(2013) 05 AHC CK 0082

In the Allahabad High Court

Case No : Writ Tax No. 407 of 2012

Shiva Enterprises APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2014) 70 VST 305

Hon'ble Judges : Prakash Krishna, J;Manoj Kumar Gupta, J

Bench : Division Bench

Judgement

Prakash Krishna, J.—The petitioner, a partnership firm registered under the provisions of the U.P. Trade Tax Act 1948, engaged in trading of hardware, marbles and sanitary-ware items at Renukoot, has filed the present writ petition challenging the order of authorization passed by the Additional Commissioner, Grade I, Commercial Tax, u/s 21(2) of the U.P. Trade Tax Act for the assessment year 2006-07. The background facts may be noticed in brief:

The petitioner sold certain items to M/s. Hindalco Industries Limited, Renukoot, who is holding recognition certificate u/s 4B as per the provisions of the U.P. Trade Tax Act. The goods were sold at concessional rate of tax to M/s. Hindalco Industries Limited, who furnished form IIIB to the petitioner-dealer. During the assessment proceedings, the petitioner filed the said form in Kha No. 243653 for a sum of Rs. 58,47,828.84. The benefit of concessional rate of tax on the basis of said form was claimed and granted. Thereafter, proceedings u/s 22, i.e., rectification proceedings was initiated on the ground that the aforesaid form IIIB was issued by the purchasing dealer for a transaction for a period beyond two years. In reply, the petitioner submitted that the said form is valid and there is no fault on the part of the petitioner. The said form IIIB was issued on January 24, 2009 to M/s. Hindalco by its A.O. and was valid for the assessment years 2007-08 and 2008-09.

2. The assessing officer by his order dated January 4, 2011 dropped the rectification proceedings on the finding that both selling dealer and purchasing

dealer are registered dealers and the transaction in question is genuine. The Deputy Commissioner, Sector 3, Commercial Tax Department, Sonbhadra, has certified form IIIB. Subsequent to the above, the notice for reassessment was issued on the same ground u/s 21(2) of the Act. The Additional Commissioner, Grade I, Commercial Tax, by the impugned order dated January 31, 2012 has granted permission to initiate the reassessment proceedings, hence, the present writ petition.

3. In reply, the respondent-Department came out with the case that the impugned order has been passed after considering the reply submitted by the petitioner as well as proposal sent by the assessing officer. The fact that the proceedings u/s 22 were taken out and were ultimately, dropped has not been disputed. The genuineness of form IIIB has not been disputed. The only dispute raised is with regard to its validity.

4. Heard Sri Aloke Kumar, learned counsel for the petitioner and Sri C.B. Tripathi, learned standing counsel for the respondents.

5. The learned counsel for the petitioner submits that there is no fault on the part of the petitioner who sold the goods to M/s. Hindalco Industries Limited, Renukoot, a recognition certificate holder and form IIIB was given by it. The said form was issued by the assessing officer of M/s. Hindalco Industries Limited and it also verified the record of the petitioner. Learned counsel for the petitioner has also placed reliance upon a Division Bench decision of this court in the case of Industrial Cables (India) Ltd. Vs. State of U.P. and Another, .

6. Having considered the respective submissions of the learned counsel for the parties, we find that the present writ petition has been filed against the order dated January 31, 2012 whereby permission to reopen the assessment has been granted. The order discloses the application of mind by the authority concerned. Sri C.B. Tripathi, learned counsel for the respondents, rightly pointed out that there has been amendment in U.P. Trade Tax Rules, 1948, specifically in rules 12A, 12B and 12C. The scope of the said amendment has been considered by a Division Bench decision of this court in the case of K.B. Hides Vs. State of U.P. and Others, . The validity of the amendments in the rules was challenged which was negatived by this court on the ground that the rule is mandatory and the filing of form as per the prescribed procedure is also mandatory. Following the aforesaid decision, another Division Bench in Civil Misc. Writ Petition No. 1791 (Tax) of 2004 Oriental Carbon and Chemicals Ltd. Vs. State of U.P. and Another decided on December 16, 2010, has held that the aforesaid rules 12A, 12B and 12C cannot be read down so as to enable a dealer to file form IIIB in respect of transaction which took place beyond two years of the assessment year in which the form was issued.

7. It has been held in the case of K.B. Hides Vs. State of U.P. and Others, , that no doubt some dealer may suffer some hardship by the impugned rules, but it is well-settled that equity has no place in taxing laws. It is also well-settled that a

statutory rule cannot be said to be unreasonable merely because in a given case it operates harshly.

8. In view of the amendment in the rules indicated above, the ruling relied upon by the learned counsel for the petitioner in the case of Industrial Cables (India) Ltd. Vs. State of U.P. and Another, has no application. The law relating to filing of form IIIB has been changed.

9. It shall be open to the assessing authority to consider all the contentions of the petitioner on merits of the case in accordance with law. In view of the above, we find no merit in the writ petition. The writ petition is dismissed. No order as to costs.