
(2010) 04 AHC CK 0271
In the Allahabad High Court

U.P. Cooperative Federation Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 36 VST 386

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri Pradeep Agrawal learned Counsel for the petitioner and Shri H.P. Srivastava learned Additional Chief Standing counsel.

2. Petitioner is a registered dealer under the U.P. Trade Tax Act, 1948 is a government organization having branches all over the State. The main object of the petitioner is to make purchase of wheat, paddy and food grain under the prices support scheme. The petitioner also provides fertilizers and seeds to the farmers at subsidized rates. Petitioner also engaged in import business of coal from outside the State of U.P and supply to the brick kiln owners.

3. The controversy relates to assessment year 2003-04. The Food and Civil Supplies Department of State of U.P. under the prices support scheme announced the policy of purchase of paddy under the Scheme. It was also provided that paddy purchased by the petitioner under the prices support scheme can be supplied to the rice miller for processing and in pursuance of the government order dated 1-10-2003 it was provided that the petitioner has purchased 2.30 lacs metric tones of paddy. A copy of notification has been filed as Annexure-1 to the writ petition.

4. While proceeding to purchase paddy thereafter rice from the mill the petitioner entered into the agreement with the millers. One of the condition provided by the agreement as contained in Annexure-3 to the writ petition under Clause B of

Clause 2 is that for selling under the agreement, the miller shall be allowed to retain and appropriate to himself the husk, rice bran polish and kinkee obtained in milling process of the paddy supplied to him under the agreement.

5. It has been stated by petitioner's counsel that under the terms of agreement, rice bran, rice polish and kinkee are retained by the millers.

6. Assessment of the year 2003-04 was done by the Assessing Officer, a copy of the assessment order of the year has been filed as Annexure-4 to the writ petition. The Assessing Officer i.e. Deputy Commissioner Trade Tax Lucknow had affirmed the statement of account with regard to payment of tax. The Assessing Officer had affirmed that petitioner had rightly paid tax in lieu of purchase of paddy.

7. It appears that after receipt of certain information the Additional Commissioner Trade Tax Lucknow had sent a notice to the petitioner dated 11-11-2009 informing him to show cause why tax may not be imposed on the rice bran and kinkee since the petitioner had not provided form 3 Ga (1) to the millers. A copy of the notice has been filed as Annexure-5 to the writ petition. After receipt of notice the petitioner had submitted a reply dated 23.11.2009, a copy of which has been filed as Annexure 6 to the writ petition. While submitting reply the petitioner specifically pleaded that the rice bran, rice polish and kinkee were not taken back by the petitioner from the millers in terms of agreement. It has also been stated by the petitioner that the Assessing Officer with regard to assessment year 2003-04 was satisfied with the statement made on purchase by the petitioner and no allegation was raised. After receipt of reply, by impugned order the Additional Commissioner had referred the matter for re-assessment of tax in pursuance to power conferred by sub-section 2 of Section 21 of the Act.

8. While assailing the impugned order learned Counsel for the petitioner had raised two fold arguments.

Firstly, no tax could be imposed on the petitioner since, the rice bran and rice polish and kinkee were not taken back from the millers in terms of agreement.

The second fold submission of the petitioner's counsel is that all these aspect of the matter has been considered by the Assessing Authority while assessing the tax and no defect were found. The power conferred by sub Section 2 of Section 21 can not be used on the same facts and circumstances, to reopen the assessment.

9. For convenience relevant portion of Section 21 of the Uttar Pradesh Trade Tax Act, 1948 is reproduced as under:

21. Assessment of tax on the turnover not assessed during the year--

(1) If the Assessing Authority has reason to believe that the whole or any part of the turnover of a dealer, from any assessment year or part thereof, had escaped assessment to tax or has been under assessed or has been assessed to tax at

the rate lower than that at which it is assessable under this Act, or any deductions or exemptions has been wrongly allowed in respect thereof, the Assessing authority may, after issuing notice to the dealer and making such inquiry, as it may consider necessary, assess or re-assess the dealer to tax according to law:

Provided that the tax shall be charged at the rate, at which it would have been charged, had the turnover not escaped assessment, or full assessment, as the case may be.

Explanation-I-----

Explanation-II----

Explanation-III---

(2) Except as otherwise provided in this section, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:

Provided that if the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the Assessing Authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid, but not after the expiration of [six years from the end of such year or March 31, 2002, whichever is later] notwithstanding that such assessment or reassessment may involve a change of opinion:

Provided further that the assessment or re-assessment for the assessment year 1987-88 may be made by March 31, 1993:

Provided also that if the eligibility certificate granted u/s 4-A has been amended or cancelled by the Commissioner under Sub-section (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, whichever is later:

Provided also that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995.

10. A perusal of Sub-section 1 of Section 21 shows that in case assessing authority has reason to believe that the the whole or any part of the turnover of a dealer, from any assessment year or part thereof, had escaped assessment to tax or has been under assessed or has been assessed to tax at the rate lower than that at which it is assessable under this Act, or any deductions or exemptions has been wrongly allowed in respect thereof, the Assessing authority may, after issuing notice to the dealer and making such inquiry, as it may consider necessary, assess or re-assess the dealer to tax according to law.

11. The legislatures to their wisdom had imposed two folds duty while invoking the provision contained in Sub Section 1 of Section 21 of the Act. The first is, there must be some reason to believe that the assessing authority had committed fault on the ground enumerates in terms of sub-Section 1 and secondly, the enquiry should be held by the assessing authority.

12. It is settled law that while interpreting the statutory provisions contained in an Act or statute, any one should not be read in isolation but it should be read in reference to context. According to Maxwell, a construction which would leave without effect any part of the language of a statute will normally be rejected. Hon"ble Supreme Court by catena of judgment held that while interpreting any section of a statute, every word and provision should be looked into in context to which it is used and not in isolation vide *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, *Easland Combines v. CCE*; *A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh*, and *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*,

13. Hon"ble the Supreme Court while considering the principles regarding the construction of exemption provisions in *Union of India and others Vs. M/s. Wood Papers Ltd. and another*, held as under:

13. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective, etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly.

14. Their Lordships of Hon"ble Supreme Court in the case of *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, while interpreting the word "reason to believe" observed that for existence of reasons for that belief, the belief must be held in good faith and it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer; the form of decision as to the existence of reasons and the belief is not in the mind of Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justifiable. The relevant portion from the case of *Calcutta Discount Company (supra)* is reproduced as under:

14. The expression "reason to believe" postulates belief and the existence of

reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under-assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression therefore predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion: it must be founded upon information.

15. In the case of Smt. Kesar Devi Vs. Union of India (UOI) and Others, Hon"ble Supreme Court in a case reported in Aslam Mohd. Merchant Vs. Competent Authority and Others, had reiterated the aforesaid principle of law as under:

Para 28. ..."Both the statutory elements, namely, "reason to believe" and "recording of reasons" must be premised on the materials produced before him. Such materials must have been gathered during the investigation carried out in terms of Section 68-E or otherwise. Indisputably therefore, he must have some materials before him. If no such material had been placed before him, he cannot initiate a proceeding. He cannot issue a show cause notice on his own ipse dixit. A roving enquiry is not contemplated under the said Act as properties sought to be forfeited must have a direct nexus with the properties illegally acquired.

29. It is not a trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which has been placed before him....

31. In Smt. Kesar Devi Vs. Union of India (UOI) and Others, wherein Fatima Mohd. Amin (supra) was distinguished by a Bench of this Court, inter alia, opining that no nexus or link between the money of the debt and property sought to be forfeited is required to be established under the scheme of the Act, stating;

10. ...The condition precedent for issuing a notice by the competent authority u/s 6(1) is that he should have reason to believe that all or any of such properties are illegally acquired properties and the reasons for such belief have to be recorded in writing. The language of the section does not show that there is any requirement of mentioning any link or nexus between the convict or detenu and the property ostensibly standing in the name of the person to whom the notice has been issued.

16. In the present case, the Additional Commissioner while passing the

impugned order had considered the submission made by the petitioner in his reply but while concluding his finding and taking decision to remit the matter to the Assessing Officer for reassessment in pursuance to power conferred by Sub-section 2 of Section 21 of the Act had not recorded satisfaction after discussing the reply submitted by the petitioner and other evidence on record. The word used "reason to believe" means competent authority must disclose his mind and consider the objection filed by the assessee, submitted in response to notice. No finding has been recorded by the Additional Commissioner as to how and under what circumstances the original assessment of the respective year is bad in law or the petitioner is liable to pay tax on the rice bran, rice polish and kinkee. At least prima facie finding should have been recorded by the Additional Commissioner to indicate that how and in what manner the petitioner is liable to pay tax under the escaped liability. The reply submitted by the petitioner should have been considered by the Additional Commissioner and reason should have been assigned as to why the ground enumerated in the reply submitted by the petitioner (Annexure-6) is not correct or it is not believable.

17. Article 14 is the pulse beat of the Constitution. Even if, the statute does not provide it shall always be obligatory on the part of administration or quasi judicial authority to assign reason while affecting civil right of a person or party. The provision contained in Section 21 of the Trade Tax Act abundantly makes it clear that while exercising power conferred by Sub-section 1 of Section 21, the competent authority had to assign reason and discuss the material on record which makes out a case of escaped assessment to tax.

18. In view of above, the impugned order does not seem to survive and writ petition deserves to be allowed. Accordingly, writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 25.11.2009 as contained in Annexure-7 to the writ petition with consequential benefit. However, liberty is given to the respondents to proceed afresh and pass a fresh order after giving due opportunity of hearing to the parties.

Writ petition is allowed accordingly. No order as to costs.