(2012) 04 AHC CK 0041

In the Allahabad High Court

Case No : Writ Tax No. 465 of 2012

Poonam Coal Suppliers and Another APPELLANT

Vs

State of U P. and Others RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:
Forest Act, 1927 — Section 41, 41(2)(i), 41A

Citation : (2013) 57 VST 271

Hon'ble Judges : Saeed-Uz-Zaman Siddiqui, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Brahmdeo Dwivedi, for the Appellant; S.P. Kesarwani, Additional Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Shri Brahmdeo Dwivedi, learned counsel appearing for the petitioners. Shri S.P. Kesarwani, Additional Chief Standing Counsel appears for the State-respondents. The petitioners are proprietorship concerns involved in the trading of coal and are registered under the provisions of the U.P. Value Added Tax Act, 2008 vide Tin Nos. 09455701933 (in Writ Tax No. 1699 of 2011), and 09521700736 (in Writ Tax No. 1700 of 2011). The petitioners bring coal from the collieries of Coal India Limited as per sale policy of e-auction. They are also purchasing coal from the traders of Jharkhand, Bihar and Assam. In the routine course the petitioners import coal from outside the State of U. P. by road too after making declaration under the provisions of the U.P. Value Added Tax Act.

2. By the instant writ petitions the petitioners have prayed for a writ of mandamus commanding the respondents not to charge any amount in the name of registration fee in any manner on the import of coal and to refund the amount of registration fees.

3. Shri S.P. Kesarwani, learned counsel appearing for the respondents submits that under rules 20 and 21 of the U.P. Transit of Timber and other Forest Produce

Rules, 1978 made u/s 41 of the Indian Forest Act, 1927, the petitioners require registration. Rules 20 and 21 of the Rules of 1978, are quoted as below:

20. Foreign pass.--All the forest produce imported into the State of Uttar Pradesh will have to follow the rules made by the Union Government u/s 40A of the Indian Forest Act, 1927 (Act No. XVI of 1927) in addition to the rules and shall be covered by a foreign pass registered under rule 2 and in the case of timber, by a foreign property mark registered under rule 23.

21. Form, etc., of foreign passes must be registered in conservator''s office.--Every foreign pass must be in a form which has been registered in the office of the conservator of forests of the circle into which it is sought to import forest produce thereunder and must be signed by an official whose designation is registered in the office of the said conservator, and every foreign property mark must be of description which has been registered under rule 23 in the said office. At the time of applying for registration of the foreign pass in the office of the conservator of forest of circle concerned, a declaration will have to be submitted duly verified by the competent authority concerned that there is no objection to the exporting of the desired forest produce to the State of Uttar Pradesh and custom, excise duty or other duties, if any, leviable have been paid by the party concerned to the competent authority:

Provided that at the request of the neighbouring State Governments passes signed by the contractors or their authorized agents whose signatures have been duly registered in the office of the divisional forest officer in whose division forest produce is taken, may be allowed:

Provided further that the passes used by such contractors or their authorized agents should bear an official stamp of the officer, who has been authorized by the State Government to issue books of passes to contractors.

4. Section 41(2)(i) and section 41A of the Forest Act, 1927 are the only rule-making powers referable to providing registration. Section 41(2)(i) and section 41A of the Act are quoted as below:

41. Power to make rules to regulate transit of forest produce.-- (1) and (2).

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

41A. Powers of Central Government as to movements of timber across customs frontiers.--Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from the territories to which this Act extends across any customs frontier as defined by the Central Government, and any rules made u/s 41 shall have effect subject to the rules made under this section.

5. The delegation of powers u/s 41 (2) (i) refers to registration of property marks for timber and prescribe the time for which the registration shall hold good; limit the number of such marks and provide for the levy) of fees for such registration. The reference to rule 40A appears to be a mistake in making the order. There is no such section 40A in the Act.

6. Section 41A would show that the registration is provided only for property marks for timber or other forest produce, which may be imported, exported or moved into or from the territories to which this Act extends. The Indian Forest Act, 192.7 extends to the territory of India across any customs frontier as defined by the Central Government, and any Rules made u/s 41 shall have effect subject to the Rules made u/s 41A.

7. The Indian Forest Act, 1927 and the U.P. Transit of Timber and other Forest Produce Rules, 1978, thus provide for registration of only marks of timber and foreign pass. There is no requirement for the registration of any dealer, who imports the forest produce in the State of U.P.

8. The transit pass is required to be issued under the Rules of 1978 for movement of the forest produce in the State, of U.P. whether imported from outside State of U. P., moved inside the State of U.P. or exported to outside the U. P.

9. In NTPC Limited v. State of U.P. (Writ Tax No. 327 of 2008 decided on November 11, 2011), the court considered almost all the aspects of the applicability of the Rules; the question of registration under the Rules for the movement of forest produce within the State of U.P.

10. In the present case the petitioners are bringing coal from the collieries of Coal India Limited purchased by e-auction. They also purchase coal from the traders of Jharkhand, Bihar and Assam. There is no provision under the Indian Forest Act, 1927, and the Rules of 1978 for registration of any dealer. There is only a provision of registration of marks for issuance of foreign passes. The petitioners are not the importer of coal from outside India nor exports the coal within the country to outside India.

11. On the aforesaid facts and circumstances the insistence for registration and for charging the registration fees is beyond the authority conferred upon the respondents under the Indian Forest Act, 1927 and the Rules of 1978. The writ petition is allowed to the extent that the petitioners will not be required to obtain registration for movement of coal within the State of U.P. If any registration fee is charged from the petitioners, the same shall be returned to them. They will, however, continue to obtain transit passes and pay transit fee on the transportation/movement of coal, held to be forest produce in NTPC Limited (Writ Tax No. 327 of 2008 decided on November 11, 2011) in accordance with the U.P. Transit of Timber and other Forest Produce Rules, 1978.

