

(2003) 01 AHC CK 0167

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No's. 893 and 1129 of 2001

Jaiprakash Industries Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 9, 2003**Acts Referred:**

- Uttar Pradesh Trade Tax Act, 1948 - Section 3F, 7D

Citation: (2004) 138 STC 52**Hon'ble Judges:** Prakash Krishna, J; M. Katju, J**Bench:** Division Bench**Advocate:** Bharat Ji Agrawal, P.K. Misra and Piyush Agrawal, for the Appellant; The Standing Counsel, for the Respondent**Final Decision:** Dismissed

Judgement

M. Katju, J.

This writ petition has been filed for a writ of certiorari to quash clause (3) of the Composition Scheme dated August 10, 2000 u/s 7-D of the U.P. Trade Tax Act, 1948 annexure 5 to the writ petition and for a writ of certiorari to quash the circular dated August 10, 2000 issued by the Commissioner, Trade Tax, U.P., annexure 6 to the writ petition.

2. Heard learned counsel for the parties.

3. The petitioner is a company registered under the Indian Companies Act, 1956. It had been awarded three civil works contracts as stated in paragraphs 4, 5 and 6 to the writ petition. Photocopies of the works orders are annexures 2, 3 and 4 to the writ petition. A perusal of the same shows that it involved civil work including earth work, development of the area, construction of road, walkways, landscaping, etc. u/s 2(h) of the U.P. Trade Tax Act, 1948 the transfer of property involved in the execution of a works contract is treated as sale. u/s 3-F of the Act tax is imposed on transfer of property in goods involved in execution of works contract. Section 3-F

has been quoted in paragraph 8 of the writ petition.

4. Section 7-D of the U.P. Trade Tax Act, 1948 provides for composition scheme for payment of lump sum amount or at an agreed rate on the turnover in lieu of tax. Section 7-D has been quoted in paragraph 12 of the writ petition. The composition scheme framed u/s 7-D is annexure 5 to the writ petition.

5. Under the composition scheme 1 per cent of the contract value is payable u/s 7-D in lieu of tax in respect of the works contract. However, for determining the contract value certain deductions have to be made as mentioned in para 2 clause (ii) of the composition scheme dated July 23, 1996.

6. On August 10, 2000 the Commissioner, Trade Tax, U.P., has issued the impugned circular alongwith the scheme framed u/s 7-D. True copy of the scheme is annexure 6 to the writ petition.

7. The petitioner filed applications u/s 7-D in respect of the aforesaid three contracts before the assessing authority at NOIDA. True copy of the applications are annexure 7 to the writ petition.

8. For carrying out the aforesaid works contract the petitioner made purchases from within the State of U.P. on payment of tax and it also got goods by way of stock transfer from its depot outside U.P. as stated in paragraph 21 of the writ petition.

9. It is alleged in paragraph 26 of the writ petition that clause (3) of the scheme of composition u/s 7-D of the U.P. Trade Tax Act in so far as it restricts the value of the material received from outside the State of U.P. to the extent of 5 per cent of the contract value, completely overlooks the provisions of Section 7-D and this condition is contrary to the law laid down by the honourable apex Court and is also contrary to the object of Section 7-D of U.P. Trade Tax Act which provides for levy of composition amount in lieu of the tax which is payable under the U.P. Trade Tax Act.

10. In paragraph 27 of the writ petition it is stated that the petitioner has received goods from outside U.P. for executing the aforesaid works contract up to March 31, 2001 to the extent of approximately 35 per cent of the total contract value, whether it is by way of stock transfer or whether these are purchases/sales in the course of inter-State trade and commerce.

11. It is alleged in paragraph 29 of the writ petition that if these goods which are received by the petitioner from outside U.P. are treated as stock transfer then the tax is payable under the U.P. Trade Tax Act and if they are treated as inter-State tax then it cannot be taxed by the U.P. Legislature.

12. The petitioner is aggrieved against the conditions mentioned in clause (3) of the composition scheme restricting the benefit of composition only to the extent of 5 per cent of the goods received from outside the State of U.P. and directing for regular assessment on the balance value of goods.

13. A counter-affidavit has been filed. In paragraph 3(d) of the same it is stated that the composition scheme announced by the State Government is in lieu of the trade tax payable under the U.P. Trade Tax Act and is available if it is agreed between the petitioner and the assessing authority subject to the restrictions and conditions mentioned in the Scheme. The petitioner is not bound to accept the scheme. Clause 3 of the scheme dated August 10, 2000 provided that the contractors who are willing to opt for the compounding scheme must apply within 90 days before the assessing authority. If the petitioner was not satisfied with the provisions of the scheme then the petitioner was free to get himself assessed by regular assessment u/s 7 of the U.P. Trade Tax Act.

14. The condition that if the items imported from outside U.P. are above 5 per cent of the total contract money then the benefit of compounding will not be available above that amount was condition mentioned in the scheme of the State Government. It was for the petitioner either to opt for the scheme or not. In the proforma of the application an affidavit had to be filed u/s 7-D. It is mentioned that the conditions and directions given by the State Government must be acceptable to the dealer. It is only when both the sides are agreeable that an agreement of composition can be entered into between the parties. Hence if the petitioner was not agreeable the petitioner should not have opted for composition and he could get himself assessed by way of regular assessment under the U.P. Trade Tax Act.

15. A rejoinder affidavit has also been filed and we have carefully perused the same.

16. Section 7-D of the U.P. Trade Tax Act states as follows :

"Notwithstanding anything contained in this Act, but subject to direction of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon".

17. The purpose of Section 7-D was to provide for an alternate scheme for payment of trade tax. Many businessmen in order to avoid harassment and make peace with Department would prefer a lump sum or agreed mode of payment to avoid attending the office of the Trade Tax Officer on date, after date which would result in harassment. If businessmen have to attend the office of the Trade Tax officer on and on they will have little time to do business. Hence Section 7-D was enacted as a convenient hassle-free and simple method of assessment and in this way a dealer saves himself the botheration of book-keeping, assessment, appeals, etc. vide [State of Kerala and another Vs. Builders Association of India and others](#),

18. In State of Kerala v. Builders Association of India (supra), the Supreme Court observed :

"The first feature to be noticed is that the alternate method of taxation provided by Sub-section (7) or (7A) of Section 7 is optional. The sub-sections expressly provide that the method of taxation provided thereunder is applicable only to a contractor who elects to be governed by the said alternate method of taxation. There is no compulsion upon any contractor to opt for the method of taxation provided by Sub-section (7) or Sub-section (7A). It is wholly within the choice and pleasure of the contractor. If he thinks it is beneficial for him to so opt, he will opt ; otherwise, he will be governed by the normal method of taxation provided by Section 5(1)(iv). Sub-section (8) provides that the option to come under Sub-section (7) or (7A) has to be exercised by the contractor "either by an express provision in the agreement for the contract or by an application to the assessing authority, to permit him to pay the tax in accordance with any of the said sub-sections". In these circumstances, it is evident that a contractor who had not opted to this alternate method of taxation cannot complain against the said sub-sections, for he is in no way affected by them. Nor can the contractor who has opted to the said alternate method of taxation, complain. Having voluntarily, and with the full knowledge of the features of the alternate method of taxation, opted to be governed by it, a contractor cannot be heard to question the validity of the relevant sub-sections or the rules."

19. The above observations have been followed in the subsequent decision of the Supreme Court in [Mycon Construction Ltd. Vs. State of Karnataka and Another](#),

20. It may be noted that Section 7-D itself mentions that this provision is subject to any direction of the State Government. Moreover, it also mentions that the composition agreement may be in respect of a certain class of goods.

21. The State Government has imposed the condition that so far as the goods coming from outside are concerned the composition will be allowed only to the extent of 5 per cent of the contract value.

This direction in the composition scheme cannot be treated as illegal because Section 7-D itself says that the provision is subject to any direction of the State Government. Moreover the goods coming from outside U.P. above 5 per cent of the contract value are certainly a class of goods, whereas the goods below the extent of 5 per cent are a different class. Hence the State Government can provide for such partial composition for only a certain class of goods and not for another class of goods.

22. Shri Bharat Ji Agrawal, learned counsel for the petitioner submitted that there cannot be both composition as well as regular assessment in respect of the same assessment year. For the reasons already given above we cannot accept this submission. Section 7-D itself contemplates such a partial composition, as mentioned above.

23. It may be mentioned that Section 7-D is in the nature of a concession given to the dealer for avoiding harassment and hassle. If he is not satisfied with the

composition scheme he is not obliged to accept the same. We see no illegality in the impugned clause of the composition scheme nor in the circular of the Commissioner, Trade Tax Act.

24. The petition is dismissed.