
(1999) 12 AHC CK 0068
In the Allahabad High Court
Case No : C.M.W.P. No. 1258 of 1990

Khalil Ahmad

APPELLANT

Vs

Revisional Authority/Assistant Sugar Commissioners, Nainital

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3, 3(1), 3(1a), 3B
Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961 — Rule 14(1), 15(1)

Citation : (2000) 1 AWC 481

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : Poonam Srivastava, for the Appellant; K.M. Sahai, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

P.K. Jain, J.—The petitioner claims that he is owner of crushing unit for crushing sugarcane and he has installed one power crusher of 33 x 46 cm. with four "Bhattis" Ruhelkhand and one power crusher centrifugal for which he was issued a licence under the provisions of the U.P. Khandsari Licence Order, 1967 which was renewed from year to year. He purchased sugarcane in the month of March, 1989 and paid purchase tax. Assessment order was passed by the assessing authority as contained In Annexure-1. Notice dated 17th July. 1989 was received by him on 21.8.1989. He sent reply through registered post on 26.8.1989. Another notice requiring the petitioner to be present on 19.2.1990 the rate of final hearing was received by him. On 12.2.1990 when the petitioner appeared his statement was recorded wherein he had given facts in detail. The revisional authority without considering the evidence as well as oral statement passed an order dated 16.8.1990. enhancing the sugarcane purchase tax for the month of March. 1989 to Rs. 14,400 and directing to him to deposit Rs. 10,485.15 paise in addition to the amount already deposited by him. The petitioner's case is that there were surveys dated 7.3.1989, 9.3.1989. 21.3,1989 and 31.3.1989. On some days only two "Sheriffs" were found operating and on Other days no Bhatti

was operating. The reports of the Surveying Authority are contained in Annexure-4, 5, 6, & 7 of the petition.

2. The petitioner has prayed that by issuing a writ of certiorari order dated 16th August, 1990 passed by respondent be quashed and a writ of mandamus be issued restraining the respondent from exercising extraordinary jurisdiction u/s 3B of the Sugarcane Purchase Tax Act. The order is challenged mainly on the ground that the revising authority, the respondent has misread the documentary evidence, that the powers u/s 3B of the Act have been wrongly exercised and no appeal lies against the order u/s 3B of the Act.

3. Respondents contested the petition by filing counter affidavit mainly on the ground that the petitioner had never informed the department that during the month of March, 1989 he had operated only two Bhattis out of four Bhattis in his unit. It is also stated that the revising authority can exercise Jurisdiction u/s 3B of the Act if there is any illegality committed in the assessment order ; and further that the material before the revising authority was considered and thereafter the impugned order was passed.

4. The petitioner has also filed rejoinder-affidavit almost reiterating the same facts as were stated in the writ petition.

5. Mrs. Poonam Srivastava, in support of the petition and Sri Sahai, learned Standing counsel for the respondents have been heard:

6. Section 3 of the U.P. Sugarcane Purchase Tax Act, 1961 (hereinafter called the Act) authorises the State Government to levy and collect the tax on purchase of Sugarcane. Proviso to sub-section (1) of Section 3 of the Act provides that, "provided that in case of unit, taxes shall be payable on the quantity of the sugarcane actually purchased, or at the option of the owner of the unit, on the quantity of sugarcane assumed. In accordance with the provisions of sub-section (1a) to have been purchased by him."

7. Sub-section (1) of Section 3 of the Act provides that the State Government may prescribe the quantity of sugarcane which shall be assumed for the purposes of proviso to sub-section (1) to have been purchased by the owners of different categories of the units having regard to the crushing capacity of the units and other relevant factor. Sub-section (1-a) of the Section 3 of the Act provides that the options referred to the proviso to sub-section (1) shall be exercised by the owner of the unit by such a date and in such a form as may be prescribed and shall relate to whole of the assessment year. The option once exercised shall be irrevocable for that year. Section 3B provides that the authorities mentioned therein may in order to satisfy themselves as to the legality and propriety of an order passed by the assessing authority under the Act may call for and examine, either on his own motion or on the application of the assessee or the State Government to be made within six months of the date of order, record of any proceeding of assessment and pass such orders as he thinks fit. Proviso (1) provides that no such application shall be entertained at

the instance of a party who has right to appeal but does not avail it. Proviso (2) provides that no enhancement shall be made under this section unless the assessee had been afforded a reasonable opportunity of being heard against the enhancement.

8. Sri. K. M. Sahai, learned standing counsel has argued that the petitioner had exercised option under the proviso to sub-section (1) of Section 3 to be taxed on the quantity of sugarcane assumed to have been purchased by him in accordance with the provisions of sub-section (1-a). His further argument is that since the option was in respect of the unit, in view of the provisions contained under sub-section (1-b) of Section 3, the option once exercised by the owner for a year was irrevocable for that year. It is further pointed out that the Assessing authority had taxed the assessee on the actual purchase for the sugarcane which was in violation of the provisions as pointed out as above, and, therefore, the revisional authority was competent to correct the illegality committed by the assessing authority.

9. Perusal of the proviso of Section 3 (1) of the Act shows that there are two methods of assessment of tax payable by the owner of a crusher or factory on the purchase of sugarcane, one is on actual purchase of the sugarcane by the owner of the unit and the other is option exercised by the owner of the unit on the quantity of the sugarcane assumed to have been purchased by him. The provisions of sub-sections (1-a) and (1-b) shall be applicable in the second case, i.e., where an option is exercised by the owner of the unit on the quantity of sugarcane assumed to have been purchased by him. The submission of Sri K .M. Sahai that the owner had given option in view of proviso to sub-section (1) of Section 3 and sub-section (1-a) of Section 3 is not correct and does not find any support from the material on record. It is neither the case of the petitioner nor of the respondent that the petitioner at any time in the assessment year under consideration had exercised option under subsections (1) and (1-a) of Section 3 of the Act. In the counter-affidavit as already pointed out above, there is no averment to the effect that the petitioner had at any point of time exercised option for being assessed to the sugarcane purchase tax on the quantity of sugarcane assumed to have been purchased by him. Only this much is stated in para 18 of the counter-affidavit that the petitioner was granted licence in respect of one power crusher and at the time of surveys made by the authorities, four Ruhelkhand Bhattis were found. It was further stated that those four Bhattis were used in manufacturing and all the four Bhattis had operated to their capacity and. therefore, the enhancement in the tax payable by the petitioner was justified. In this view of the matter, the argument of Sri K. M. Sahai is against the material on record and pleadings of the parties. It may also be seen that the assessing authority on the basis of survey reports accepted the claim of the assessee and passed the assessment order as contained in Annexure-1. The respondent has not filed copy of the notice which was served upon the petitioner by the respondent while exercising powers u/s 3B of the Act. From perusal of the Impugned order as contained in Annexure-3 it would appear that only ground

taken was that the owner of the unit had not filed statement contained in Form VII for the month of March, 1989. While passing the impugned order, the respondent has made a reference to the various surveys and has observed that in all the survey reports the Surveying Officer has mentioned in column No. 6 the place of the unit and details of Installed machinery and operated machinery with four "Bhattis". Thus, the only ground taken by the revising authority for revising the order passed by the assessing authority was that according to the survey reports, all the "Bhattis" were used by the assessee in the month of March, 1989 and not that he had given option under the proviso to subsections (1) and (1-a) of Section 3 of the Act.

10. The petitioner has filed copy of reports of all the surveys. The reports are Annexures Ex.4 to Ex. 7. In Annexures-4 and 5 even though in column No. 6 the descriptions of place of unit and machineries have been given but In column No. 10 It is specifically stated that only two "Bhattis" were operating. In Annexures-6 and 7 which are reports dated 21.3.1989 and 31.3.89 in column Nos. 8, 9 and 10 which relate to whether power crusher is working, whether "Bhattis" are working and the number of "Bhattis", it is specifically stated that the power crusher was not in operation and all the four "Bhattis" were riot in operation. Column No. 9 is specifically with regard to whether the "Bhattis" are operating and column No. 10 is with regard to the "Bhattis". In both the survey reports dated 7.3.1989 and 9.3.1989, it is stated by the Surveying Officer that only two "Bhattis" were operating. Therefore, the revising authority, the respondent has misread the survey reports and has wrongly Interpreted that in the month of March, 1989 all the four "Bhalfts" were operated by the petitioner.

11. It is true that Rule 14 of the U.P. Sugarcane (Purchase Tax) Rules, 1961 provides that the owner of a unit other than a owner exercising option, shall submit to the Assessing Officer before the twelfth day of each calender month a return in Form VII showing the quantity of sugarcane purchased by him during preceding month, the amount of tax due and the amount of tax deposited by him under Rule 13 in respect of such sugarcane with the treasury receipt indicating the deposit. The revising authority has observed in its order that the owner of the unit did not submit statement in Form VII for the month of March, 1989. Rule 15 (1) (a) of the U.P. Sugarcane (Purchase Tax) Rules, 1961, provides that the Assessing Officer shall on receipt of return submitted to him under sub-rule (1) of Rule 14, examine the same and after giving the owner of the unit a reasonable opportunity of being heard, by order, assess the correct amount of tax payable. Sub-rule (1) (b) further provides that where the owner of a unit, other than a owner exercising option, fails to submit the return in accordance with the provisions of sub-rule (1), the Assessing Officer shall, after making such enquiry as he deems necessary, and giving to such owner a reasonable opportunity of being heard, assess the correct amount of tax payable. Thus, in case the statement as required by Rule 14 (1) of the Rules was not submitted by the petitioner in Form VII, it was for the assessing authority to have not accepted the return filed by the petitioner and to have held an enquiry as it deemed necessary

and thereafter assess the correct amount of tax. The provisions of Section 3B of the Act have already been quoted above. It is only when an order passed by the authority is found to be illegal and improper that the revising authority can exercise jurisdiction and can after complying with the provisions of the said section, enhance the tax assessed by the assessing authority. Once the assessing authority on the basis of survey reports was satisfied with the statement of purchase of sugarcane by the petitioner for the month of March, 1989, there was no material showing that the assessing authority committed any illegality or impropriety. When there were four survey reports on record which disclosed that only two Bhattis were operated by the petitioner, there was no room for assuming that all the four Bhattis were operated and thereby the assessing authority committed illegality and impropriety in passing the assessment order. Therefore, the order passed by the revising authority, the respondent was without jurisdiction and on assumption of incorrect facts and misreading of the survey reports.

12. For the foregoing discussions, there is no option but to quash the impugned order as contained in Annexure-3. The petitioner has intentionally been harassed by passing the Impugned order by illegal exercise of the revisional jurisdiction by the respondent. The petitioner is, therefore, entitled to costs of this petition which are quantified at Rs. 1,000. Since the revisional authority alone is the party to the petition and State of U.P. is not party, the cost shall be realized from the Officer occupying the office of the revisional authority on the date of order dated 16th August, 1990, and cost shall be paid to the petitioner within 3 months from the date of this order falling which the petitioner may recover the same through process of the Court.