(2013) 11 AHC CK 0026

In the Allahabad High Court

Case No : Writ Tax No. 387 of 2008

Kumar Rice Mill Pvt. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2014) 69 VST 122

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Judgement

1. We have heard Shri Ashok Kumar for the petitioners. Shri C.B. Tripathi, special counsel appears for the State respondents. All the petitioners are engaged in the business of purchase of paddy within the State of U.P. and manufacturer of rice. They sell the manufactured rice both within and outside the State of U.P. In these writ petitions the petitioners have challenged the notices issued u/s 21(2) of the U.P. Trade Tax Act by the Additional Commissioner (Grade-1), Commercial Tax, to show cause as to why permission be not given to reopen the assessments of trade tax on the ground that while assessing the petitioners to Central sales tax, a set-off/adjustment has been given of the amount of State tax paid on the purchase of paddy. The notices proceed on the basis that there is no provision under the U.P. Trade Tax Act for giving benefit of section 8(2A) of the Central Sales Tax Act to the manufacturers of rice for giving adjustment of the State tax paid on paddy in the Central sales tax, referring to the clarification in the circular letter No. 2313 of the Commissioner, Trade Tax, U.P., dated March 29, 2007.

2. The petitioner has also challenged the circular dated March 29, 2007 on the ground that the Commissioner of Trade Tax has no jurisdiction to issue such circular influencing the assessing authorities to exercise their powers of assessment in one way or other.

3. It is submitted by Shri Ashok Kumar that the questions raised in these writ petitions were considered and decided in favour of assessee in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 and in which a

Division Bench of this court by its judgment dated May 22, 2008 held in paragraphs 72 to 76 as follows (pages 42 to 44 in 22 VST):

72. In view of the above discussions, we are of the view that though we have upheld the view taken by the Commissioner of Trade Tax in the impugned circular, we express that the Commissioner of Trade Tax had no authority to issue such circular giving his own interpretation in respect of particular provision though no such question in any of the proceeding before him was involved and issuing a direction to the subordinate authority to proceed on the basis of such view amounts to interference with the judicial function of subordinate officers. In this view of the matter, we direct that the Commissioner of Trade Tax should refrain himself in issuing such direction in future, which amounts to interference with the judicial function of subordinate officers. In any view of the matter, the view expressed in the circular may amount to his own view and does not constitute material on the basis of which a belief could be formed to reopen the case.

73. Further, perusal of the notices (one of the notice being referred hereinabove) issued by the assessing authority reveals that no material has been referred on the basis of which believe was formed to reopen the case u/s 21(1) of the Act. In the original assessment order u/s 9 of the Central Act, the tax levied on the turnover of rice under the Central Act has been reduced by the tax levied on the paddy out of which such rice was procured. Some of the assessment orders passed u/s 9 of the Central Act have been filed along with counter and rejoinder affidavits. The reduction of tax could only be possible u/s 15(c) of the Central Act. Several writ petitions which have been filed at Lucknow Bench and at Allahabad reveal that the assessing authority has understood section 15(c) of the Central Act that reduction of tax under the Central Act on the turnover of rice with the tax levied on paddy was permissible. The notices u/s 21 of the Act have been issued without any fresh material and only on account of change of opinion. Initial opinion while passing the original assessment orders u/s 9 of the Central Act may be incorrect, but once the view has been taken and the reduction has been allowed on the same existing fact, the proceeding u/s 21 of the Act cannot be taken on account of change of opinion. The assessing authority in the notice u/s 21 of the Act has neither referred any decision of any High Court or of the apex court interpreting section 15(c) of the Act in the manner in which it has now been considered. Therefore, apart from his own change of view and may be on the basis of instructions of the Commissioner of Trade Tax by the impugned circular, proceedings u/s 21 of the Act have been initiated. Thus, on the facts and circumstances of the case, we are of the view that at the time of initiation of the proceeding u/s 21 of the Act, there was no material on the basis of which a belief could be formed that there was escaped assessment, namely, that the tax levied on the inter-State sales of rice has been wrongly reduced by the tax levied on the paddy out of which such rice was procured except on account of his own change of opinion in this regard.

74. It may be mentioned here that in view of language used in the proviso to section 21(2) of the Act, the approval of extension of time may be granted even in case of change of opinion, but in absence of any such words in section 21(1) of the Act the assessing authority can not initiate and reopen the proceeding u/s 21(1) of the Act on account of change of opinion.

75. Thus, we hold as follows:-

(i) Section 15(c) of the Central Act provides reduction of tax leviable on the turnover of rice under the U.P. Trade Tax Act with the tax levied on the paddy out of which such rice was procured. It does not provide any reduction of tax under the Central Act by the tax paid on paddy under the State law out of which such rice was procured.

(ii) The proceeding u/s 21 of the Act have been initiated without any material on the basis of which belief could be formed that there was escaped assessment, namely, that the tax levied on the inter-State sales of rice under the Central Act has been wrongly reduced by the tax levied on paddy under the U.P. Trade Tax Act out of which such rice was procured except on account of change of opinion.

76. The initiation of proceeding u/s 21(1) of the Act on account of change of opinion is not permissible and, therefore, the initiation of proceeding u/s 21 of the Act in the cases of the petitioners is bad in law.

4. It is submitted by Shri Ashok Kumar that the judgment in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 has been challenged by the State of U.P. in Civil Appeal No. 6714 of 2009 but no interim relief has been allowed. According to him the ratio of the judgment still holds good to be followed by the High Court.

5. Shri C.B. Tripathi, Special Counsel appearing for the State of U.P., on the other hand, submits that the question as to whether the Circular dated March 29, 2007 could be issued by the Commissioner, Trade Tax and whether reduction of Central sales tax by the amount of State tax paid on purchase of paddy can be allowed, was subject-matter of consideration in a subsequent judgment of this court in Gaya Deen Kailash Chand Vs. State of U.P. and Others, Writ Tax No. 642 of 2008 decided on March 6, 2013. In this judgment the court distinguished the judgment in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 and held that the circular is merely clarificatory in nature. The State authorities in the State of U.P. were proceeding to grant reduction of State tax paid on paddy in the Central sales tax on the basis of judgment rendered by the Andhra Pradesh High Court in the case of Aitha Narasaiah and Co. and Another Vs. The State of Andhra Pradesh and Another, . The circular clarified that the judgment of the Andhra Pradesh High Court is not applicable due to different statutory set up in U.P. Trade Tax Act. This position of law was found legally correct in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 and thus it cannot be said that the Commissioner wanted to and had interfered in quasi-judicial functioning of the authorities of the trade tax.

It was held in Gaya Deen Kailash Chand Vs. State of U.P. and Others, as follows (pages 152 and 153 in 59 VST):

A bare perusal of the circular would show that it has only invited the attention of the assessing authorities to the fact that the decision given by the Andhra Pradesh High Court in the case of Aitha Narasaiah and Co. and Another Vs. The State of Andhra Pradesh and Another, is not applicable due to different statutory set up in U.P. Trade Tax Act. The said view has been found legally correct by the Division Bench of this court in the case of Aryaverth Chawal Udyog [2009] 22 VST 10 (All) : [2008] UPTC 881. Thus, it cannot be said by any stretch of imagination that it amounts to interference in the quasi-judicial function of the authorities of trade tax. Drawing the attention of the authorities discharging quasi-judicial function, to a correct exposition of law, does not amount interference in quasi-judicial function of the authority. All statutory authorities are bound by law and we see nothing objectionable if the attention of such authorities is drawn to the correct proposition of law. It is bounden duty of every trade tax authorities to assess, levy and realize correct trade tax. The circular only facilitates such authorities to discharge quasi-judicial function in conformity with law, smoothly and harmoniously. As a matter of fact, the said circular can be taken as if it is providing assistance to quasi-judicial authority in discharge of its duties. It is interesting to note that the judgment of Aryaverth Chawal Udyog [2009] 22 VST 10 (All) : [2008] UPTC 881 holding the circular as valid is based on the decision given by the apex court in the case of Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc., , wherein the apex court had an occasion to interpret section 15(c) of the Central Sales Tax Act. Although, in the circular, the CTT has independently took the view but is being in conformity with the ratio of Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc., is in a sense reminds the trade tax authorities the correct exposition of law.

6. Shri C.B. Tripathi submits that this court clearly distinguished the notices issued u/s 21(2) in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 and the notices issued in Gaya Deen Kailash Chand Vs. State of U.P. and Others, and found that the notice in Gaya Deen Kailash Chand is based on the circular dated March 29, 2007 issued by the Commissioner, Trade Tax, informing that where Central sales of rice have been made, the tax paid in the State law on paddy cannot be adjusted against the tax liability on the inter-State sale of rice. Such adjustment is impermissible and if such adjustment has been made, proceeding for refund u/s 21(2) is desired. The circular, even in view of Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881, contains the correct exposition of law. In the facts and circumstances the initiation of reassessment cannot be held to be invalid. In Gaya Deen Kailash Chand Vs. State of U.P. and Others, this court referred to the provisions of section 21(1) of the Act, which provides (page 156 in 59 VST):

Sub-section (1) of section 21 of the Act confers power on the assessing authority to reopen the assessment order if the assessing authority has reason to believe that--

(i) whole or part of any turnover of a dealer in any assessment order or part thereof;

(ii) has escaped assessment to tax, or

(iii) has been under-assessed, or

(iv) has been assessed to tax at a rate lower than at which it is assessable under this Act, or

(v) any deductions or exemptions have been wrongly allowed in respect thereof.

(vi) the assessing authority may issue notice . . .

7. Section 21(2) is by way of enlargement of jurisdiction with the permission of the Additional Commissioner.

8. In the present three writ petitions the notices u/s 21(2) are by way of show-cause notices as to why limitation be not enlarged for proceeding of reassessment to tax to deny the adjustment of State tax given on the purchase of paddy in the Central sales tax on inter-State sales.

9. In Gaya Deen Kailash Chand Vs. State of U.P. and Others, this court referred to the judgments in The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow, , Sales Tax Officer, Ganjam Vs. Uttareswari Rice Mills, , Rawalpindi Flour Mills (P.) Ltd. v. State of U.P. [1998] UPTC 172, S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, . In all these cases the Supreme Court and this court have held that if the grounds are relevant and have a nexus with the formation of opinion 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 Supreme Court, for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency or reasons for the belief. At the same time, the belief must be held in good faith and should not be a mere pretence.

10. It cannot be disputed that in Gaya Deen Kailash Chand Vs. State of U.P. and Others, a Division Bench of this court merely explained the judgment in Aryaverth Chawal Udyog v. State of U P. [2009] 22 VST 10 (All) : [2008] UPTC 881 which had also accepted the same principle of law that u/s 15(c) of the Central Act the reduction of tax leviable on the turnover of rice under the U.P. Trade Tax Act and with the tax levied on paddy out of which such rice was produced, cannot be allowed. The Central Act does not provide any reduction or tax by the tax paid on paddy under the State law out of which such rice was produced.

11. We do not find any substance in the argument of Shri Ashok Kumar that in Gaya Deen Kailash Chand Vs. State of U.P. and Others, the court had differed with the opinion expressed in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 on the questions raised and thus the matter should have been referred to a larger bench. We also do not find substance in his contention that since honourable Supreme Court has issued notice and granted relief to the State of U.P. to challenge the judgment in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 this court should wait until the Civil Appeal No. 6714 of 2009 is decided by the apex court. This court taking the earliest opportunity in Gaya Deen Kailash Chand Vs. State of U.P. and Others, clarified the judgment in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 upholding the provisions of section 15(c) of the Central Sales Tax Act upheld the notices, which were issued u/s 21(2) for reassessment to tax the escaped turnover due to deductions which were wrongly allowed u/s 21(1)(v) of the U.P. Trade Tax Act.

12. Where the principle of law has been correctly laid down by the Division Bench, it is not necessary for the subsequent Division Bench hearing the matter of granting relief to refer the matter to a Larger Bench.

13. So far as directions issued in para 72 of the judgment in Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008] UPTC 881 is concerned, we find that the directions are merely by way of guidance and do not amount to quashing the circular nor there was any valid ground on which the circular letter dated March 29, 2007, could be quashed. In the present case also we do not find any good ground to entertain the challenge inasmuch as the circular is only by way of clarification and does not take away the jurisdiction of assessing authority of reassessment.

14. We have taken the same view in Balaji Foods v. State of U.P. [2014] 69 VST 119 (All) (Writ Tax No. 1466 of 2008 decided on July 10, 2013).

15. Before parting the matter we may quote with benefit the conclusions drawn in Gaya Deen Kailash Chand Vs. State of U.P. and Others, as follows (page 159 in 59 VST):

Having regard to what has been said above, we are of the opinion that the Additional Commissioner Grade-I/respondent No. 2, has committed no error in exercise of power u/s 21(2) of the Act in granting the impugned permission permitting the assessing officer to initiate the proceeding for reassessment by the order dated February 22, 2008 as contained in annexure 4 of the writ petition. The consequent notice for reassessment u/s 21(2) given by the assessing authority dated March 11, 2008, annexure 6, to the writ petition is also valid.

There is one more aspect of the case yet. The purchase tax paid in the State of U.P. by the petitioner, as held in the case of Satnam Overseas [2002] UPTC 1211 and Aryaverth Chawal Udyog v. State of U.P. [2009] 22 VST 10 (All) : [2008]

UPTC 881, cannot be adjusted against the Central sales tax. The assessing officer has, thus, wrongly given adjustment of Rs. 1,22,245. Realizing the mistake, the assessing officer wants to correct it. Whether a writ court can prevent the assessing officer to correct the mistake when law envisages such correction u/s 21 of the Act. The answer is obviously ''No''. No writ can be issued to prohibit a person to correct a legal mistake. A writ jurisdiction is meant for doing justice and not to perpetuate injustice or technicalities.

16. For the reasons given as above, the show-cause notices proposing reassessment of the escaped turnover issued u/s 21(2) of the U.P. Trade Tax Act are held to be valid. All the writ petitions are consequently dismissed.

