(2009) 08 AHC CK 0135

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 604 and 605 of 2006

Jagan Nath Dudadher, Aligarh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(8)(c)(1a)
Central Sales Tax Act, 1956 — Section 8(1), 8(4)
Constitution of India, 1950 — Article 226
Uttar Pradesh Trade Tax Act, 1948 — Section 21
Uttar Pradesh Trade Tax Rules, 1948 — Rule 41(8)

Citation : (2009) 08 AHC CK 0135

Hon'ble Judges : R.K.Agrawal, J and S.K.Gupta, J

Judgement

S.K.Gupta,J.

1. In these aforementioned writ petitions since similar questions are involved, with the consent of the parties they are taken up together and are being disposed of by common judgement and order. .

2. These writ petitions have been filed, inter alia for the following reliefs:

(i) Issue a suitable writ, order or direction, in the nature of CERTIORARI quashing the notice dated 22422006 (Annexure9 to this writ petition) for the assessment year 19992000 (U.P./Central)

(ii) A suitable writ, order or direction in the nature of mandamus restraining/ prohibiting the respondent no.3 from taking any proceeding for completing reassessment proceeding under section 21 of the U.P.Trade Tax Act for the assessment year 1999 2000 (U.P/Central)

(iii)Any other and further writ, order or directions which this Hon''ble Court may deem fit and proper in the circumstances of the case be also issued in favour of the petitioner."

The petitioner of Writ Petition no.604 of 2006 and the petitioner of Writ Petition

No.605 of 2006 are hereinafter referred to as petitioner no.1 and petitioner no.2 respectively.

3. The background facts of the case in a nutshell essentially are as follows:

The petitioners are a registered dealers under the provisions of U.P.Trade Tax Act (hereinafter referred to as the "Act") as well as under Central Sales Tax Act (in short "CST Act") and are carrying on the business of purchase and sale of Petroleum oil and petroleum products. The petitioner no.1 is owned by Jagarti Khetan and the petitioner no.2 is owned by his wife Smt. Mukta Khaitan. The assessment order for the assessment year 19992000 was passed by the assessing authority under rule 41(8) of U.P.Act and under section 9(2) of CST Act.

4. The petitioner no.1 had disclosed interstate sales of Rs.13,32,24,500/ against form C which were issued by the Ex U.P. purchasers. Petitioner no.1 submitted 288 FormC in respect of disclosed inter State sale before the assessing authority at the time of final assessment proceeding and consequently the assessing authority assessed the disclosed inter state sale as covered by FormC @ 4%.

5. Similarly, petitioner no2. also disclosed inter state sale of Rs.3,73,99,200/ against FormC which were issued by Ex U.P. Purchasers. The assessing officer accepted the inter state sale as covered by FormC @ 4% .

6. The assessment order under Rule 41(8) of U.P.Trade Tax Rules, was passed on 3152001 and 2042001 against the petitioners no.1 and 2 respectively.

7. The investigation in regard to FormC, submitted by the petitioner claiming concessional rate of tax for the year in question was carried on in the year 2004 which revealed that several CForms submitted by the petitioner were found not to have been issued to the purchasing dealer by the prescribed authority as prescribed under the Act and Rules made thereunder and it was allegedly used by them unauthorisely. In these circumstances, investigation regarding FormC submitted by the petitioners for the assessment year 199899 on wards were also carried out, which revealed that FormC allegedly obtained by the petitioner from M/s J.R.Sons of Rajasthan, M/s Jai Govind Trading Company, Rohtak and M/s Jai Govind Parle, West Mumbai etc. were found to be unverifiable and allegedly fictitious on the basis of which benefit of concessional rate of tax was taken by the petitioner on sales amounting to Crores. For ready reference paragraph 3D of the counter affidavit filed in Writ petition No.604 of 2006 are quoted below:

"3D That in respect of formC submitted by the petitioner during the course of assessment proceedings, the respondent no.3 wrote letters to sales tax authorities of several states for verification as formC submitted by the petitioner. The Sales tax authorities of the respective States have communicated the following formC as unverifiable, not obtained by the issuing dealer or unauthorised and not genuine and thus fictitious."

(i) Deputy Excise and Taxation Commissioner, Bhivani vide his letter no.825 dated 0282005 informed following form C are unverified:

No of FormC Amount

1 0951796 733200.00

2 0951818 488800.00

3 0951817 524160.00

4 0951815 366600.00

5 0951825 342160.00

6 0951810 537680.00

7 0951811 562120.00

8 0248852 478400.00

9 0248853 454480.00

10 0248854 583700.00

11 0248855 406640.00

12 0248859 611520.00

13 0248860 430560.00

14 0248861 479960.00

15 0248873 474240.00

16 0248872 499200.00

17 0248881 483860.00

18 0248886 310960.00

19 0248887 207480.00

20 0248897 478400.00

(ii) Deputy Commissioner Excise and Taxation, Bhivani vide his letter no.823 dated 0282005 following form C found unverified:

FormC Amount

1 0996530 499200.00

2 0996535 478400.00

3 0996536 485940.00

4 0996540 478400.00

5 0996546 478400.00

6 0996549 478400.00

7 0996550 358800.00

8 0996325 488800.00

9 0996324 308256.00

The above Form C are issued to M/s Mittal Sales Corporation, H.B.Bhivani R.C.No.6530 and not tyo Sai Nath Trader H.B.Bhivani R.C.No.6529

(iii) Deputy Commissioner Excise and Taxation Bhiwani (Haryana) vide his letter no.624 dated 0282005 informed that following form C have been actually issued to Sai Nath Trader H.B Bhivani R.C.No.6529 and not to Mittal Sales Agencies, Bhiwani (Haryana) R.C.No.6530

1 0876966 357136.00

2 0876978 478400.00

3 0876981 366860.00

4 0876982 384020.00

5 0876988 478400.00

6 0876927 478400.00

7 0876931 491400.00

8 0876935 436800.00

9 0876942 491400.00

10 0876945 449280.00

11 0876948 491400.00

12 0876949 394968.00

13 0876951 468312.00

(iv) Sales Tax Officer (C444) Bandra Division Mumbai vide his letter No.STI(C444)/Bandra Div/400056/2016/BC/1704 327 dated 1352005 informed that as per office record Form C issued to Jai Govind Trading Company during the year 199899. Registration certificate has been cancelled w.e.f. 0141999 or dealer has left the place of business long back. The dealer was dealing in rice and Bardana.

FormC Amount

1 2352854 415480.00

2 2352855 452140.00

3 2352857 478400.00

4 2352858 502320.00

5 2352862 502320.00

6 2352864 502320.00

7 2352865 430560.00

8 2352867 275080.00

9 2352868 478400.00

10 2352869 475800.00

11 2352873 478400.00

(v) Commissioner Commercial Taxes, West Bangal, 14 Ballia Ghat Road, Kolkata vide his letter no.824/CT/C dated 25112005 has informed that dealer is not in West Bengal and some form C are issued to another dealer.

Form C Amount

1 371106 461760.00

2 371121 488280.00"

8. In view of the above, respondent no.3 sought permission from the respondent no.2 to proceed under section 21 of the act against the petitioner and in pursuance of the same a show cause notice was issued by respondent no.2 to the petitioners. The petitioners in pursuance of the said show cause notice issued under section 21 of U.P. Act, submitted their reply to the same and the respondent no.2 after giving them personal hearing and considering their reply, passed the order under section 21(2) of the Act granting permission to respondent no.3 to proceed under section 21. Hence the impugned notices were issued under section 21 of the act for reassessment under U.P. Act and the CST Act, by the respondent no.3.

9. The petitioners being aggrieved by the said notices have filed the present writ petitions.

10. Learned counsel for the petitioner has submitted that the books of account of the petitioner as well as their versions were accepted by the assessing authority after the proper scrutiny of record including the statutory forms and the assessment order was completed under Rule 41(8) of U.P.Trade Tax Rules and under section 9(2) of CST Act, and disclosed interstate sale which was covered by FormC,was assessed @ 4%. The FormC was issued by the purchasers of other States to whom sale during interstate sale was affected and at the time of assessment no defect or discrepancy in them was pointed out. It is further submitted that there was no material or reasons to believe that any turnover has escaped assessment under the Act and It is further contended that onus which lay upon the petitioner, has been discharged by submitting genuine FormC in respect of interstate sale. It is the department to prove beyond doubt that the exemption allowed in the assessment year, was wrong. It is also submitted that

the proceeding under section 21 have been illegally initiated by respondent no.3 against the petitioners. He has further submitted that no liability may be fastened on a selling dealer for the defaults committed by the purchasers in issuing forms. Provisions of the CST Act does not place on the selling dealers the burden of making all sorts of verification.

11. Learned Standing Counsel appearing on behalf of the respondents has submitted that the notices issued by respondent no.2 & 3 contained sufficient information and relevant particulars and material for initiation of proceedings under section 21 of the Act. The assessing authority had reason to believe on the basis of the material available on record that turnover had accepted turnover. It has further been submitted that the facts of the case discloses calculated, planned commissioning of fraud and evasion of huge amount of Government revenue. Therefore the authority concerned were fully justified in initiating proceeding under section 21 of the Act .

12. Heard Sri Vishwajit, learned counsel for the petitioner, Sri A.C.Tripathi, learned Standing counsel appearing on behalf of department and perused the record.

13. Petitioner no.1 and 2 are claiming interstate sale of lubricants oil and solvent oil for Rs.13,32,24,500/ and 39,76,36,700/ respectively against FormC and thus admitted the tax liability @ 4% under CST Act. The assessing authority while passing the assessment order has admitted the claim of the petitioner for concessional rate of tax @ 4%. The record of the case shows that in the course of investigation it was revealed that large number of FormC, against which sales were made by the petitioners amounting to several crores of rupees, were found actually not been issued to the purchasing dealers by the Prescribed authority, however, it was fraudulently used by them by forging the forms and issuing the same to the petitioners and on the basis of same petitioners got the benefit by paying tax @ 4% under CST Act.

14. In the counter affidavit, AnnexureCA1 and CA2 have been annexed containing the letters issued by the STO concerned of the respective States giving details of FormC which were fraudulently used by the purchasing dealer by issuing the same to the petitioner and on the basis of which, @ 4% was levied on inter State sale against FormC as noticed hereinbefore. The names of the dealers were also disclosed in the said letters to whom actually FormC were issued. It also discussed the details of those firms whose registrations under the Sales Tax Act were cancelled even prior to the issuance of form C by the purchasing dealers to the petitioner. The amount involved in the present matter is very huge amounting to several crores of rupees .It is evident from the aforesaid facts that concessional rate of tax was wrongly allowed to the petitioner and consequently the proceedings under section 21 of the Act were initiated and the impugned notices dated 2422006 have been issued after seeking permission from respondent no.2. Before granting permission to respondent no.3 for initiating proceeding under section 21 of the Act, proper opportunity was given to the

petitioner and the impugned orders have been passed after considering their reply and their submissions. Therefore, it cannot be said that the respondent no.2 has not considered the submissions of the petitioner and the impugned order has been passed without application of mind.

15. Provisions of Section 8(1) and Section 8(4) of the CST Act and Rule 12(8)(c) (1a) of the Rules clearly indicate that the dealer may be entitled to benefit of concessional rate of tax by submitting FormC only if such forms are obtained by the registered dealer (purchasing dealer) from the Prescribed authority and such declaration/FormC should be signed by the competent person. The benefit of concessional rate of tax taken by the petitioner lacks above mentioned mandatory requirements of the CST Act and the Central Sales Tax Rules. Therefore, the proceedings under section 21 of the Act cannot be said to be invalid or unjustified .

16. Learned counsel for the petitioner has placed reliance on the following decisions of this Court namely (1)M.L.Shukla & Company Vs. Commissioner of Sales Tax, Kanpur, 1981 UPTC 596, (2) M/s Bharat Iron Stores Vs. Commissioner of Sales Tax 1994 UPTC 1340, (3) M/s Jain Sudh Vanaspati Vs. Commissioner of Sales Tax and (4) Star Paper Mills Limited, Saharanpur Vs. Commissioner of Sales Tax, 2004 NTN Vol (24) Page1. The facts and circumstances of the aforesaid cases are not applicable in the present matter. In our opinion they are clearly distinguishable and has no application on the facts of the present case. This apart in the present case it cannot be said that there was no relevant material before the assessing authority to initiate proceeding under section 21 of the Act against the petitioners. It is relevant to note, that the recurring nature of involvement of the petitioner to obtain the benefit of concessional rate of tax on the basis of forged forms C from year to year on large number of transactions of sale amounting to several crores clearly indicates that in the present set up of facts element of fraud,connivance and collusion between the purchasing dealers and the petitioners cannot be completely ruled out.

17. What can be seen in the writ petition is the existence of reasons to believe and not sufficiency of reasons to believe. It is also relevant to note that in the present set of facts specific informations were available on record and on the basis of those informations reasons in brief were recorded in the ordersheet dated 9112005 appended to the writ petition as Annexure10. Needless to say, that the petitioner will get full opportunity to defend himself and explain his position in the proceedings under section 21 of the Act.

18. The Apex Court in the case of The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Limited AIR 1973 SC 370 has observed as follows:

"9 The controversy between the parties has centered on the point as to whether the assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for the assessment year 1295758. Question in the circumstances arises as to what is the import of the words " reason to believe, as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High court or this Court for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue .What can be challenged in the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be mere pretence.

10 It may also be mentioned that at the stage of the issue of notice the consideration, which has to weigh is whether there is some relevant material giving rise to prima facie inference that some turnover has escaped assessment. The question as to whether, that material in sufficient for making assessment or re assessment under section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary.

11 The import of the words " reasons to believe" has been examined by this Court in cases arising out of proceedings under section 34 of the Indian Income Tax Act, 1922 wherein also these words were used. The aforesaid section dealt with income escaping assessment and conferred jurisdiction on the Income Tax Officer to make assessment or reassessment if he had reason to believe that income, profits or gains, chargeable to income tax had been under assessed and that such under assessment had occurred by reasons of either omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts necessary for his assessment. Certain other conditions were also necessary, but we are not concerned with them. "

19. Thus it has been well settled by the Apex Court in the aforesaid case of Bhagwan Industries (supra) that what can be seen in the writ petition is existence of reasons to belief and not the sufficiency of reasons. The fact of the present case and even the order of respondent no.2 clearly reveals, existence of

reasons to believe and the same does not appear to be extraneous. In the present matter, specific informations were available on record and on the basis of those informations reasons in brief were recorded in the order sheet dated 9112005 (annexure10 to the writ petition). Therefore, it cannot be said that without recording any reasons, proceeding under section 21 was sought to be initiated. The respondent no.2 gave sufficient opportunity of hearing before granting the permission.

20. Learned counsel for the petitioner has pointed out that even if it is assumed that there was sufficient information with the assessing authority under the provisions of CST Act there is nothing on record to show that there was any kind of information or material with the assessing authority to suggest that any turnover had escaped assessment under U.P.Act.

21. We find force in the argument of the learned counsel for the petitioner. A bare perusal of the record clearly indicates that there was absolutely no material on record to show that any proceeding under section 21 of the Act are warranted as far as any transaction in U.P. is concerned. Therefore, notices issued under section 21 of the Act for reassessment pertaining to U.P. cannot be sustained.

22. In view of the aforesaid discussions writ petitions are partly allowed and the notices for reassessment dated 2422006 (Annexure9 to the writ petition) issued by respondent no.3 to the petitioners for the assessment year 19992000 with regard to U.P. are hereby quashed and the notices issued for reassessment under the Central Sales Tax Act are upheld.

23. Before parting with the judgement it is made clear that the respondents will not be influenced by any of the observations made in this judgement. It will be independent exercise of the concerned authority to pass appropriate order under section 21 of the U.P.Act, in accordance with law .