(1997) 01 AHC CK 0108

In the Allahabad High Court

Case No : Writ Petition No. 1278 of 1985

Industrial Cables (India) Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 4B

Citation : (1998) 111 STC 35

Hon'ble Judges : Maithli Sharan, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, S.M.K. Choudhry and Piyush Agrawal, for the Appellant; Rakesh Bajpai, for the Respondent

Final Decision : Allowed

Judgement

Maithli Sharan, J.—In this petition, the grievance raised is against the notice issued to the petitioner u/s 21 of the U.P. Trade Tax Act for the assessment year 1980-81. Section 21 of the U.P. Trade Tax Act permits reopening of the assessment already made, in case there is reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof has escaped assessment to tax or has been under-assessed to tax or on the ground that the deductions or exemptions have been wrongly allowed.

We have heard learned counsel for the petitioner and learned Standing Counsel.

2. The facts in brief are that the petitioner manufactures steel wires which are used as raw material by other manufacturers of certain notified items. The petitioner sells the manufactured steel wires to other dealers. In the present case certain sales were made to purchasers who held eligibility certificate granted to them u/s 4-B of the U.P. Trade Tax Act. Section 4-B of the U.P. Trade Tax Act provides special relief to certain manufacturers. There may be total exemption from payment of tax or its payment on concessional rate. This concession is available to a dealer, who requires the goods for using it for the manufacture of

any notified goods, etc.

3. The purchasing dealer who made purchases from the petitioner, as indicated above, held eligibility certificate issued to them u/s 4-B(2) of the U.P. Trade Tax Act. It appears that total exemption from payment of tax was granted. The procedure as prescribed for such transactions, is that the purchasing dealer, has to furnish form 3-Kha as prescribed under the Rules to the selling dealer. On such form being furnished either no sales tax is realised or it is realised on concessional rates by the seller from the purchasing dealer, consequently such turnover would not be taxable in so far as it relates to the turnover of the seller against form 3-Kha. Accordingly the petitioner was assessed taking into account the sales made by the petitioner against form 3-B(Kha) furnished by purchasing dealer. A perusal of the assessment order passed by the assessing authority indicates that the petitioner had made sales against form 3-Kha furnished to it by the purchasing dealers to the extent of turnover of Rs. 64,47,374.80. This amount of turnover has been indicated against form 3-Kha and it has accordingly been found exempted from payment of sales tax. A copy of the assessment order has been filed as annexure 1 to the writ petition.

4. It appears later the authority issued notice u/s 21 of the U.P. Trade Tax Act, a copy of which has been filed as annexure 2 to the writ petition. The assessment was sought to be reopened on the ground that the purchasing dealers who had furnished form 3-Kha to the petitioner could not be totally exempted from payment of sales tax in the relevant assessment year. The case of the petitioner is that this cannot be a ground for reopening of the assessment u/s 21 of the U.P. Trade Tax Act. The submission is that in case the purchasing dealer was not entitled for full exemption which may have been wrongly made admissible to him by the appropriate authority on his application u/s 4-B of the U.P. Trade Tax Act, it may be open to the authorities to initiate proceeding, for cancellation of the eligibility certificate or to proceed u/s 3-B of the U.P. Trade Tax Act if legally permissible. It is submitted that it is not the case that the purchasing dealer had furnished a false form 3-Kha. On behalf of the State, it has been submitted that total exemption granted to the purchasing dealers was not in accordance with law and they were not entitled for it. They were only entitled partial concession and assessment could not be made against law. The dealer is entitled for exemption only to the extent as permissible under law. Therefore, it was the duty of the assessing authority to check and see as to whether the eligibility certificate issued to the purchasing dealer was rightly issued or not. The assessing authority, it is submitted, cannot extend the concession which was not admissible to the purchasing dealers under the law.

5. The learned counsel for the petitioner has emphatically refuted the plea raised by the respondent. As indicated above, it has been submitted that so far petitioner-selling dealer is concerned, his duty is to abide by the form 3-Kha, as furnished by the purchasing dealer to the petitioner. The selling dealer is not supposed to hold any inquiry into the validity of the order u/s 4-B of the Act or

form 3-Kha. It is further submitted that the only course open to the opposite parties was that in case it was thought that eligibility certificate was wrongly issued to the purchasing dealer it was open to the authority either to proceed to cancel the eligibility certificate issued to him or to realise the amount of tax from the purchasing dealer, if legally permissible under the law. We would like to observe that the case of the opposite parties does not seem to be that the eligibility certificate furnished, was false or fake but if at all fault lay with the authority granting eligibility certificate providing total exemption in place of concessional rate. Therefore, the assessment proceedings could not be reopened u/s 21 of the U.P. Trade Tax Act.

6. Learned counsel for the petitioner has placed reliance upon a decision reported in Premier Electro-Mechanical Fabricators Vs. The State of Madras, where it has been held that once a declaration is produced before the seller, there is no further obligation on the part of the selling dealer and he would be automatically entitled to the concessional rate. Another decision relied upon is reported in The Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Bharat Refineries Limited, . It has been observed that once the declaration is obtained by the selling dealer and is furnished to the sales tax authority, the selling dealer satisfies the requirements of the statute and he is entitled to the concessional rate irrespective of the correctness of the declaration or the manner in which the purchasing dealer subsequently acts. Similar view was taken in yet another decision reported in The State of Madras Vs. Radio and Electricals Ltd. etc., . It is the decision of honourable the Supreme Court, It has been observed that duty of seller is only to satisfy himself that the purchaser is a registered dealer and the goods purchased are specified in the certificate. This duty extends no further.

7. The above noted decisions leave no reason to doubt the legal position that once purchasing dealer furnishes form 3-Kha and the seller is satisfied that the goods purchased are specified in the certificate, his responsibility comes to an end. He would be entitled for the concession in the payment of tax. Appropriate steps can always be taken as may be permissible under the law against the holder of eligibility certificate or the officer making a wrong order but Section 21 of the Act is not attracted.

8. Learned counsel for the State submits that assessing authority should have taken care to see that purchaser-dealer had correct exemption. In case under the law he is entitled only for partial concession the assessing authority should not have given total exemption. In this connection it may be observed that assessing authority is different from the authority granting eligibility certificate u/s 4-B of the U.P. Trade Tax Act. In the assessment proceedings the assessing authority has to act in accordance with certificate as may be issued by other departmental authority, to the dealers. Reliance has been placed on behalf of the petitioner, upon a case reported in 1982 UPTC 858 (Commissioner of Sales Tax, U.P. v. Metal Cans, Noor Market). It has been held that assessing authority could not sit over the decision of the authority issuing the recognition certificate. In

assessment proceeding he has to act in accordance to the same. The view taken by the learned single Judge in the above noted case, in our opinion, is the correct view. Different authorities are vested with different powers and duties. They have to perform only their part of the duty as assigned under the provisions of the Act. As observed earlier in case it is found that the authority has passed any wrong order in granting eligibility certificate or in case it has been misused by the purchasing dealer, the appropriate steps as may be permissible under the law, to undo the wrong may be taken. But resort cannot be taken to Section 21 of the U.P. Trade Tax Act reopening of the assessment. All facts including total amount of turnover was before the assessing authority. There is no suppression or anything on the part of the assessee nor the order of assessing authority can be said to be incorrect.

9. Learned counsel for the petitioner submitted that simply because different view was taken subsequently on the same facts it would not justify reopening of the assessment. He has placed reliance upon a decision [1997] 107 STC 98 (All) : 1994 UPTC 1041 (Harbans Lal Malhotra v. Assistant Commissioner. Sales Tax, Ghaziabad). There can be no doubt about the proposition that change of opinion on same facts would not give valid ground to reopen an assessment. Though this case is slightly different, yet we have observed in the present case as well that there was no occasion to issue notice u/s 21 of the U.P. Trade Tax Act.

10. In the result writ petition is allowed with costs and notice u/s 21 of the U.P. Trade Tax Act as contained in annexure 2 to the writ petition is quashed.

