(2015) 02 AHC CK 0080

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 182 of 2011

Saraya Distillery, Gorakhpur APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 2 ADJ 742

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J

Bench : Division Bench

Advocate : Avnish Kumar Srivastava and Tarun Veer Singh Khehar, for the Appellant; C.B. Tripathi and Siddharth Saran, Advocates for the Respondent

Judgement

Tarun Agarwala, J.—The petitioner is a company incorporated under the Companies Act and is engaged in the manufacture and sale of extra neutral alcohol/rectified spirit and other products. The petitioner has entered into an agreement with various parties, i.e., respondent Nos. 4 to 20 for supply of the products manufactured by it on terms and conditions specified in the agreement. It is alleged that in the agreement it was also indicated that the supply of the product shall be made by the petitioner on concessional rate of tax and that the respondent companies would supply Form-C to the petitioner company to avail the benefit of concessional sales made by them. Some of the private respondent companies are public sector undertakings but majority of them are private companies. Based on the agreement entered by the petitioner with various parties it is alleged that the goods were supplied on concessional rate of tax but the respondents failed to issue Form-C. Due to the non-supply of Form-C by the private respondents, the petitioner could not submit Form-C to the tax department. Accordingly, the Assessing Officer passed assessment order levying the general rate of tax applicable on the sale made by the petitioner. The petitioner, being aggrieved by the assessment orders passed under U.P. Trade Tax Act, 1948 as well as under Central Sales Tax Act, 1956 for the assessment years 2004-05, 2005-06 and 2006-07, has filed the present writ petition for quashing of the assessment orders as well as for a writ of mandamus commanding the private respondents to supply Form-C to the petitioner to enable the petitioner to avail concessional rate of tax under the Central Sales Tax Act.

2. We have heard Sri Tarun Veer Singh Khehar, learned counsel alongwith Sri Avnish Kumar Singh, learned counsel for the petitioner and Sri C.B. Tripathi, learned special counsel for the State.

3. The contention of the learned counsel for the petitioner that he had supplied the goods to the private respondents, some of whom are public sector undertaking, at concessional rate of tax under the agreement and consequently, the petitioner was entitled to receive Form-C from them in order to avail the concessional rate of tax in the assessment proceedings. The petitioner contended that a public duty is cast upon the respondents to issue Form-C and since the same has not been issued, the writ Court has the jurisdiction to issue a mandamus commanding the respondent companies to supply Form-C to the petitioner. In support of his contention the learned counsel has placed reliance upon a decision of the Madras High Court in TvL City Tower Hotels (P) Ltd. v. The Commercial Tax Officer, decided on 13.3.2003 (2003) RD-TN 209. This decision is not helpful nor applicable in the instant case. In the said decision the tax authorities were not issuing Form-C to the petitioner on the ground that the petitioner would misuse Form-C and in that scenario writ Court issued a mandamus directing the authorities to issue Form-C. The learned Counsel for the petitioner further relied upon a decision of the Gauhati High Court in OMIL-JSC-JV v. Union of India and others, (2013) 61 VST 370 (Gau.), where direction was issued to the respondent company to issue Form-C.

4. Having heard the learned counsel for the parties, we are of the view that the petitioner is not entitled to any relief. In so far as the assessment orders are concerned, the petitioner has a remedy of filing an appeal before the 1st Appellate Authority under the Act. Consequently, on the ground of alternative remedy, no relief could be granted to the petitioner.

5. In so far as, a writ of mandamus is concerned, no mandamus could be issued to the private respondents to supply Form-C. In M/s. U.B. Engineering Ltd. v. State of U.P. and others, decided on 27.8.2014, the Court held as under:

"Under the contract, the petitioner was entitled to receive Form-C from the purchaser, namely, from the Managing Director of PVVNL. The said respondent was obliged to issue Form-C to the petitioner to enable the petitioner avail concessional rate of tax in his assessment proceedings. Since the petitioner did not receive Form-C from PVVNL the petitioner became liable to pay tax at a higher rate. We are of the opinion that the petitioner is entitled to recover the differential rate of tax etc. from PVVNL as per the contract. However, the writ jurisdiction is not the appropriate proceedings for recovery of the tax. We find that there is a contract between the petitioner and PVVNL in which there is a clause relating to arbitration for settlement of a dispute. We are accordingly, of the opinion that no mandamus could be issued to PVVNL-respondent No. 5 for issuance of Form-C.

6. In Commissioner of Sales Tax, Delhi and Others Vs. Shri Krishna Engg. Co. and Others, AIR 2005 SC 958 : (2005) 1 JT 563 : (2005) 2 SCC 692 : (2005) 1 SCR 825 : (2005) 139 STC 457 , the Supreme Court held that if requisite ST-1 form was not being issued the only legal recourse is for the selling dealer to file a suit for recovery of the sales tax from the purchasing dealer. The Supreme Court held as under:

"Considering the full effect of the provisions, we are fortified in our conclusion that exemption from including the total turnover of the selling dealer is possible only where the requisite ST-1 form is produced. The embargo on charging tax under the Act is only in those instances where the purchasing dealer contemporaneously offers ST-1 Form to the selling dealer. The Sales Tax Department neither privy to nor is it concerned with any assurances that might have been exchanged inter se there parties. As observed by the High Court quite frequently ST-1 Forms are obtained from Sales Tax Department by the purchasing dealer, but for sundry reasons are not forwarded to the selling dealer. The only legal recourse is for the selling dealer to file a suit for the recovery of the sales tax from the purchasing dealer. There is no reason to deviate from this position. It should be recalled that, for the benefit of the assessee, the Rules permit the filing of exemption Forms till the time of assessment, this is probably the reason why dealers postpone their obtainment. There is no reason for the consequences of the dealers acts of omission or commission to visit the Department. The Act and the Rules do not prohibit the simultaneous furnishing of ST-1 Forms. They, in fact, envisage it."

7. In the instant case we find that there is an agreement between the petitioner and the private respondents for supply of goods on certain terms and conditions. The Sales Tax Department is not party to this agreement nor is privy with any assurances that might have been exchanged inter se between the petitioner and the respondents. Form-C is obtained by the purchasing dealer from his assessing authority upon due verification and genuineness being shown and if for any reason Form-C is not forwarded by the purchasing dealer to the selling dealer then the only recourse available is to file a suit for recovery against the Sales Tax Department from purchasing dealer or arbitration clause under the agreement. We are, accordingly, of the opinion that no mandamus could be issued to the private respondents for issuance of Form-C. In the light of the aforesaid, the writ petition fails and is dismissed.