Rs. 2,14,53,892/- recovered from the bank account of the petitioner at Bank of India, Hamdard Dawakhana Branch, 1545, Gali Qasimjan, Bazar Lal Kuan, Delhi 110006 and other consequential relief''s. Briefly stated the facts giving rise to present petition are as follows :-

2. The petitioner is a Wakf Board and is engaged in the business of manufacture of Unani medicines and Sharbat Rooh Afza and sells its product within the State of U.P inter state sales and also transfers goods outside the State of U.P. by way of stock transfer. It is carrying on its manufacturing activities in the State of U.P. and it is a registered dealer under the provisions of U.P. VAT Act, 2008 and prior to it under the provisions of U.P. Sales Tax Act, 1948 which Act was subsequently amended as U.P. Trade Tax Act, 1948.

3. According to the petitioner on 29th August, 2009, it was served with a show

cause notice u/s 25(1) of the U.P. VAT Act in which the Sharbat Rooh Afza was proposed to be assessed provisionally @ 12.5% under residuary category. Notices were issued involving the Assessment Years 2008-09 and 2009-10. The petitioner submitted its reply in which objections both on jurisdiction and merits were taken. The provisional Assessment Orders were passed by the Joint Commissioner-Assessment (Corporate Circle). The submission made by the petitioner regarding taxability on Sharbat Rooh Afza @ 4% was not accepted and in the provisional assessment tax was levied @ 12.5%. Feeling aggrieved the petitioner preferred an appeal before the Additional Commissioner (Appeals) along with an application for stay. The Additional Commissioner (Appeals) was pleased to grant stay of 60% of the disputed amount of tax whereupon the petitioner took the matter further in appeal before the Trade Tax Tribunal, Ghaziabad. The Tribunal vide order dated 1st February, 2010 granted 80% stay of the disputed amount of tax for four months or till the disposal of appeal whichever was earlier. The Tribunal vide order dated 2nd August, 2010 extended the stay order till disposal of appeal. The Additional Commissioner (Appeals) vide order dated 28th August, 2010 had rejected the petitioner''s appeal. On 28th August, 2010 itself the Assistant Collector (Recovery), respondent No. 4, issued an order for recovery of amount which was earlier stayed by the Tribunal. The recovery was pressed by attachment of the bank account of the petitioner with the Bank of India, Delhi. The petitioner came to know about the order of dismissal of the appeal when the bank authorities communicated the order of attachment on 30th August, 2010. The petitioner was served with a copy of the order dismissing the appeal on 30th August, 2010. It may be mentioned here that 29th August, 2010 was a Sunday. However, before the petitioner could take any further step for filing an appeal before the Tribunal and getting the demand stayed, respondent nos. 3 and 4 got a demand draft/pay order of Rs. 2,14,53,893/- prepared from the bank and adjusted the demand raised by the provisional assessment order. The action of the respondent-authorities in acting in haste for recovering the amount of Rs. 2,14,53,892/- by coercive process is under challenge in the present writ petition.

4. We have heard Sri Abhisek Anand and Sri Krishna Agrawal, learned counsels for the petitioner and Sri S.P. Kesarwani learned Additional Chief Standing Counsel for the respondents.

5. Considering the averments made in the writ petition and hearing the learned counsel for the parties, the Court vide order dated 2nd August, 2011 passed the following order :

Blatant misuse of power to recover the tax dues is writ large in the present case. Huge demand of more than 2 crores and odd was created against the petitioner which is a reputed company. The petitioner preferred regular appeal. During the pendency of the appeal realization was stayed partially by the first appellate authority and partially by the Tribunal. The appeal was dismissed by the first appellate authority i.e. Addl. Commissioner (Appeals) on 26-8-2010 which was a

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Saturday. Even before the copy of the appellate order could be served upon the petitioner, departmental authorities prepared the recovery notice on 28-8-2010 itself and presented it to the petitioner''s banker on 30-8-2010 which was the next working day, (29-8-2010 being a Sunday). The petitioner came to know about the recovery and dismissal of the appeal from the Bank authorities where after it was served with the copy of the appellate order on 30-8-2010.

Submission is that this highhanded attitude and the arbitrary action of the Commercial Tax Department in proceeding to recover the amount even before the order is served should be checked.

The facts regarding passing of the appellate order and its service on the petitioner are not in dispute. The manner in which the authorities have proceeded to recover the amount itself speaks about the arbitrary action of the authorities and would shake the confidence of the law abiding dealers and would adversely affect the development and industrial growth of this State. It warrants immediate remedial measures to be undertaken.

Let a responsible Officer of the Commercial Tax Department of the State of Uttar Pradesh not below the rank of Addl. Commissioner be present in the Court on 16-8-2011 in order to suggest means to put a stop to such type of arbitrary action.

List on 16-8-2011.

6. In compliance of the order dated 2nd August, 2011 Sri Vinod Kumar, Additional Commissioner (Vidhi), Commercial Tax appeared personally before the Court on 16th August, 2011 and stated that the State Government is seized with the issue and appropriate circular shall be issued to mitigate the hardship suffered by the dealers in this behalf. A draft circular was produced before the Court on 25th August, 2011 which was not found satisfactory. However, when the matter was taken up on 12th September, 2011 Sri S.P. Kesarwani, learned Additional Chief Standing Counsel produced a copy of the draft circular which the Commercial Tax Department proposes to issue. Sri Kesarwani, learned Standing Counsel submitted that the proposed circular has been approved by the State Government as also by the Law Department but it shall be issued only after this Court approves the same. The Court has perused the proposed Circular dated 9th September, 2011 and finds that by the said circular the authorities have been directed to grant at least 10 days, time after the dismissal of the appeal for taking appropriate steps for filing second appeal or revision and to obtain stay from a competent authority or a court of law and the demand created pursuant to the assessment order in appeal would be pressed only after 10 days. The Circular is reproduced below :

7. We are of the considered opinion that the aforesaid circular would meet the ends of justice and, therefore, dispose of the writ petition with the direction to the Commissioner, Commercial Tax, U.P. to issue the circular dated 9th September, 2011 and ensure that it is followed both in letter and spirit by the

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officers of the Commercial Tax Department.

8. So far as the relief of seeking refund of Rs. 2,14,53,892/- is concerned, we may mention here that at present the first appeal has been dismissed/rejected and the petitioner has a remedy of second appeal before the Tribunal and the question of refund can arise only thereafter. With the aforesaid observations and directions the writ petition stands disposed of.

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