(2017) 10 AHC CK 0016

In the Allahabad High Court

Case No : 23745 of 2017

M/S U.P. Cooperative Federation Ltd. Lko. Thru. Auth. Signat	APPELLANT
Vs	
State Of U.P. Thru. Prin. Secy. Tax & Registration, & Ors.	RESPONDENT

Date of Decision : 23-10-2017

Acts Referred:

Constitution of India, Article 226 - Uttar Pradesh Sales Tax Act, 1948, Section 10, Section 11, Section 3D(1), Section 3D(7)

Citation : (2017) 10 AHC CK 0016

Hon'ble Judges : Devendra Kumar Upadhyaya, Rajesh Singh Chauhan

Bench : Division Bench

Advocate : Pradeep Agrawal

Final Decision : Dismissed

Judgement

1. Heard Sri Pradeep Agarwal learned counsel for the petitioner and Sri Rahul Shukla learned Additional Chief Standing Counsel for the State.

2. By means of instant writ petition the petitioner has assailed the order dated 11.9.2017 issued by the Deputy Commissioner, Trade Tax, Sector 8, Meera Bai Marg, Lucknow demanding Rs. 2,09,98.112 with interest as tax liabilities which is contained as Annexure no. 10 to the writ petition.

3. The sole question for consideration for this court is as to ''whether the writ court can revise the order of this court passed under section 11 of U.P. Sales Tax Act, 1948 which provides Revision by High Court in special cases''.

4. The brief facts of the case are that the petitioner is a registered dealer under the U.P. Sales Tax Act, 1948 and the Central Sales Tax Act, 1956. The petitioner has been dealing in the purchase of food grains for the State of U.P. towards its contribution to the national pool and the same was supplied to the Food Corporation of India towards the national pool.

5. The issue in question is related to the assessment for the year 1977-78 which

was completed vide order dated 26.2.1985 on the turnover of Rs. 61,26,39,561.78. The Assessing Authority has disallowed certain exemptions. The petitioner, therefore, preferred an appeal before the First Appellate Authority assailing the order of disallowing those exemptions. The First Appellate Authority partly allowed the appeal and reduced the tax liability.

6. The petitioner feeling aggrieved with the aforesaid order filed second appeal before the Sales Tax Tribunal under section 10 of the Act and the Tribunal vide its order dated 31.3.1994 partly allowed the appeal of the petitioner. The Tribunal has confirmed the imposition of purchase tax on the wheat worth Rs. 54,87,61,701.52 only on the ground that Form-III-C-1 has not been filed by the petitioner. The Tribunal, however, remanded the matter to the Assessing Authority for disposal afresh vide order dated 31.3.1994.

7. Feeling aggrieved from the order dated 31.3.1994 passed by the Tribunal, the petitioner filed a Trade Tax Revision no. 67 of 1994 before this Court and an interim order was granted on 24.8.1994 to the effect that ''''Let assessment proceedings in pursuance of the impugned order may go on but the final order which may be passed shall not be given effect to.'' This Court vide order dated 13.7.2017 finally decided the issue in question. The order of this Court is being reproduced herein below :

"1. Heard Sri M.G. Gurha, learned counsel for revisionist and learned Standing Counsel for respondent.

2. Learned counsel for revisionist presses only question no. 5 and addressed this Court which reads as under:-

"Whether in any view of the matter, there is no liability of purchase tax upon the applicant in respect of purchase of wheat worth Rs. 54,87,61,701.52, which were supplied to Food Corporation of India by the applicant and on which the Food Corporation of India has admittedly paid the purchase tax being the first purchaser of the said wheat and no liability could legally be fastened upon the applicant merely because form III-C-1 was not filed by the applicant because Food Corporation of India did not supply form III-C-1 to the applicant, F.C.I. having discharged their liability by paying the purchase tax on the aforesaid purchases worth Rs. 54,87,61,701.52, in view of Section 3-D (1) (Explanation II)?"

3. It is admitted that Form III-C-1 was not submitted by revisionist and therefore liability of tax has been levied upon Assessee. Section 3-D sub Section 7 of U.P. Sales Tax Act, 1948 (hereinafter referred to as "Act 1948") provides as under:-

"3-D. Levy of purchase or sales tax on certain goods.

(1)..............

(7)(a) Every purchase within Uttar Pradesh by dealer either directly, or through another, whether on his own account or on account of any one else, shall for the purposes of sub-section (1), be deemed to be the first purchase, unless the dealer proves otherwise, to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the selling dealer, in such form and manner and within such period as may be prescribed.

(b) Every sale within Uttar Pradesh by a dealer, either directly or through another, whether on his own account of on account of any one else, shall, for the purposes of sub-section 92), be deemed to be sale to a person to a person other than a registered dealer, unless dealer selling the goods proves otherwise, to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the purchaser of such goods, in such form and manner and with such period, as may be prescribed."

4. In absence of Form III-C, Revenue has right to levy tax upon revisionist. Hence, I answer this question, against Assessee.

5. Revision stands dismissed.

8. Order Date :- 13.7.2017'' Therefore, the issue regarding requirement of form-III-C-1 has been decided by this cour tvide order dated 13.7.2017 (supra) passed in Trade Tax Revision No. 67 of 1994 against the petitioner, even after considering the factual and legal submissions of the petitioner.

9. The submission of the learned counsel for the petitioner here in this writ petition is that the Division Bench of this Hon''ble Court in Re: Food Corporation of India vs. C.S.T. reported in 1987, U.P. Tax Cases, 1258 has held that liability for payment of purchase tax would be fixed on the Food Corporation of India. In the aforesaid matter the Food Corporation of India had not supplied Form-III-C-I to the petitioner and the Food Corporation of India had challenged their liability for payment of purchase tax before the Division Bench of this Court. The petitioner has reproduced para 67 of the aforesaid judgment of the High Court in para 16 of the writ petition, which is as under:

''''67. The result of the above Explanation II is that although the food-grains are actually first purchased by the procuring agencies of the State under the Levy Order issue under Section 3 of the Essential Commodities Act, from the growers, farmers, millers or stockiest and so on but fro the purposes of Section 3-D when such food grains is purchased by a dealer from the State Government, that purchase is taken to be first purchase. There is no dispute about the fact that after the levy food grains are purchased by the State through its agencies, the same are then purchased by the Food Corporation of India, which is also registered as a dealer under the U.P. Sales Tax Act. The liability is thus fastened upon the petitioner by virtue of Explanation II to Section 3-D(1) of the U.P. Sales Tax Act quoted above.'' The counsel for the petitioner further submitted that feeling aggrieved by the aforesaid order of the High Court, a Special Leave Petition was filed before the Hon''ble Apex Court. The Hon''ble Apex Court vide order dated 28.2.1997 affirmed the order of High Court (supra). The petitioner has reproduced para 7 of the judgment of Hon''ble Apex Court in para 26 of the writ petition as under :

''''Although the purchase made by the Food Corporation of India from the State is a second sale or purchase, in view of explanation II to section 3D(1) of the U.P. Sales Tax Act, it is deemed to be the first purchase. Explanation II was added with retrospective effect by U.P. Act No. 23 of 1976. It is specifically in respect of purchase of feed grains in pursuance of orders made u/s 3 of the Essential Commodities Act.'' It is not out of place to indicate that para 31 of the judgment of the Hon''ble Apex Court (supra) is also relevant to be extracted herein below :

''31.Now coming to the second proposition regarding the constitutionality of Explanation II added to Section 3-D(1) of the U.P. Sales Tax Act, it must be answered against the assesse following our answer to proposition No. 1 and in favour of the Revenue. We have held that the transactions in question are all sale and exigible to tax under the State Sales Tax Act. The contention that the Explanation newly added was ultra vires Entry No. 54, List II of the Seventh Schedule to the Constitution on the assumption that the disputed transactions are not sales, and, therefore, by a fiction the impugned Explanation cannot deem a sale which is not a sale, is without substance. The learned counsel fairly concedes that it is open to the State Legislature to shape a point at which tax is levied, it may be equally permissible to the Legislature to treat a part6icular sale or purchase as the first sale or purchase, but it cannot be legislative device of fiction of law make something as a sale purchase which in fact is not. This argument has to fail in view of our answer to proposition No. 1 in favour of the Revenue. We, therefore, do not find any substance in the proposition No. 2 advanced by he learned Senior Counsel for the appellants."

10. A perusal of para 31 of the judgment of Hon''ble Apex Court in re: Food Corporation of India vs. State of Kerla (supra) clearly indicates that the Hon''ble Apex Court itself upheld constitutionality of the Explanation-II added to section 3-D(1) of the Sales Tax Act.

11. Counsel for the petitioner also submitted that the U.P. Government issued a Government Order dated 17.5.1977 which was also produced before the Tribunal and the Tribunal had also mentioned the same in the judgment in which it was clarified by the State Government that in case of purchases made by the different purchasing agents of the State Government including that of petitioner which are subsequently sold to the Food Corporation of India, the liability for payment of tax under section 3D shall be that of Food Corporation of India. As per the counsel for the petitioner the Government Order dated 17.5.1977 was further clarified by the State Government in its Government Order dated 21.7.1977.

12. The counsel for the petitioner has quoted Rule 12-B in para 29 of the writ petition which provides exemption from purchase or trade tax under section 3D, which runs as under :

(1). the certificate of declaration referred to in subsection (7) of section 3D shall be in forms III-C(1) & III-C(2).

....

Subsection (7)- In respect of the goods notified under the clauses (a)& (b) of subsection (1) of section 3D, the certificate or declaration in-

(a) Form III-C(1) shall be issued by the dealer, who accepts the liability to tax on the purchase or sale of goods, as the case may be, to the following:-

(i) to the seller when such dealer is the first purchaser: or

(ii) to the subsequent purchaser ; or

(iii) to his selling agent ; or

(iv) to his Principal in Uttar Pradesh in case the sale is made by such dealer as selling commission agent to an unregistered dealer ; or

(v) to his Principal in Uttar Pradesh when acting as purchasing commission agent.'' As per the submission of the learned counsel for the petitioner, the aforesaid provision has duly been complied with by the Food Corporation of India but since they had challenged the vires of section 3D(1) Explanation -II of the Act which was brought in the statute book of U.P. Act No. 23 of 1976 with retrospective effect and when they ultimately failed before this court as well as before the Apex Court, then the requisite Form-III-C(1) was issued by them on 7.6.2005 and thus, the petitioner cannot be made liable to pay tax on the purchase tax made by the Food Corporation of India.

13. We have carefully perused the relevant material enclosed with the writ petition viz-a-viz the order of Hon''ble Apex Court. The aforesdaid submission of the petitioner is not acceptable in the light of para 31 of the judgment of Hon''ble Apex Court passed in re: Food Corporation of India vs. State of Kerla (supra).

14. The petitioner is aggrieved by the demand notice dated 11.9.2017 which appears to have been issued after the order dated 13.7.2017 having been passed by this Court while finally deciding the trade tax revision of the petitioner bearing Trade Tax Revision No. 67 of 1994: M/S. U.P. Cooperative Federation Ltd. Lucknow vs. Commissioner of Sales Tax, U.P. Lucknow. By means of supplementary affidavit filed on 5.10.2017 the petitioner has enclosed attachment order issued by the opposite party no. 3 addressed to the Punjab National Bank, P.C.F. Building, 32 Station Road, Lucknow for attaching the Bank account of the petitioner with regard to the dues amounting to Rs. 2,09,98,112 pertaining to the Assessment Year 1977-78. The petitioner has also enclosed the order dated 3.10.2017 issued by the Punjab National Bank informing the petitioner that an attachment order from the Trade Tax Department has been received for an amount of Rs. 2,09.98,112 towards the Trade Tax dues for the Assessment Year 1977-78.

15. In the light of the aforesaid factual and legal matrix, we are of the

considered view that the judgment and order dated 13.7.2017 passed by this court in Trade Tax Revision No. 67 of 1994 cannot be annulled or reviewed by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India inasmuch as the issue in question has been dealt, considered and decided by this Court in Trade Tax Revision against the petitioner. The writ court cannot sit in appeal over the judgment of this court passed in Trade Tax Revision (supra). The petitioner has admittedly raised the issue raised herein before the Sales Tax Tribunal under section 10 of the U.P. Sales Tax, 1948. Admittedly, feeling aggrieved by order of Sales Tax Tribunal, the Revision under section 11 of the U.P. Sales Tax Act, 1948 was filed before this Court bearing Trade Tax Revision No. 67 of 1994 which has finally been decided vide judgment and order dated 13.7.2017 (supra).

16. The efficacious and appropriate remedy is not the writ petition but the order of the Trade Tax Revision could have been assailed before the Hon''ble Apex Court, if the petitioner so advised. The Hon''ble Apex Court in re: Union of India and others vs. Major General Shri Kant Sharma and another (2015) 6 SCC 773, vide para 27 and 28 of the judgment has observed as under:

27. In Babubhai Muljibhai Patel v. Nandlal Khodidas Barot this Court held as follows: (SCC pp.715-16, para 10)

"10......Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see Gunwant Kaur v. Municipal Committee, Bhatinda). If, however, on consideration of the nature of the controversy, the High Court decides, as in he present case, that it should go into a disputed question of fact and the discretion exercised by the High court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.".

28. In Mafatlal Industries Ltd. v. Union of India, a nine-Judge Bench of this Court while considering the Excise Act and Customs Act held that the jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of the aid enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. This Court held : (SCC pp. 631-32, para 108) "108. The discussion in the judgment yields the following propositions. We may forewarn that theswe propositions are set out merely for the sale of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i)....While the jurisdiction of the High Courts under Article 226-and of this Court under Article 32 -cannot be circumscribed by the provisions of the said enactments, they will certainly hve due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it."

17. Not only the above, the Hon''ble Apex Court vide para 77 in re: Mafatlal Industries Ltd. v. Union of India, reported in (1997) 5 SCC 536 has held as under:

''77.....So far as the jurisdiction of the High Court under Article 226-or for that matter, the jurisdiction of this Court under Article 32-is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/ Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'' The petitioner may, therefore, approach the Hon''ble Apex Court, if so advised but it cannot re-agitate the same issue before the writ court by filing writ petition under Article 226 of the Constitution of India.

18. Therefore, the writ petition is Dismissed being devoid of merits, for the reasons stated herein above.

19. There will be no order as to costs.