(1975) 08 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 454 of 1975

M/S. KRISHNA COAL CONCERN, BALLIA — APPELLANT

Vs

THE SALES TAX OFFICER, BALLIA. — RESPONDENT

Date of Decision : 27-08-1975

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1976) 5 CTR 78

Hon'ble Judges : Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gulati J. - This is a petition under Article 226 of the Constitution.

2. The petitioner is a dealer in coal. In order to import coal from outside Uttar Pradesh. Form No. 31 prescribed under the U.P. Sales tax Rules is to be furnished. The petitioner made a demand of 300 such forms. The Sales-tax Officer thought that this demand was highly excessive and unreasonable. He accordingly directed the petitioner to appear before him and to place material for ascertaining his genuine demand and also to produce accounts showing that the forms issued to him previously had been properly utilised. The Sales-tax Officer after examining the material produced before him came to the conclusion that the petitioner was entitled to only 10 forms. He also found that the forms previously issued to the petitioner had not been properly accounted for. The petitioner is aggrieved and has approached this Court under Article 226 of the Constitution praying for a writ of mandamus directing the Sales-tax Officer to issue to him 300 forms.

3. The matter of the issuance of Form No. 31 is governed by Rule 85(4) which provides that :-

"If the Sales-tax Officer is satisfied that the demand of the dealer for blank declaration form is genuine and reasonable, he may issue such number of forms as he deems fit. No declaration form shall be issued unless the dealer has rendered accounts of all such forms obtained earlier".

It is thus clear that an assessee is not entitled to unlimited number of forms. The number of forms to be issued has to be determined by the Sales-tax Officer having regard to the genuineness of the need of the assessee. It is further provided that if an assessee is not able to account for all the forms issued to him the Sales-tax Officer can refuse to issue any further forms to him. This is because, as has been stated in the counter-affidavit, certain unscrupulous assessees misused blank forms by selling them to other persons to facilitate improper import of goods from outside Uttar Pradesh. The learned counsel for the petitioner has submitted that his client produced complete account of forms issued to him earlier and no fault was found with it. This statement is at variance with the finding recorded by the Sales-tax Officer. Moreover, since the supply of form depends on the discretion of the Sales-tax Officer, guided by the genuine requirement of a dealer, we cannot compel the Sales-tax Officer to issue forms to the petitioner which in the opinion of the Sales-tax Officer are not genuinely required by him. Moreover, the petitioner has an alternative remedy by way of appeal in case he is not satisfied with the order of the Sales-tax Officer with regard to the number of forms to which he is entitled. If the petitioner can satisfy the appellate authority that his genuine need for the forms is greater than sanctioned by the Sales-tax Officer and also that the forms previously issued to him had been properly accounted for, the Appellate Authority can give him the necessary relief. It is not open to this Court to entertain and decide such disputes. In the circumstances we are of the opinion that the proper course for the petitioner is to approach the Appellate Authority. We make it clear that in the meantime, if the petitioner bona fide utilises the forms already issued to him and if he genuinely needs more forms, he can make a demand from the Sales-tax Officer and we have no reason to believe that the Sales-tax Officer will not issue more forms.

4. At the end the learned counsel made an attempt to challenge sub-rule (4) of Rule 85. No such ground has been taken in the writ petition and, as such, we are not inclined to permit him to raise this ground.

5. With these observations the petition fails and is dismissed.

