(1992) 08 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 85 of 1990

Vishwa Nath Shiv Kumar APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 04-08-1992

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 13(3), 13(3A)

Citation : (1993) 88 STC 57

Hon'ble Judges : D.S. Sinha, J;A.N. Gupta, J

Bench : Division Bench

Advocate : Rakesh Ranjan Agrawal, for the Appellant; A.C. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

D.S. Sinha, J.—Heard Shri Rakesh Ranjan Agrawal, learned counsel for the petitioner, and Shri A.C. Tripathi, learned Standing Counsel representing the respondents.

2. This petition was presented in this Court in January, 1990. On 25th January, 1990, the court granted a month''s time to the respondents to file counter-affidavit. No counter-affidavit was filed within the time fixed. On 9th April, 1990, the court again granted a month''s time for filing counter-affidavit. The respondents again failed to file counter-affidavit. In spite of time being granted the respondents are not filing counter-affidavit. Today, there is no prayer for grant of further time for filing counter-affidavit. In these circumstances we have no choice but to accept the averments made in the petition and proceed to determine the controversy raised in the petition on the basis of the uncontroverted averments of the petitioner.

By means of this petition the petitioner has prayed for grant of the following three reliefs :

(A) Issuance of a writ, order or direction in the nature of certiorari quashing the notices dated 4th December, 1989, in respect of the assessment proceedings for the assessment years 1986-87 and 1987-88, under the provisions of the U.P. Sales Tax Act, 1948, hereinafter called "the Act", and the Central Sales Tax Act, 1956, hereinafter called "the Central Act", after remand. Notices are annexures 14 and 15 to the petition ;

(B) Issuance of a writ, order or direction in the nature of mandamus directing the respondent No. 2 to return the books of account, other documents and diary of the petitioner seized on 21st August, 1987 and 8th December, 1987 ;

(C) Issuance of a writ, order or direction in the nature of prohibition restraining the respondent No. 1 from proceeding to assess the petitioner for the assessment years under reference till return of the seized books of account, documents and diary.

Learned counsel for the petitioner states that, for the present, relief (A), i.e., for issuance of a writ of certiorari for quashing the notices of assessment proceedings is not pressed by the petitioner and the court may confine the consideration of the petition with reference to reliefs (B) and (C) only.

3. The submission on behalf of the petitioner with regard to the retention of the seized account books, etc., is that it was in contravention of the provisions of Sub-section (3-A) of Section 13 of the Act inasmuch as the documents seized were retained for a period beyond 90 days and for retaining a document beyond a period of 90 days two conditions are required to be satisfied. But in the instant case conditions were not satisfied. These two conditions are : recording of reasons in writing by the authority seizing the document and prior approval of the Commissioner of Sales Tax to retain the documents, etc., obtained before the expiry of the period of 90 days, for which period the documents could be retained under the provisions of Sub-section (3) of Section 13 of the Act.

4. Sub-section (3) of Section 13 of the Act empowers the officer authorised under Sub-section (2) to seize account, register or document which may be necessary for the purpose of investigation into the liability of the dealer in respect of payment of sales tax. The provision further contemplates that the officer seizing account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized within a period of 90 days from the date of seizure, after having such copies or extracts taken therefrom as may be considered necessary. Sub-section (3-A) provides that the officer seizing any account, register or other document under Sub-section (2) may, for the reasons to be recorded by him in writing, and with prior approval of the Commissioner of Sales Tax, retain such account, register or document for such period not exceeding 30 days from the date of completion of all proceedings under the Act in respect of the years for which they are relevant.

5. Reading the provisions of Sub-section (3) and Sub-section (3-A) together makes it abundantly clear that the account, register or document seized by the

officer authorised, may be retained for a maximum period of 90 days from the date of seizure and if the retention thereof is required for a period beyond 90 days then the officer seizing the account, register or other document has to record reasons in writing for retaining the documents beyond a period of 90 days as stipulated in Subsection (3). Besides recording the reasons he has also to obtain prior approval of the Commissioner of Sales Tax to retain such account, register or document. The requirement of obtaining approval of the Commissioner of Sales Tax, obviously, has to be complied with before the expiry of the period of 90 days stipulated in Sub-section (3). If either of the two conditions precedent for retaining the account, register or document is not satisfied the retention of the seized account, register or document beyond a period of 90 days will be invalid.

6. In paragraph 24 of the petition the petitioner has categorically asserted that the conditions precedent, as envisaged in Subsection (3-A) with regard to recording of reasons and prior approval of the Commissioner of Sales Tax before the expiry of the period of 90 days from the date of seizure as fixed by Sub-section (3), have not been complied with. This assertion, in the absence of any counter-affidavit from the respondents remains uncontroverted. The court, therefore, accepts the averments that the conditions laid down in Subsection (3-A), as asserted by the petitioner, were not satisfied. Consequently we hold that the retention of the books of account, documents and diary of the petitioner, seized on 21st August, 1987 and 8th December, 1987, after the expiry of the period of 90 days, is illegal and the petitioner is entitled to have them returned.

7. In the result, the petition succeeds and is allowed. The Sales Tax Officer (Special Investigation Branch), Muzaffarnagar, respondent No. 2, is directed to return to the petitioner the books of account, documents and diary, seized from it on 21st August, 1987 and 8th December, 1987, within a period of two months from the date of production of a certified copy of this judgment before him. The Sales Tax Officer, Sector-1, Muzaffarnagar, the respondent No. 1, is directed not to proceed with the assessment proceedings in respect of the years 1986-87 and 1987-88 pursuant to the impugned notices dated 4th December, 1989, copies whereof are annexures 14 and 15 to the petition, for a period of 3 months to be computed from today.

