(2012) 01 AHC CK 0216

In the Allahabad High Court

Case No : Civil Misc. Correction Application No. 8915 of 2012

Noida Offset Printers Association and Others — APPELLANT

Vs

The State Of U.P. and Others — RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 301
Entry of Goods into Local Areas Act, 2007 — Section 6A

Citation : (2012) 01 AHC CK 0216

Hon'ble Judges : Sunil Ambwani, J;Naheed Ara Moonis, J

Bench : Division Bench

Judgement

1. Heard Shri A. B. Saran, assisted by Shri Kartikeya Saran for the petitioner, in support of the application to modify the judgment dated 23.12.2011 to the extent that the Writ Tax No.1304 of 2007 be separated and it may be recorded that the judgment dated 23.12.2011 is not applicable to this case. Shri Saran submits that he had made a mention which was accepted by the Court at the time of hearing of the writ petitions, to separate this case as apart from the constitutional validity of the U.P. Tax on Entry of Goods into Local Areas Act, 2007, (in short the U.P. Act of 2007), the question of quashing the assessment orders and the notification of the Commissioner of the Trade Tax dated 7th February, 2001 was also involved.

2. Shri Saran submits that in this case the Court had passed an interim order on 7th December, 2007, accepting the argument of the learned counsel for the petitioner that the exemption notification dated 7.7.2004 was issued under the old Act of year 2000, and subsequently in the Act, 2007, the notifications were expressly saved and continued; the notification provided for exemptions to the persons engaged in a certain kind of business, namely, job work of printing and binding of paper.

3. The Court had by its order dated 7th December, 2007 had prima facie accepted the arguments, that the petitioners cannot be asked to perform the

impossible from the traders to obtain the certificate from Sales Tax Officer from outside of the State, to show that only the job work was done on the paper, which was returned to the principals outside the State. The paper was not brought inside the State for sale. The Court had observed that as an interim measure if the transaction carried on by the petitioners are covered by the notification dated 7.7.2004, the exemption will not be denied to the petitioners only on the ground that the petitioners have not been able to produce the certificate from Sales Tax Officer of other States, with a clarification that, if the job work is entrusted by a principals located in U.P. and subject to jurisdiction of any Trade Tax in U.P. the interim order will not apply.

4. Shri Saran further submits that in view of the order dated 7th December, 2007, the Assessing Officer has given notice to petitioners, and in the consequence of the judgment of this Court dated 23.12.2011 the Assessing Authority has asked the banks to encash the bank guarantees. The petitioners had subsequently amended the writ petition vide Court''s order dated 13.5.2011, challenging the constitutional validity of the U.P. Tax on Entry of Goods into Local Areas Act, 2007.

5. We had considered and decided all the issues relating to the constitutional validity of the entry tax, and the issue of the imposition of entry tax violating of Article 301 of the Constitution of India. We have expressly stated in our judgment dated 23.12.2011 and all other issues relating to re-assessment or exemption will be dealt with in accordance with the procedure prescribed under the Act.

6. In the present case, the satisfaction of the assessing authority of the job work carried out by the petitioners is to be based on the proof of imports only for job work. In M/s. A.C.P.L. Jewels Private Ltd. vs. Union of India and others, Civil Misc. Petition(Tax) No.1190 of 2008 this Court, in its judgment dated 1.12.2009, held as follows :

We have taken into account the submissions, the judgment of the Supreme Court dated 31.3.2009, arising out of the judgment of the Division Bench of this Court in Ambica Steels (supra), as well as the Circular Letter issued by the Commissioner, Trade Tax Department dated 26.6.2009, and consequently without going into the merits of the challenge to the vires of Section 6-A of the Act or other submissions, we dispose of all the writ petitions with the following directions:

1. In all the cases, in which transactions of job-work and goods-returned are involved, the assessment orders only to the extent that the tax was imposed on such transactions for want of Form F of the Central Sales Tax are set aside. The petitioners will appear and submit before the assessing authority a certified copy of this judgment in six weeks to complete the assessment proceedings with regard to such transactions only, on its own merits, after examining the transactions between the parties, and keeping in mind that the assessee is not in

a position to obtain Form F for no fault of his; and

2. In the cases where the assessee has been subjected to reassessment proceedings in which the transactions of job-work and goods-returned are involved, the reassessment orders only to the extent that the tax was imposed on such transaction/s for want of Form F of the Central Sales Tax are set aside. The assessee will appear before the Reassessing Authority and submit a certified copy of this judgment in six weeks, to complete the reassessment proceedings in respect of such transactions only, on its own merits after examining the transactions between the parties, keeping in mind the findings recorded earlier on such transactions, and also that the assessee is not in a position to obtain Form F, for no fault of his.

There will be no order as to costs.

7. It is always open to the petitioners to satisfy the assessing authority by any cogent evidence other than the certificate of the assessing officer of the place where the business place of the principal is situate or From-F of the Central Sales Tax Act that the goods imported in the State of U.P. were brought in only for job work and that the finished goods were returned to the principals outside the State of U.P.

8. We need not adjudicate the issue all over again as the issue has already been decided by this Court. It will be open to the petitioners to satisfy the assessing authority, if the assessments are pending in reassessments proceedings, or before the appellate authority that the petitioners had only carried out the job work on the imported goods and returned goods imported in the State, to its principals outside the State. With these observations the application is disposed of.

