(2009) 08 AHC CK 0242

In the Allahabad High Court

Jai Jawan Arms APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21(2)

Citation : (2009) 08 AHC CK 0242

Hon'ble Judges : S.K. Gupta, J;R.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Gupta, J.—In these Writ petitions similar questions of fact and law are involved and with the consent of parties they are taken up together and are being disposed of by a common judgment and order. Writ Petition Nos. 117/06, 118/06, 119/06, 120/06, 121/06, and 122/06 relate to the assessment year 2000-01, 2001-02, 2002-03, 2001-02, 2001-02, 2002-03 and have been filed for quashing the orders dated 17-12-2005 passed by Additional Commissioner, Grade-1, Trade Tax, Kanpur Range, Kanpur, respondent No. 3 passed u/s 21(2) and the impugned notices dated 17-12-2005 issued by respondent No. 5 pursuant to the order dated 17-12-2005.

2. Writ petition No. 164 (Tax) of 2006 Jai Jawan Arms v. State of U.P. relates to the assessment year 1999-2000 and has been filed for quashing the notice dated 01-12-2005 issued by Assistant Commissioner, Sales Tax, Sector-17, Kanpur u/s 21(2) of the Act.

3. The facts of all the aforesaid writ petitions are almost same, therefore, facts of the leading Writ Petition No. 117 of 2006 are briefly stated as under:

4. The petitioner is a registered dealer both under U.P.Trade Tax Act as well as under the Central Sales Tax Act and is carrying on the business of purchase and sale of arms and ammunitions . The books of account of the petitioner were always accepted by the assessing authority upto 2002-03. Since the petitioner

used to purchase all arms and ammunitions from the registered dealers in wholesale within the State of U.P. mainly from Kanpur itself and the goods were tax paid; hence the same were being duly entered and maintained in the regular books of account of the petitioner .The assessing authority of the petitioner for the assessment year 2000-01 both under U.P.Trade Tax Act (hereinafter referred to as "Act")and under the Central Sales Tax Act (hereinafter referred to as "Central Act")passed assessment order under Rule 41(8) read with Section 9(2) of U.P.Trade Tax Rules and the Central Sales Tax Act respectively and accepted the books of account of the petitioner declaring the petitioner exempted from payment of tax, as all the purchases were affected by the petitioner within State of U.P. i.e. of the tax paid goods.

5. The SIB team of the Trade Tax department had carried out some surveys of M/s Punjab Armoury,Kanpur to ascertain about the sales effected by the said dealers. It appears that from the inquiry made by the S.T.O. SIB certain facts came to their knowledge from the records maintained by M/s Punjab Armoury that the said firm has not disclosed true and correct figures in its sale register.Thereafter, the SIB team also made inquiries from the retail dealers including the petitioner and on the basis of said inquiry made by SIB team the assessing authority sought permission from respondent No. 3 for initiating reassessment proceeding against the petitioner u/s 21 of the Act. In pursuance of the same respondent No. ,3 issued notice u/s 21(2) of the Act fixing 22-11-2005 to file reply to the notice issued u/s 21(2) of the Act.

6. The petitioner submitted a detailed reply to the said show cause notice. The respondent No. 3 neither considered the reply nor provided any opportunity of hearing to the petitioner granted permission for reassessment u/s 21(2) of the Act to respondent No. 4. After the grant of permission by respondent No. 3, the assessing authority of the petitioner, the respondent No. 4 issued the impugned notice dated 27-12-2005 u/s 21(2) of the Act to the petitioner for the assessment year 2001-02 under U.P.Trade Tax Act alleging therein that the petitioner had made purchases from M/s Punjab Armoury , Kanpur and disclosed the same in its books of account as tax paid purchases although the said purchases from M/s Punjab Armoury , Kanpur was not tax paid purchases. Hence the present writ petition.

7. The facts of the connected writ petitions are almost similar. Therefore the facts of the above petitions are not being repeated .

8. At the very out set learned Counsel for the petitioner has contended that best judgment assessment has already been passed against M/s Punjab Armoury, Kanpur from whom purchases were made by the petitioners and tax has already been imposed on the disputed sale made by M/s Punjab Armoury, Kanpur, as such the petitioners cannot be subjected to double taxation.

9. It has been further submitted that respondent No. 3 without application of mind and considering the reply of the petitioner, has passed the impugned order.

He has further submitted that none of the parties have pointed out any defect in the books of account and the inquiry has been conducted behind the back of the petitioner, without affording any opportunity to cross examine the assessing authority. It was further submitted that neither any defect were pointed out in the books of account of the petitioner nor there was any allegation that the petitioner had not made purchases from the registered dealer within State of U.P. who had issued bill which was duly scrutinized by the authority.

10. Heard learned Counsel for the petitioner and learned Standing counsel appearing for the respondents and perused the record.

11. After obtaining the permission from respondent No. 3, the assessing authority issued notices to the petitioners to participate in the proceeding initiated by him u/s 21(2) of the Act on the basis that in the assessment proceeding the petitioner had disclosed tax paid purchases of arm from M/s Punjab Armoury, Kanpur. However, in the inquiry it was found that the said selling dealer did not disclose/record transactions relating to the petitioners. Meaning thereby, the purchases made by the petitioner from M/s Punjab Armoury, Kanpur was infact not tax paid purchases, as such, reassessment proceedings u/s 21(2) of the Act were initiated against the petitioners.

12. Several submissions have been made by the learned Counsel for the petitioners. But in our opinion very first submission is enough to allow the present writ petition.

13. The petitioners have filed supplementary affidavit dated 22-1-2006 wherein it has been stated that after the filing of the writ petitions, the petitioners came to know that the assessing authority of M/s Punjab Armoury, Kanpur has passed the assessment order against the said firm by which it has assessed tax liability upon the said firm M/s Punjab Armoury, Kanpur, on the basis of best judgment assessment for the assessment years in question. Consequently, demand notice has also been issued by the concerned assessing authority against the said dealer M/s Punjab Armoury, Kanpur for evading the huge amount of tax. Photostat copy of the assessment order passed against M/s Punjab Armoury, Kanpur has also been appended alongwith the supplementary affidavit.

14. On the strength of the aforesaid facts, learned Counsel for the petitioner has contended that when the tax has already been imposed upon M/s Punjab Armoury, Kanpur, there is no justification by re-opening the matter of the petitioners, which would amount to double taxation.

15. This Court by order dated 15-7-2009 had directed Sri U.K.Pandey, learned Standing counsel to file supplementary affidavit, stating therein as to whether assessment order passed in the case of M/s Punjab Armoury, Kanpur, has become final or not .In pursuance of the aforesaid direction the supplementary affidavit dated 28-7-2009 has been filed by the respondents stating in para 5 as follows:

5- That upon inquiry made from respondent No. 4 it has been stated that M/s Punjab Armoury, Kanpur, has not challenged the assessment order. As such, best judgment assessment has become final.

16. Thus the aforesaid averments clearly indicates that the assessment order passed against M/s Punjab Armoury, Kanpur, has become final.

17. The submission of the petitioner that since the disputed sale made to the petitioner by M/s Punjab Armoury, Kanpur has already been subjected to tax and the petitioner cannot be fastened with the liability to pay tax over the same transaction, has force particularly when assessment order passed against M/s Punjab Armoury, Kanpur, has not been challenged and attained finality.

18. In view of the above, the impugned notices issued u/s 21(2) of the act as well as the orders passed by respondent No. 3 granting permission are hereby quashed.

19. In the result all the aforesaid writ petitions succeed and are allowed. There shall be, however, no order as to costs.

