(2007) 04 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition No. 417 of 2004 (M/B)

Karam Chand Thapar and Bros. (Coal Sales) Ltd. APPELLANT

Vs

Deputy Commissioner (Assessment), Trade Tax and Others RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:
Central Sales Tax Act, 1956 — Section 14

Citation : (2007) 04 UK CK 0009

Hon'ble Judges : Rajeev Gupta, C.J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : V.B.S. Negi, for the Appellant; Subhash Upadhya, Brief Holder, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Petitioner Karam Chand Thapar & Bros (Coal Sales) Ltd. has filed this writ petition for the following reliefs:

a. Issue a writ, order or direction in the nature of certiorari quashing the notice dated 12-4-2004 (filed as Annexure-5) passed by the Respondent No. 3.

b. Issue a writ, order or direction in the nature of mandamus directing the Respondents to allow the Petitioner to avail the benefit of Form ''C and not to make any amendment in pursuance of the notice dated 12-4-2004.

c. Issue any suitable writ, order or direction in the nature of which this Hon''ble Court may deem fit and proper in the circumstances of the case.

d. Award the cost of the writ petition to the Petitioner.

2. The Petitioner, thus in substance, is seeking quashing of the notice dated 12-04-2004 (Annexure No. 5) issued by Respondent No. 1 Deputy Commissioner (Assessment), Trade Tax, Dehradun.

3. A bare perusal of the notice (Annexure No. 5) reveals that it is a notice to the

Petitioner to show cause as to why the Petitioner''s registration under the Sales Tax Act be not modified. The Petitioner, instead of filing reply to the show cause notice before the statutory authority, has rushed to the High Court by filing this writ petition.

4. Mr. V.B.S. Negi, the learned Counsel for the Petitioner fairly conceded that the authority i.e. Respondent No. 1 Deputy Commissioner (Assessment) Trade Tax, Dehradun is competent to issue the notice (Annexure No. 5) under the provisions of the Act. The learned Counsel, however, submitted that the notice has been issued by the authorities without any legal foundation.

5. The law is well settled that writ petition against a show cause notice, ordinarily, is not to be entertained unless the authority, who has issued the notice, lacks jurisdiction.

6. The Apex Court in the case of The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, observed in para 5:

5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ Petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court....

7. The Apex Court in the case of Trade Tax Officer, Saharanpur v. Royal Trading Company reported in (2005) 11 SCC 518, reiterating the same view, observed in para 1:

1. These appeals are against the judgment of the Allahabad High Court dated 21-1-2000. The Respondent Company were clearing their goods on the basis that they were leather sheets within the meaning of Section 14 of the Central Sales Tax Act. A show-cause notice was issued to them claiming that the items cleared by them were not leather sheets and that a higher duty was required to be paid. The Respondents filed a writ petition challenging the issuance of the show-cause notice. The High Court ignoring the well-settled law that against a mere issuance of a show-cause notice a court should be reluctant to interfere, purported to go into the facts and quashed the show-cause notice in a mechanical way. In our view the approach of the High Court was entirely wrong. All that had been done was that a show cause was issued. After the Respondents filed their reply, the notice may have been dropped or if the reply was not satisfactory based on the

reply further inquiries could have been made by the Appellants. Adjudication proceedings must not be stalled in the manner done by the High Court.

8. In view of the above-quoted dicta of the Apex Court, the writ petition is liable to be dismissed on this short ground alone.

9. The writ petition, therefore, is dismissed. No order as to costs.

10. Consequently, the interim order dated 21-05-2004 stands vacated automatically.