(1992) 08 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 34066 of 1992

Rajesh Udyog APPELLANT

Vs

Krishi Utpadan Mandi Parishad and Another RESPONDENT

Date of Decision : 30-08-1992

Acts Referred:
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17

Citation : (1992) 4 AWC 524 Supp

Hon'ble Judges : R.B. Mehrotra, J;A.P. Misra, J

Bench : Division Bench

Advocate : Shankar Suan, for the Appellant;

Final Decision : Disposed Of

Judgement

A.P. Misra, J.—Heard learned Counsel for the Petitioner and Sri. B.D. Mandhyan appearing for the Respondent Mandi Samiti.

2. In view of the counter and rejoinder affidavits having been exchanged the present writ petition is being disposed of finally at the stage of admission in accordance with the Rules of Court.

3. The Petitioner by means of this writ petition has sought for writ of mandamus directing the Respondents to issue gate passes without insisting the Petitioner to pay market fees while taking out its goods outside from the area of the Respondent Mandi Samiti and further to consider the document of sale other than Forms F and C for the purpose of proving that the sale/ purchase transaction was for sale outside the market area.

4. The Petitioner is a licencee of the Respondent Mandi Samiti and the Petitioner is dealing in the commodity of Dal. According to the Petitioner, while taking out Dal by him from the market area the Respondent authorities are not issuing the Gate passes but are insisting that unless Forms F and C are produced the same shall not be permitted. The Petitioner contends the question whether the transaction in question is sale or purchase within the area of the Mandi Samiti or

outside could be decided by the Respondents on the basis of the evidence on ;the'' record to be produced by the Petitioner, but insisting that the Petitioner must produce Forms F and C which are forms under the U.P. Sales Tax Act is not justified.

5. It is not necessary for us to go into the question about submission of Forms F and C that may be also one of the methods of ascertaining whether sale and purchase transactions have taken place within the area of Mandi Samiti or it was a case of inter-State sale. The question which is up for consideration before us is whether on the facts and circumstances of this case the Respondents could insist only for filing Forms F and C for the purpose of proving the above or it could be proved by other documents than Forms F and C. Before considering the said question now the position after amendment of Section 17 and by addition of the Explanation to the said Section under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, the burden is placed on the trader to prove the transaction in question That burden has to be discharged by the trader (Petitioner). Keeping that in mind we feel that there is nothing in the Mandi Samiti Act nor there is anything which could show under the aforesaid Act and the Rules that proving inter- State Sale or whether the sale was inside the Mandi Samiti or not would only be by production of Forms F and C, That may be one of the consideration without weighing the evidence on record, to come to the conclusion and to believe or disbelieve the evidence adduced by the Petitioner. It is always open to a trader to prove by such evidence, which is in his possession for proving whether the transaction in question was inter-Stale sale and the Respondent authority cannot refuse to consider the same on the ground that the Petitioner must produce Forms F and C. It is for the trader to do so by such evidence to show and prove that the transaction has taken place outside the State and not within the Mandi Samiti area and- in case such an evidence is tendered by the Petitioner the Respondent authorities are bound to consider the same and come to its own conclusion whether the same proves the case of the Petitioner or not.

6. On behalf of the Respondent Mandi Samiti Sri B.D. Mandhyan made emphasis on the averments made in paragraphs 6 and 10 of the counter affidavit wherein it has been provided that the Petitioner is a manufacturer of Dal, which is very costly item and, in fact, one truck load Dal costs more than 2 lacs. It is on this costs of Dal allegation is made that the logical conclusion is that the entire sale takes place within the market area of Kanpur. That by itself would not constitute a ground for drawing an inference of sale to have taken place within the market area. The Respondent authority has to consider the evidence adduced by the Petitioner and weigh then on the facts of each case and then come to its own conclusion. No doubt, various malpractices possibly that may take place have been referred in this paragraph, which the Respondent-authority could always take into consideration while disposing of the question pertaining to this matter. The averments in paragraph 10 that the Petitioners are only indulging in preparing forged documents to show that the sale has taken place outside the market area is not a matter which pertains to the question involved in the

present case. Whether the document is held to be forged or not is for the Respondent-authority to conclude and draw such an inference but that by itself would not give the Respondent-authority a right not to accept other evidence adduced by the Petitioner and insists only on the Forms F and C for the purpose of this case.

7. In view of the aforesaid observations made by us, we are of opinion that the insistence of the Respondent authority of production of Forms F and C for proving the transaction whether it is inter-State sale or made within the Mandi Samiti area is not justified. The Respondent-authority will proceed and decide on the basis of the evidence adduced by the Petitioner in accordance with the observations made by us above.

8. With the aforesaid observations, the present writ petition is finally disposed of. Cost easy.

