**(2014) 08 AHC CK 0061**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition (Tax) No. 1648 of 2009

U.B. Engineering Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

**Date of Decision :** 27-08-2014

**Acts Referred:**
Uttar Pradesh Sales Tax Act, 1948 — Section 6(2), 8(4)(a)

**Citation :** (2015) 79 VST 521

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

**Bench :** Division Bench

**Advocate :** Shubham Agrawal, for the Appellant; C.B. Tripathi, Standing Counsel and Nripendra Mishra, for the Respondent

## Judgement

Tarun Agarwala, J.?The petitioner is a dealer registered under the U.P. Trade Tax Act, 1948 as well as under the Central Sales Tax Act, 1956. It is alleged that Pashchimanchal Vidyut Vitran Nigam Ltd. (PVVNL) is also registered under the Central Sales Tax Act. The petitioner entered into two agreements dated July 9, 2005 with the Managing Director of PVVNL, Meerut for sale, supply, fitting and for erection, transportation and insulation for the work of rural electrification work to be carried out under the Accelerated Rural Electrification Programme on a turnkey basis in the district of Moradabad and Bijnor. Under the said agreement, the petitioner was required to provide the electrical goods for the establishment, erection and maintaining the work of rural electrification, which would be used eventually in the generation and distribution of electricity in the rural areas of India. Under clauses 9.2 and 9.3 of the contract concessional sales tax/trade tax form C/form HID was to be arranged and issued by the Chief Executive Officer of PWNL to the petitioner. Pursuant to the aforesaid contract, the petitioner purchased electrical goods worth Rs. 9,26,96,152 from outside the State of U.P. In assessment proceedings the books of accounts and transactions were accepted by the Department but the assessing officer imposed the tax at the rate of 10 per cent in the absence of form C not being filed by the petitioner as prescribed under section 8(4)(a) of the U.P. Trade Tax Act. This form C was required to be issued by PWNL evidencing the sale of goods during transit as required under section 6(2) of the Act. The assessing officer, accordingly, fixed the tax liability at the enhanced rate of 10 per cent in the absence of form C and gave time to the petitioner to file form C so that the tax liability could be reduced.

2. The petitioner contends that he came to know that respondent No. 3, namely, the Deputy Commissioner, has issued a letter dated 17th April, 2006 restraining the Executive Engineer, Electricity Store Division, PWNL-respondent No. 4, from issuing form C to the petitioner, failing which penalty proceedings would be initiated under section 10A of the Act. The petitioner, being aggrieved by the action of the respondents in restraining the electricity division from issuing form C to the petitioner, has filed the present writ petition praying that the liability of imposition of tax at the enhanced rate of 10 per cent as depicted in the assessment order should be quashed as well as the order passed by respondent No. 3, namely, the Deputy Commissioner dated April 17, 2006 restraining the Executive Engineer, Electricity Store Division-respondent No. 4 from issuing form C. The petitioner also prayed that a writ of mandamus be issued directing the Assistant Commissioner, Trade Tax, Moradabad-respondent No. 6 to issue form C to the Chief Executive Officer, Electricity Distribution Circle PWNL-respondent No. 5 so that the said respondent may issue form C to the petitioner in terms of the contract executed between them.

3. We have heard Sri Shubham Agrawal, the learned counsel for the petitioner and Sri C.B. Tripathi, the learned standing counsel for the State and Sri Nripendra Mishra, the learned counsel for the PWNL.

4. The contention of the petitioner is, that he had purchased the goods from parties from outside the State of U.P. and had supplied it to PWNL. The petitioner was entitled to receive form C from PWNL in terms of the contract but the same could not be issued to him on account of a restraint order issued by respondent No. 3 restraining respondent No. 4 from issuing such form C. The learned counsel contended that as a result of this restraint order, respondent No. 4 could not issue form C, as a result of which, the petitioner has become liable to pay the tax at the enhanced rate of 10 per cent to the Trade Tax Department pursuant to the assessment order.

5. The Trade Tax Department has filed two counter-affidavits. In the counter-affidavit dated September 15, 2011 it was contended that respondent No. 4, namely, the Executive Engineer, Electricity Store Division PWNL had applied for issuance of form C before a wrong authority and, consequently, form C could not be issued as he was required to apply for form C before the Additional Commissioner, Trade Tax, Moradabad. A second counter-affidavit dated April 29, 2014 was filed by respondent No. 3 indicating that the Executive Engineer, Electricity Store Division-respondent No. 4 is registered under the U.P. Trade Tax Act as well as under the Central Sales Tax Act and that the Managing Director, PWNL is only registered under the U.P. Trade Tax Act but is not registered under the Central Sales Tax Act. The respondent further contended that since the

contract was entered by the petitioner with the Managing Director of PWNL, which is not registered under the Central Sales Tax Act, no form C could be issued by them nor a writ of mandamus could be issued by this court directing the Trade Tax Department to issue form C to the Managing Director, PWNL.

6. A counter-affidavit has been filed by the Executive Engineer, Electricity Store Division admitting the execution of the agreement and the non-issuance of the form C to the petitioner. The said respondent further stated that under the contract there is a provision for settlement of dispute through arbitration and, therefore, if there is any dispute between the petitioner and PWNL the same could be settled through arbitration.

7. No counter-affidavit has been filed on behalf of respondent No. 5, namely, the Chief Executive Officer, Electricity Distribution Circle PWNL, Moradabad.

8. The learned counsel for the petitioner contended that pursuant to the contract it was obligatory on the part of PWNL to issue form C so that the petitioner could avail the concessional rate of tax. The learned counsel contended that when the Act envisages that a concessional rate of tax would be payable on the production of form C it could not have been the intention of the Legislature to defeat this provision at the sweet will and pleasure of the purchaser of the goods by not supplying form C and, consequently, a writ of mandamus could be issued directing the purchaser, namely, the PWNL to issue form C. In support of his submission, the learned counsel for petitioner placed reliance upon a decision of the High Court of Andhra Pradesh in Modern Proteins Ltd. Vs. Food Corporation of India, .

9. There is no quarrel with the aforesaid proposition laid down in the said decision. When an Act provides a mechanism for payment at concessional rate of tax, a registered dealer would be entitled to avail of this facility provided form C is given to him by the purchaser. Rule 8 of the Central Sales Tax Rules as applicable in the State of U.P. provides that form C can be issued by the Department to a registered dealer. We find that the stand of the State that the Managing Director, PWNL is only registered under the U.P. Trade Tax Act and is not registered under the Central Sales Tax Act has not been denied by the petitioner.

10. Consequently, we are of the opinion that since the contract was entered between the petitioner and the Managing Director of PWNL, form C could only be issued by the said Managing Director of PWNL. The Trade Tax Department was justified in restraining the Executive Engineer from issuing form C to the petitioner, who had nothing to do with the execution of the contract.

11. A writ of mandamus can be issued to an authority to perform the obligation that is required to be done under the Act. Since we find that the Managing Director of PWNL is not registered under the Central Sales Tax Act, no mandamus can be issued to the said authority to issue form C.

 

12. In Hindustan Vegetable Oils Corporation Limited Vs. Progressive Industries and Others, , the Supreme Court held that if a party was not in a position to issue the declaration form it may not issue them but in such a case it shall reimburse the selling dealer in full for the difference of amount of tax, which the selling dealer was made to pay on account of the party failing to furnish the declaration form and also in respect of interest or the penalties, if any, imposed in that behalf and paid by the selling dealer.

13. Taking a clue from this decision, we find that the Trade Tax Department was justified in imposing a tax at a higher rate on account of non-production of form C by the petitioner. Consequently, to that extent we do not find any error in the charging of tax at a higher rate in the assessment order.

14. Under the contract, the petitioner was entitled to receive form C from the purchaser, namely, from the Managing Director of PWNL. 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 PWNL 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 PWNL 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 PWNL 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 PWNL-respondent No. 5 for issuance of form C. We dismiss the writ petition giving liberty to the petitioner to invoke the arbitration clause under the agreement.

 