(2011) 10 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1313 of 2011

M/s. Dabur India Limited APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 147, 21, 21(1), 21(2), 4

Citation : (2011) 10 ADJ 579

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri Bharat Ji Agarwal assisted by Sri Piyush Agarwal for the petitioner. Learned standing counsel appears for the State respondents.

2. The petitioner had earlier filed a Writ Petition (Tax) No. 2283 of 2002, against the notice u/s 21(2) U.P. Trade Tax Act, which was allowed by the Court on 31.3.2010, setting aside the order dated 28.9.2002, passed by the Additional Commissioner Grade-I, Trade Tax, Ghaziabad Zone, Ghaziabad. The Court had accepted the grounds of challenge that no material was disclosed in the order passed u/s 21(2) of the Act, relating to the escaped assessment for the years 1996-97, 1997-98, 1998-99 and 1999-2000, and directed the Additional Commissioner, Grade-I, Trade Tax, Ghaziabad Zone, Ghaziabad, or any other competent authority to pass fresh orders.

3. In pursuance to the order passed by the Court on 31.3.2010, the respondent No. 2 has passed afresh order dated 11.5.2011, on the basis of which notice u/s 21(2) has been issued to reply as to why the escaped turnover be not reassessed to tax. After receiving petitioner''s reply, the Additional Commissioner, has passed orders on 11.5.2011, giving permission u/s 21(2) of the U.P. Trade Tax Act for reassessment, giving rise to this writ petition, to set aside the order for assessment years 1996-97 and 1998-99. For assessment years 1998-99 and

1999-00, the petitioner is participating in the assessment proceedings.

4. Brief facts giving rise to the writ petition are as follows: The petitioner is a public limited company, having its registered office at 8/3 Asaf Ali Road, New Delhi, and factory at Plot No. 22, Site-IV, Industrial Area, Sahibabad, District Ghaziabad. It is manufacturing and selling Ayurvedic medicines, hair oil, tooth powder and tooth paste etc. The petitioner is registered as a dealer both under the U.P. Trade Tax Act as well as under the Central Sales Tax Act.

5. It is stated that on the detailed scrutiny of the records and documents, including the account books of the petitioner, the assessment orders were passed for the assessment year 1996-97 on 26.3.1999. The petitioner''s account books were accepted and sales disclosed by the Company were subjected to trade tax. The Assessing Officer, while accepting the account books and the disclosed turnover, had examined the sales, which were made by the petitioner within U.P., as well as the stock transfer and the sales made by the petitioner to Canteen Stores Department (CSD) of the Government India. The Commanding Officer, CSD, Meerut had also given a certificate, verifying that CSD has purchased the goods from the petitioner at Meerut, and in view of the certificate issued by the Commanding Officer, CSD, Meerut, an exemption was granted to the petitioner in respect of the sales made to the CSD, Meerut u/s 4 of the Act. Similarly for assessment years 1997-98, the assessment order was passed on 21.3.2000.

6. The petitioner replied to the notice dated 8.7.2010, on 3.8.2010, for reassessment requesting the respondent No. 2, to disclose the materials relating to forming of opinion of escaped assessment for the assessment years 1996-97 and 1997-98. The petitioner''s representative also appeared before respondent No. 2 on 31.1.2011, and requested him to provide the material relating to escaped assessment for the assessment years 1996-97 and 1997-98. In respect to notices for reassessment for the years 2000-01 and 2001-02, the petitioner filed a writ petition No. 1242 of 2003. As observed above, the Court quashed the reassessment proceedings u/s 21 of the Act, directed fresh orders to be passed after disclosing relevant material.

7. It is submitted by Sri Bharat Ji Agarwal that the order dated 11.5.2011, to reopen the assessment proceedings relating to the assessment years 1996-97 and 1997-98, does not disclose any material u/s 21(1) of the Act. He has relied upon judgments of this Court in M/s. Aryaverth Chawal Udyog and others v. State of U.P. and others, 2008 UPTC 881 and S.K. Traders Modi Nagar, Ghaziabad v. Additional Commissioner Grade-I, Trade Tax Zone Ghaziabad and another, 2008 UPTC 392, in support of his submission that there was no material at all to form an opinion of ''reason to believe'' of the turnover having escaped assessment for reassessment.

8. In M/s. Aryaverth Chawal Udyog (supra), after considering the entire case law on the subject, this Court held in para 48 as follows:

Under Section 21(1) of the Act the words are "has reason to believe" and not "reason to suspect". The belief entertained by the Assessing Officer must not be arbitrary or irrational. It must be reasonable and based on reasons, which are relevant. It must be in good faith and not in mere pretence, should have a rational connection and relevant bearing on the formation of the belief, and should not be extraneous or irrelevant The material should be relating to the particular year for which the assessment is sought to be reopened. It is not any and every material, howsoever vague and indefinite or distant, remote and far fetched, which would warrant the formation of the belief relating to escapement of income.

9. In M/s. S.K. Traders (Supra), the Court held in para 16 as follows:

The formation of the required opinion and belief by the Assessing Officer is a condition precedent. Without such formation, he will not have jurisdiction to initiate proceedings u/s 147. The fulfillment of this condition is not a mere formality but it is mandatory. The failure to fulfill that condition would vitiate the entire proceedings as held by the Apex Court in the case of Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax, and Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, . The reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been escapement of income of the assessee from assessment in the particular year. It is not any and every material, howsoever vague and indefinite or distant, remote and far fetched, which would warrant the formation of the belief relating to escapement of income of the assessee from assessment, as held by the Hon''ble Supreme Court in the Case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Assessing officer could not have reason to belief. In such a case, the notice issued by him would be liable to be struck down as invalid as held in the case of Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, .

10. A counter-affidavit of Sri R.R. Singh, Commercial Tax Officer, Ghaziabad had been filed in which it is stated in paragraphs 8, 9,12,13 and 17 as follows:

8. That the contents of paragraph Nos. 11 to 13 of the writ petition have been placed to mislead this Hon''ble Court as such denied. It is a matter of practice with Canteen Stores Department that the Purchase Orders for goods for Pan-India supply are issued by the Bombay based Head Quarter of the Canteen Stores Department, alongwith the allocation sheet categorically bearing details of the different depot all across India with allocation of goods to be supplied to the respective depot. Against the purchase order issued for supply of goods to whole of India as per the purchase order referred above herein this paragraph, the petitioner has shown supply of goods allocated for Canteen Stores Department in

other States also made to Canteen Stores Department, Meerut. Further Canteen Stores Department Meerut in its return has disclosed supply of only that much material by the petitioner, which had been allocated in the Purchase Order issued from Canteen Stores Department, HQ, Bombay. It is therefore that the material, that the turnover has escaped assessment since came to the notice only subsequent to the inspection of the records of Canteen Stores Department, Meerut did the respondent No. 3 sought permission for reassessment for AY 1996-97,1997-98,1998-99 and 1999-2000.

9. That the contents of paragraph No. 14 of the writ petition are false misconceived and therefore denied. It is submitted that the petitioner had placed the certificates issued by the Commanding Officer, Canteen Stores Department, Meerut as proof of supplies made inside the State of U.P., claiming exemption, however upon scrutiny of records it came to light that against Purchase Orders for Canteen Stores Department outside State of U.P. also the supplies in the certificate produced by the petitioner are showing sale in U.P. Canteen Stores Department only, whereas upon verification from Commanding Officer, Canteen Stores Department, Meerut had given confirmation of supplies allocated by the Purchase Order for Canteen Stores Department, Meerut only and rest have been shown to have been supplied to other Canteen Stores Department''s which included Canteen Stores Department''s outside State of U.P. Further if it is to be assumed that petitioner made consolidated supplies related to all Canteen Stores Department''s irrespective of allocation in the Purchase Orders to Canteen Stores Department Meerut only, and Canteen Stores Department Meerut further transported goods to other Canteen Stores Department''s based on respective allocation, then in such an event Canteen Stores Department was under an obligation to produce form ''F'' for claiming exemption from tax for supplies made outside State of U.P., which was never produced nor the supplies outside State of U. P. had any reference in returns filed by Canteen Stores Department, Meerut for assessment years 1996-97,1997-98, 1998-99 and 1999-2000 as such it is clearly reflective of the facts that the supplies outside UP were also made by the petitioner and there was escapement of turn over.

12. That the contents of paragraph No. 19 of the writ petition are misconceived and misleading as such denied. It is submitted that upon verification of the certificates of Commanding Officer, Canteen Stores Department, Meerut so produced by the petitioner for claiming exemption over supplies made against Purchase Orders for Canteen Stores Department''s even outside State of U.P., there was complete mismatch in the details in the certificates and those provided by Commanding Officer, Canteen Stores Department, Meerut. The details provided by Commanding Officer, Canteen Stores Department, Meerut clearly spelt out the supplies made to Canteen Stores Department, only as separated from supplies made to other depots outside State of U.P., clearly indicating collusion between Commanding Officer, Canteen Stores Department, Meerut and the petitioner for evading tax applicable upon supply of goods outside State of U.P.

13. That the contents of paragraph No. 20 of the writ petition are not admitted as stated. It is submitted that from the statement in paragraph under reply that it has been admitted by the petitioner that material related to escapement of turnover from assessment for assessment year 2000-01 and 2001-02 was found upon inspection of records of Canteen Stores Department, Meerut by SIB. Canteen Stores Department, Meerut undisputedly is a unit of Government of India as such under normal ordinary circumstances, it is expected to adopt similar modus operandi for sale and purchase every year including assessment year 1996-97 and 1997-98. Further it may not be out of place to mention here that discrepancies in the certificates of exemption that has been provided by the Commanding Officer, Canteen Stores Department, Meerut, furnished by the petitioner for assessment year 1998-99 and 1999-2000 came to light when they were verified with the records of Canteen Stores Department, Meerut, which revealed that actual purchases which were made by Canteen Stores Department, Meerut for consumption in their Depot as well as other Depots in U.P. were less than the total amount disclosed in the Certificates clearly indicating something fishy leading the department to pass composite order for reassessment.

17. That the contents of paragraph No. 25 of the writ petition are not admitted as stated. Petitioner has made sale not only to Canteen Stores Department Meerut, but had also supplied goods to Canteen Stores Department''s in other States outside U.P., which is evident from the ambiguity in the certificate for exemption that came to light subsequent to verification.

11. Learned standing counsel submits that in the present case, there was sufficient material for the relevant years 1996-97 and 1997-98, before the competent authority to form an opinion that he has reason to believe of escapement of turnover. He relies upon material referred to in the impugned order of the Additional Commissioner Grade-I Commercial Tax Ghaziabad on the examined the report of the Kar Nirdaran Officer, and the records of the CSD of the years 1996-97, 1998-99,1998-99 and 1999-00, from which it was found that CSD, Meerut have not filed forms of Central Sales Tax nor has participated in the proceedings of the hearing of the cases at any stage and declared the Central Sales/Stock transfer. The records reflect that the goods were also supplied to Canteen Stores outside the State of U.P. by M/s. Dabur India Ltd., Plot No. 22, Sahibabad, Ghaziabad. The sales made by CSD Depot, Meerut and other depots within the U.P. is only exempted from commercial tax. He found that for assessment years 1996-97 to 1999-2000, the examination of CSD records revealed that it is not filing any Form F, for Central Sales Tax, nor at any stage during the hearing in assessment proceedings any declaration of Central Sales Tax or Stock transfer was claimed. In this manner the exemption were wrongly given to Dabur India Ltd for Rs. 35,92,79,276/- in the year 1998-99, as against sales within U.P. of Rs. 6,23,89,275/-. For the previous years also there was escapement of turnover on the same basis.

12. From these details given in the report, the department discovered the

material, on which it has recorded the reason to believe that for the four assessment years viz., 1996-97, 1997-98, 1998-99 and 1999-2000 there was escapement of the assessment of sales made outside the State of U.P. The material so found from the reports of Central Sales through CSD, have direct link and live nexus of the escapement of income from assessment in these years.

13. The petitioner has not challenged the notices u/s 21(1) of the Act for the assessment years 1998-99 and 1999-2000 in the High Court. For these years, they are contesting the matter in the reassessment proceedings. For these assessment years also similar modus operendi of Central Sales was found.

14. We do not find substance in the contention of Sri Bharat Ji Agarawal that on the aforesaid facts there could no reason to believe for the escapement of assessment for the years 1996-97 and 1997-98. It is neither objected, nor pleaded in the reply to the notices or in the writ petition that there was no sale outside the State of U.P., in respect of the assessment years 1996-97 and 1997-98. The petitioner has not contested the material for the years 1998-99 and 1999-2000, for which also there was reason-to believe for escapement of assessment. In para 13 of the counter-affidavit, it has been clearly stated that:

Canteen Stores Department, Meerut undisputedly is a unit of Government of India as such under normal ordinary circumstances, it is expected to adopt similar modus operandi for sale and purchase every year including assessment year 1996-97 and 1997-98. Further it may not be out of place to mention here that discrepancies in the certificates of exemption that has been provided by the Commanding Officer, Canteen Stores Department, Meerut, furnished by the petitioner for assessment year 1998-99 and 1999-2000 came to light when they were verified with the records of Canteen Stores Department, Meerut, which revealed that actual purchases which were made by Canteen Stores Department, Meerut for consumption in their Depot as well as other Depots in U.P. were less than the total amount disclosed in the Certificates clearly indicating something fishy leading the department to pass composite order for reassessment.

15. For the A. Ys 2000-01 and 2001-2002, the notice for reassessment has been quashed. For these years, the Additional Commissioner has correctly observed that the material found in survey dated 13.8.2011 was used in the assessment of these years. The facts in the AYs under consideration are different. For reassessment, each year forms separate unit, and warrants positive material on the basis of which the competent authority may exercises its jurisdiction for reason to believe escapement of assessment. The competent authority, however, has the authority to form reason to believe in respect of the previous year''s material for which no objection was raised regarding method of sales adopted by the parties.

16. Taking into consideration the entirety of the circumstances and the fact that for the years 1998-99 and 1999-2000 when similar mode was adopted regarding sales within the State and outside the State, there was sufficient material found

for the escaped assessment, the reasonable belief by the competent authority in respect of assessment years 1996-97 and 1997-98 may be doubted or challenged on the ground of arbitrary exercise of powers or mala fides.

17. In the present proceedings, we are not required to look into the sufficiency of the material, but the availability of material, having live nexus with the formation of opinion, of reasons to believe the escapement of assessment. The petitioner will have adequate opportunity to contest the matter on sufficiency of material, in the proceedings for reassessment.

18. On the facts and circumstances of the case and the report of the Deputy Commissioner, we are unable to subscribe to the argument of counsel for the petitioner that there was no material in respect of escaped assessment for the years 1996-97 and 1997-98, for reason to believe that the turn over has escaped assessment.

19. The writ petition is dismissed.