(1986) 07 CAL CK 0010

In the Calcutta High Court

Case No : Civil Order No. 8356 (W) of 1986

Universal Packaging Industries — APPELLANT

Vs

Assistant Commissioner of Commercial Taxes and Others — RESPONDENT

Date of Decision : 08-07-1986

Acts Referred:

Citation : (1988) 71 STC 90

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Suhas Chandra Sen, J.—In this writ petition, the petitioner has challenged the show cause notice issued by the Assistant Commissioner of Commercial Taxes (North) Circle on 12th June, 1986 (being annexure B to the writ petition) by which the petitioner was asked to show cause on 7th July, 1986 at 11.30 p.m. as to why the eligibility certificate of the petitioner will not be cancelled db initio from the date of issue of eligibility certificate as the writ petitioner has violated the conditions of Rule 3(66) of the Bengal Sales Tax Rules, 1941.

2. The contention of the petitioner is that under Rule 3(66) of the Rules, the eligibility certificate that is granted cannot be db initio cancelled. The certificate that was granted has already expired, and the benefits of that certificate cannot be taken away retrospectively. The petitioner has drawn my attention to the phraseology of Rule 3(66)(iii) of the Rules, 1941 by which the authority granting the eligibility certificate has been empowered, for good and sufficient reasons to be recorded in writing to declare such certificate invalid on such date as he may specify. The petitioner has argued that this rule is attracted only when the petitioner is a holder of the certificate. If the period of eligibility certificate has expired, the petitioner cannot be described as a holder of an eligibility certificate anymore. Therefore, the contention of the petitioner is that the impugned notice db initio is bad.

3. In my judgment, this writ petition is not maintainable. The first reason is that the notice asks the petitioner to show cause. The petitioner will be at liberty to show cause before the authority concerned. Moreover, it has been pointed out on behalf of the respondents that although the period of eligibility certificate has expired, the assessment orders are pending. Whether the petitioner will get the benefit of the eligibility certificate or not in the assessment proceedings will have to be gone into. Since these assessment proceedings are pending the question of the petitioner''s eligibility under Rule 3(66) of the Rules will have to be decided. This, in my judgment, is a substantial question which must be gone into and decided by the Assistant Commissioner. Thirdly, the petitioner''s contention that on the face of it the show cause notice is bad cannot be accepted. Facts as well as law will have to be investigated. There is no reason why the Assistant Commissioner should not investigate it. Without deciding the question finally it may be stated that the well-known principle is that the power to grant a certificate includes the power to cancel the certificate. Moreover, it is well-settled that fraud unravels everything. If a certificate is obtained by misrepresentation of facts and by practising duplicity, I am unable to hold that the respondents are entirely powerless in the matter.

4. However, I make it clear that I am not expressing any final opinion on the merit of the petitioner''s case, that this is not a case where the show cause notice should be quashed in limine.

5. The writ petition is dismissed. It will be open to the petitioner to agitate all the questions in accordance with law before the Assistant Commissioner of Commercial Taxes (North) Circle. There will be no order as to costs.