(2013) 01 AHC CK 0173

In the Allahabad High Court

Case No : Writ Tax No. 1336 of 2011

Singhal Enterprises APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 17, 55

Citation : (2013) 58 VST 186

Hon'ble Judges : Ram Surat Ram (Maurya), J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Aloke Kumar, for the Appellant; C.B. Tripathi, Special Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. By means of the present writ petition the petitioner has sought a writ, order or direction in the nature of certiorari quashing the order dated August 18, 2011 passed by the Assistant Commissioner, Commercial Taxes, Ghazipur, respondent No. 2 filed as annexure No. 9 to the writ petition and other consequential reliefs. Briefly stated that the facts giving rise to the present petition are as follows:

The petitioner is a proprietorship concern and is engaged in the business of trading of iron rods, angles, bars and other allied products of iron. It is registered under the provisions of the U.P. Value Added Tax Act, 2008, hereinafter referred to as, "the Act". According to the petitioner it is paying due taxes under the Act. During the assessment year 2009-10 the petitioner filed its monthly return in the prescribed form. A survey was conducted by the Special Investigation Branch, Unit II, Varanasi, in the assessment year 2009-10 in which suppressed turnover was assessed at Rs. 75,00,000 and a sum of Rs. 3,00,000 was imposed as tax. The matter is pending in appeal before the Tribunal in which a stay order has also been passed. The petitioner has complied with the terms of the stay order passed by the Tribunal. Another survey was made by the Special Investigation Branch, Unit II, Varanasi on July 15, 2011 in which regular books of accounts were not found in the business premises of the petitioner and three loose papers were seized. The proceedings before the Special Investigation Branch were initiated. In the meantime relying upon the circular/directive issued by the headquarters proceedings for cancellation of the registration certificate have been initiated by respondent No. 2 by issuance of a notice dated August 8, 2011 calling upon the petitioner to show cause as to why the registration be not cancelled as it was indulging in evasion of tax and is not cooperating in the proceedings before the Special Investigation Branch. The petitioner appeared through its representative and submitted that the proceedings before Special Investigation Branch are still going on and the instant proceedings be deferred. The request was not accepted and respondent No. 2 by the order dated August 18, 2011 had cancelled the registration certificate on the ground that in the survey conducted by the Special Investigation Branch on July 15, 2011 regular books of accounts have not been found in the business premises and three loose papers have been seized which shows that the petitioner is indulging in tax evasion. The order dated August 18, 2011 is under challenge in the present writ petition.

2. While entertaining the writ petition, this court vide order dated September 14, 2011 had passed the following order:

Shri S.P. Kesarwani, Additional Chief Standing Counsel, has accepted notice on behalf of all the respondents. He prays for and is allowed three weeks'' time to file counter-affidavit. The petitioner will have one week thereafter to file rejoinder affidavit.

List on October 18, 2011.

It is submitted by Shri Aloke Kumar, learned counsel for the petitioner that for the year 2009-10 the petitioner was assessed under the U.P. Value Added Tax Act against which he has filed an appeal in which an interim order was passed. A survey was made by the SIB on July 15, 2011, in which it is alleged that the petitioner did not produce the account books. He was served with the notice dated July 27, 2011 to appear on August 12, 2011. A reply was given by the petitioner on August 11, 2011, in which it was alleged that he is appearing before the SIB, and that until the proceedings before the SIB are concluded, the order of suspension of registration and the proceedings for cancellation be stayed.

The Assistant Commissioner, Commercial Tax (Registration Cell), Ghazipur, has found that both the proceedings are separate, but that taking the grounds of non-appearance and non-cooperation before the SIB, he has cancelled the registration for the reason, that during the survey the regular account books were not found and three doubtful used parchas were found.

We prima facie find that though the petitioner has a right to appeal u/s 55 of the Act, the action taken by the respondents in cancelling the registration, by which the petitioner has been stopped from doing business, is not supported by cogent reasons. The non-cooperation of the petitioner before the SIB; the findings that account books were not properly maintained and three doubtful parchas, could not be a ground to cancel the registration, specially when the proceedings in pursuance of material found during search are still pending, and no final opinion has been expressed on it, by the Department.

Until further orders the effect and operation of the impugned order dated August 18, 2011 passed by respondent No. 2 cancelling the petitioner''s registration shall remain stayed.

3. Affidavits have been exchanged between the parties. With the consent of the learned counsel for the parties, the writ petition is being finally decided at the admission stage in accordance with the Rules of the court.

4. We have heard Sri Aloke Kumar, learned counsel for the petitioner and Sri C.B. Tripathi, learned special counsel appearing for the respondents.

5. The learned counsel for the petitioner submitted that the impugned order has been passed by respondent No. 2 with a predetermined mind as none of the grounds taken for cancellation of the registration certificate is relevant. He submitted that so far as the suppressed turnover of Rs. 75,00,000 during the assessment year 2009-10 is concerned, the matter has not yet attained finality as the appeal is pending before the Tribunal and the Tribunal had passed an interim order staying the realisation of disputed amount of tax on certain conditions which the petitioner had complied with. He submitted that under sub-section (11) of section 17 of the Act, the registering authority is empowered to cancel registration certificate after giving reasonable opportunity of being heard to the dealer on any of the grounds mentioned in clauses (a), (b) and (c) of the said subsection and none of the grounds mentioned in clauses (a), (b) and (c) is attracted in the present case, therefore, the impugned order is liable to be set aside. He further submitted that no adverse inference can be drawn from the assessment order made for the assessment year 2009-10 as it has not yet attained finality and further the Special Investigation Branch had not given any finding whether the three loose papers seized at the time of survey indicated suppressed turnover or not. According to him the impugned order on the one hand proceeds on the basis that the petitioner is not cooperating with Special Investigation Branch and on the other hand draws inference on seizure of loose papers found by the Special Investigation Branch without there being any final adjudication.

6. Sri C.B. Tripathi, learned special counsel for the respondents, submitted that the petitioner is habitual in indulging suppression of turnover and evasion of taxes and, therefore, is not entitled to for continuation of the registration granted to it. He submitted that the order passed by respondent No. 2 does not call for any interference.

7. We have given our thoughtful consideration to the various plea raised by the learned counsel for the parties. We find that impugned order has been passed on two grounds, firstly--that the petitioner has suppressed its turnover amounting

to Rs. 75,00,000 during the assessment year 2009-10 and tax of Rs. 3,00,000 has been imposed and secondly, three loose papers have been found at the time of survey made on July 15, 2011 by the Special. Investigation Branch, Unit II, Varanasi which indicates that the petitioner is indulging in suppression of turnover. In our considered opinion both the grounds are not sufficient for cancelling the registration certificate for the reasons that in respect of the alleged suppressed turnover of Rs. 75,00,000 assessed during the assessment year 2009-10, it is not in dispute that the appeal is pending before the Tribunal which is empowered to go into both the questions of fact and law. Thus, the order for the assessment year 2009-10 has not yet attained finality and cannot be taken as adverse for cancellation of registration certificate. So far as the second ground is concerned, we are of the considered opinion that the proceedings before the Special Investigation Branch, Unit II, Varanasi, had not been concluded and no finding have been returned by the Special Investigation Branch to the effect that three loose papers denote suppressed turnover when the impugned order was passed. Thus, both the grounds taken for cancellation of registration certificate are not sufficient for cancelling the same. In view of the aforesaid discussion, we are of the considered opinion that the impugned order cancelling the registration cannot be sustained and is hereby set aside. The writ petition succeeds and is allowed.