(2008) 06 UK CK 0042

In the Uttarakhand High Court

Polyplex Corporation Limited APPELLANT

Vs

State of Uttaranchal and Others RESPONDENT

Date of Decision : 02-06-2008

Acts Referred:
Constitution of India, 1950 — Article 301, 304

Citation : (2008) 2 UD 195 : (2006) 2 UD 195 : (2008) 16 VST 170

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—This writ petition has been filed for issue a suitable writ, order or direction in the nature of mandamus or prohibition restraining/prohibiting the respondents from realizing entry tax in respect of machines imported from outside the country by the petitioner which have been brought in the factory of the petitioner at Khatima for the assessment year 2000-2001 and 2001-2002. Prayer has also been made for issue a writ, order or direction in the nature of certiorari quashing the circular dated 14-09-2000 issued by the Commissioner Trade Tax U.P. Lucknow, which appears to have been adopted by respondent No. 2.

2. Brief facts giving rise to the present writ petition are that by means of this writ petition, the validity of levy of entry tax on the entry of machines in the industrial area of Khatima, which has been imported from outside the country has been challenged. The petitioner has purchased the machineries for carrying out the erection of the factory at Khatima. The said machines were purchased by the petitioner from foreign countries, which have been received at its factory situate at Khatima.

3. This fact is not disputed that the machines were purchased from outside the country and were installed at Khatima.

4. The learned Senior Advocate appearing on behalf of the petitioner has

contended that similar controversy had arisen before the Allahabad High Court wherein imposition of the same entry tax circular under the same Act was challenged in Writ Petition No. 251 of 2003, Indian Oil Corporation v. State of U.P. and the Entry Tax has been declared ultra vires and void being violative of Article 301 and 304 of the Constitution of India vide order dated 27-1-2004. Copy of the Division Bench Judgment of the Allahabad High Court has been annexed as Annexure SA-1 to the supplementary affidavit filed by the petitioner.

5. The order passed by the Division Bench was assailed by the State before the Apex Court and finally the Apex Court remitted the issue for decision of the Allahabad High Court to ascertain as to whether it is a compensatory tax or not. After remittance, the Hon''ble Allahabad High Court after hearing the petitioner as well as the State has held in paragraph No. 32 and 33 as under:

32. It is obvious, that the Apex Court remitted the issue of ''compensatory-tax'' after parties are given opportunity to file ''Data'' to discharge their burden) apparently for the reason that it fond "Aims and Object'' of the Act irrelevant and none of the provisions of the Act (including in Sections 4, 4-A and 6 read with the schedule) reflect that amount of ''entry tax'' is to provide ''additional'' or ''specific'' facility to the scheduled trades vis-?-vis those who are not subjected to this ''Tax''. There is no co-relation between the ''Levy''/ ''Entry Tax'' and the ''Scheduled Trades''.

Finding

33. There is not even an iota of evidence/material on record to give required data/statistics to prove/establish that the amount collected as ''tax'' and its expenditure on providing additional/specific advantage/facility provided to trade/s in particular mentioned under the Schedule of the Act. In absence of such a data it is not possible for this Court to hold that ''entry tax'' is ''compensatory tax''. We hold accordingly.

6. In the case at hand, the State has filed its counter affidavit, but the State has failed to provide any such data/material to establish that the entry tax is being charged to provide any additional facility to the schedules trades vis-?-vis those who are not subjected to this tax.

7. The only contention of the learned Additional Chief Standing counsel appearing for the State is that the machineries were brought to the local area from out side the State of Uttarakhand and U.P., therefore, the respondents are justified in levying the entry tax upon the petitioner as per circular dated 14-92000 issued by the Commissioner of Trade Tax U.P.

8. I am not inclined to accept the contention of the learned Counsel for the State because there is no whisper to establish that tax levied upon the petitioner in the form of entry tax is compensatory in nature or that it provides any specific/ additional service/facility to its payers. It is significant to mention that the Division Bench of the Allahabad High Court has declared the U.P. Tax on Entry of

Goods Act, 2000 violative of Articles 301 and 304 of the Constitution of India and the same is ultra vires and it is not disputed that circular was issued on 14-9-2000 by the Commissioner Trade Tax U.P. to levy entry tax in respect of goods which are imported from outside the country.

9. In the facts and circumstances of the case taking into consideration the fact that the U.P. Tax on Entry of Goods Act, 2000 has been declared ultra vires by the Division Bench of the Allahabad High Court and it has also been held that the ''entry tax'' is not a ''compensatory tax'', therefore, the writ petition is liable to be allowed. The impugned circular dated 14-9-2000 is liable to be quashed.

10. The writ petition is allowed. The respondents are restrained by a writ of mandamus not to realize the entry tax from the petitioner in respect of machines imported from outside the country for the assessment year 2000-2001 and 2001-2002. The circular dated 14-9-2000 issued by the Commissioner of Trade Tax U.P. Lucknow, which is impugned in this writ petition (Annexure No. 2), is accordingly quashed. Costs easy.