(2017) 10 UK CK 0004

In the Uttarakhand High Court

Case No : 671 of 2016

M/s Gayatri Iron & Steel — APPELLANT

Vs

State of Uttarakhand & others — RESPONDENT

Date of Decision : 06-10-2017

Acts Referred:

Central Sales Tax Act, 1956, Section 9(2) - Uttarakhand Value Added Tax Act, 2005, Section 21, Section 29(4)

Citation : (2017) 10 UK CK 0004

Hon'ble Judges : Sudhanshu Dhulia

Bench : Single Bench

Advocate : B.R. Garg, Jitendra Chaudhary, N.K. Arora, Yogesh Pandey

Final Decision : Dismissed

Judgement

1. The petitioner before this Court is a partnership firm registered under the Uttarakhand Value Added Tax Act, 2005 as well as under the Central Sales Tax Act and is engaged in manufacturing and sales of M.S. Ingots/channel/flat, etc. The manufacturing unit of the petitioner''s firm is in Roorkee, Haridwar.

2. The petitioner has challenged the impugned order dated 15.02.2016 passed under Section 29 (4) of the Uttarakhand Value Added Tax Act, 2005 by respondent no. 3 i.e. Additional Commissioner, Commercial Tax, Haridwar Zone, District Haridwar, by which respondent no. 3 has granted permission for the reassessment for the year 2010-2011. The dispute here is regarding the Assessment Year 2010-11.

3. The facts of this case are that the petitioner which manufactures M.S. Ingots/ Channel/Flat, etc., has made sale of the aforesaid manufactured goods to a purchasing dealer, which according to the petitioner, is a registered purchasing dealer at Gurgaon, Rewari, Ambala

in the State of Haryana and Mansa & Bhawanigarh in the State of Punjab. Since the sales made by the petitioner being an inter-state sale, he was liable to pay tax at the concessional rate under Section 9 (2) of the Central Sales Tax Act . For the said purposes, the purchasing dealers of these different States had submitted relevant "forms" to the petitioner, which were duly deposited by the petitioner before the Prescribed Authority and on the basis of the forms which were submitted by the petitioner, he was asked to pay the tax on the concessional rate. Admittedly the rate of tax for an inter-State sale is much lower as compared to a sale within the State.

4. The order dated 15.02.2016, by which respondent no. 3 has granted permission to respondent no. 4 to open the reassessment proceedings against the petitioner is a well considered order which assigns reasons for opening the reassessment proceedings against the petitioner. The reasons are that many of the forms which are Form-C, and were submitted by the petitioner, as a selling dealer before the Prescribed Authority, subsequently on enquiry were found to be fake. An inquiry was made and verification was done from the States from where these Forms were obtained and it was found that about 12 of these forms were the ones which had not been issued by the Prescribed Authority to the purchasing dealer, who ultimately gave these forms to the petitioner. In other words, these Forms have not been authenticated and therefore on the basis of such forms, the concessional rate of tax was not liable to be given to the petitioner. This in short is the case of the State. In other words, the Assessing Authority is of a prima facie opinion, based on the evidence which is available before it, that giving benefit of concessional rate of tax which has been given to the petitioner at least in cases of 12 Form-C was wrong as in

such cases rate would be higher as it is not an inter-state sale. There seems to be absolutely no anomaly in this.

5. Moreover, this matter can be best appreciated by the authority concerned before which the petitioner has an opportunity to present its case. This matter cannot be appreciated at this stage in a writ jurisdiction.

6. The two submissions of the learned counsels for the petitioner, Mr. B.R. Garg and Mr. Jitendra Chaudhary, are that even if presuming that there has been a case of misrepresentation at the hands of the purchasing dealer, no liability can be fixed upon the selling dealer for this act. The argument of the petitioner would be that once they have completed their sale which is an inter-State sale, and have received a Form-C, all that they have to do is to submit that Form-C to the authorities in order to avail the concessional rate of tax. In case a fraud has been done by the purchasing dealer, law will take its course against the purchasing dealer, but the selling dealer cannot be held responsible. Learned counsel for the petitioner has relied upon the decision of Hon''ble Apex Court in the case of State of Madras v. Radio & Electrical Ltd . reported in AIR 1967 (SC) 234 in order to advance the above submission.

8. All the same, this Court is not inclined to accept this argument. The judgment of Hon''ble Apex Court which has been cited by the petitioner is also not relevant

to the facts of the present case. The simple reason being that the said submission rests on an admitted fact that the sale in question is an inter-State sale. In our case, however, this very sale is in doubt as the documents submitted by the selling dealer for this purpose have been found to be

fraudulently obtained. Therefore, no benefit can be given to the petitioner of the judgment cited by him.

9. The second submission of the learned counsel for the petitioner is that there is a jurisdictional error here, inasmuch as considering that it is an inter-State sale, the notices which have been issued to the petitioner are Section 21 of the Uttarakhand VAT Act. The argument would be that the proceeding for reassessment could only have been initiated under the Central Sales Tax Act and consequently the notice issued under Section 29 (1) of the Uttarakhand VAT Act is a jurisdictionally defective notice.

10. This submission again is entirely misconceived and not acceptable for the simple reason that this too rests on the fact which has not been established as yet that the sale was an inter-State sale. Moreover, in the present case, the only authority which can initiate reassessment is the authority in Uttarakhand under the relevant provisions i.e. the Uttarakhand VAT Act. This Court finds absolutely no jurisdictional error here.

11. The principal ground for reassessment is that the authority concerned must have "reason to believe" that any part of the turnover of the selling dealer has escaped assessment of tax, which in our case is for the assessment year 2010-11. In my view, the Assessment Officer had enough material before him and, therefore, a "reason to believe" that a part of turnover has escaped assessment and therefore there is no anomaly to the reassessment proceedings. Hon''ble Apex Court in the case of Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Limited reported in AIR 1973 SC 370 had this to say about the exercise of powers of reassessment:

"9- The controversy between the parties has centered on the point as to whether the assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for the assessment year 1957-58. Question in the circumstances arises as to what is the import of the words "reason to believe, as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however the grounds are relevant and have a nexus with the formation of belief 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 this Court, for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue .What can be challenged in the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be mere pretence.

10- It may also be mentioned that at the stage of the issue of notice the consideration which has to weigh is whether there is some relevant material giving rise to prima facie inference that some turnover has escaped assessment. The question as to whether that material in sufficient for making assessment or reassessment under section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary.

11- The import of the words "reason to believe" has been examined by this Court in cases arising out of proceedings under section 34 of the Indian Income Tax Act, 1922 wherein also these words were used. The aforesaid section dealt with income escaping assessment and conferred jurisdiction on the Income Tax Officer to make assessment or reassessment if he had reason to believe that income, profits or gains, chargeable to income tax had been under assessed and that such under assessment had occurred by reason of either omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts necessary for his assessment. Certain other conditions were also necessary, but we are not concerned with them."

12. I am therefore of a considered view that the reassessment proceeding initiated by the respondent authorities against the petitioner being in accordance with law, and initiated on the basis of objective materials before the authorities. This matter therefore calls for no interference from this Court, at this stage.

13. The writ petition is without any merit and the same is hereby dismissed. Interim order, if any, stands vacated.