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(1996) 07 AHC CK 0117

In the Allahabad High Court

Case No : Writ Petition No. 1386 of 1994

Kisan Gur-Khandsari Udyogik Utpadan Sahkari Samiti Ltd. APPELLANT

Vs

Dy. Sugar Cane Commissioner RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:
Constitution of India, 1950 — Article 226
Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 — Section 3B, 3B(1)

Citation : (1996) 07 AHC CK 0117

Hon'ble Judges : R.K. Gulati, J

Bench : Single Bench

Advocate : O.S. Malik, for the Appellant;

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This writ petition under Article 226 of the Constitution of India is directed against three orders, all dated 4.12.1992 passed by the Deputy Sugar Cane Commissioner, Meerut, in relation to different months in respect of the assessment years 1990-91 and 1991-92. The orders under challenge were made in the purported exercise of the powers contained in Section 3B of the U.P. Sugar Cane (Purchase Tax) Act, 1961 (hereinafter referred as "the Act"). In the instant case, Sub-section (1) of Section 3B is the only relevant provision with which we are concerned. The said provision reads as under:

3B. Revision.--(1) The Cane Commissioner, in the case of a factory, and the Sugar Commissioner or any other officer, not below the rank of Assistant Sugar Cane Commissioner, authorised by the Sugar Commissioner in this behalf, in the case of a unit, may in order to satisfy himself as to the legality or propriety of any order passed by an assessing authority under this Act, 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 the order, the record of any proceedings of assessment and pass such orders as he may think fit:

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Provided that no such application shall be entertained at the instance of a party which has a right of appeal but does not avail of it:

Provided further that no enhancement shall be made under this section unless the Assessee has been afforded a reasonable opportunity of being heard against the enhancement.

2. By the orders impugned, the Deputy Sugar Cane Commissioner, Meerut, has revised certain assessment orders directing enhancement of purchase tax which was originally assessed by the assessing authority by the respective assesement orders under revision.

3. During the course of argument, learned Counsel for the Petitioner has challenged the legality of the impugned orders on two-fold submissions. It was contended that in exercising the power of revision u/s 3B of the Act, the Deputy Sugar Cane Commissioner was not entitled to go into the questions of fact. The Commissioner, it was urged, could not revise an assessment order on matters which were in the realm of factual state of affairs nor could he examine the question about the quantum of sugarcane cultivated by the Petitioner or its consumption for the purposes of crushing. Likewise, the revising authority was not competent to go into the question of quantum of sugarcane that the Petitioner may have purchased from the market particularly when the finding of the assessing authority was that the Petitioner had not purchased any sugarcane and had crushed the sugarcane which was cultivated by the Petitioner on his own fields.

4. Now on a plain reading of Sub-section (1) of Section 3B, it would be evident that the revising authority may revise any order of assessing authority on an application of the Assessee or the State Government or on his own motion, i.e., sua moto. However, the revising authority can only act where the "illegality" or "impropriety" of an order comes to its notice and the action is taken "for the purpose of satisfying itself as to the legality or propriety" of the order which is passed by the assessing authority under the Act. The exercise of power under the said provision is not dependent on the fulfilment of any condition precedent. However, before invoking the powers u/s 3B, the revising authority must be satisfied that the relevant order is improper, illegal or unjust or the order levying the purchase tax is substantially adverse to the financial interest of the State or the Assessee. To put it differently, the revisional jurisdiction under the provisions aforesaid extends not only to a consideration of the question of legality of an order passed, but also to a consideration of the correctness or justness of such order. The provisions under discussion are intended to be exercised both in the interest of the State as also for the Assessee.

5. The expression used in the "legality or impropriety of any order passed". The word "propriety" has various shades of meanings In the Oxford English Dictionary, it has been stated to mean fitness; appropriateness; aptitude; suitability; appropriateness to the circumstances or conditions; conformity with

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the requirements, rules or principle; Tightness; correctness, justness, accuracy."

6. The context in which the expression "propriety" has been used in Section 3B of the Act, it must be interpreted as relating to the correctness, justness, accuracy or appropriateness of the orders, which are amenable to the revising authority under the said provisions. What is relevant is that there is no omission on the part of the assessing authority which may jeopardise the fiscal interest of the revenue nor an excessive assessment has been made to the disadvantage of the tax payer. The revising authority has been entrusted the power to call for and examine the record of any proceedings of assessment and to go through them, and then pass such appropriate order as the circumstances may warrant in a given case having regard to the material available so that Justice is done between the State and the taxpayer. The second proviso attached to Sub-section (1) of Section 3B says that if the order proposed would affect the Assessee adversely, in the sense that an enhancement in the tax is proposed, then unless the Assessee has been afforded a reasonable opportunity of being heard against the proposed assessment, no order should be made. There is no limitation provided in Section 3B that the revising authority cannot interfere on a question of fact nor any such impediment can be imposed on powers of the revising authority under those provisions. The revising authority in his discretion may Interfere with order of an assessing authority where the assessment is based on no evidence or on misreading of evidence or when facts admitted are not taken note of in framing the assessment order. likewise an order of the subordinate authority is liable to be interfered with where it is based on matters not in evidence and the view taken by that authority lacks of appreciation of the true legal position. It is the lack of sufficient co-relation between the evidence and the decision that constitute a source of impropriety.

7. The contention of the learned Counsel for the Petitioner that the revising authority cannot interfere on question of fact irrespective of all other considerations, cannot be accepted and it is accordingly rejected.

8. It was next contended that the Petitioner was not served with any notice before the impugned orders were made nor any opportunity of being heard was provided to the Petitioner, as contemplated under the second proviso to Section 3B. The only averment on this score is contained in para 14 of the writ petition which reads as under:

That the impugned orders passed by Respondent without giving any opportunity of being heard to the Petitioner.

The Respondent, Deputy Sugar Cane Commissioner, Meerut, has filed a counter-affidavit. The averments made in paragraph 14 of the writ petition have been specifically denied. No rejoinder affidavit has been filed in denial of the counter-affidavit. When the case was called out today, at the very outset the learned Counsel for the Petitioner stated that he does not propose to file any rejoinder affidavit as the Petitioner has not responded to the letters sent by him for the

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purpose of filing the rejoinder affidavit. That apart, in the impugned orders, it has categorically been stated that the Petitioner was heard before the orders were made. This statement appears in each of the three impugned orders. Not only that, the grounds on which the assessment orders under revision were found deficient by the revising authority, have also been set out in the orders passed in revision on which the Petitioner was also heard. Therefore, the contention that no notice or opportunity of being heard was given to the Petitioner, as contemplated under the second proviso to Section 3B of the Act, cannot be accepted. The second contention is also rejected.

9. No other point was pressed before this case.

10. The writ petition is devoid on merit and accordingly rejected.

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