

(2009) 08 AHC CK 0308

Allahabad High Court

Case No: None

Laxmi Steels

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 26, 2009

Acts Referred:

- Central Sales Tax Act, 1956 - Section 8C(2), 8C(3), 8C(3A), 8C(8)
- Constitution of India, 1950 - Article 14

Citation: (2010) 31 VST 553

Hon'ble Judges: S.K. Gupta, J; R.K. Agrawal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.K. Gupta, J.

Since similar questions are involved in these aforementioned writ petitions, they are, with the consent of the parties, being taken up together and disposed of by a common judgment and order. Civil Misc. Writ Petition No. 1256 of 2006 is being treated as the leading writ petition and therefore its brief facts are being given below:

2. These writ petitions have been filed, inter alia, for the following reliefs:

(1) Issue a writ, order or direction in the nature of certiorari quashing the impugned circular dated January 20, 2006 issued by the Commissioner of Trade Tax, U. P., Lucknow (annexure 2 to the writ petition).

(2) Issue a writ, order or direction in the nature of mandamus directing respondent No. 3 to issue the requisite form XXXI to the petitioner as and when the same are required without asking any security.

3. The petitioner is engaged in trading of all kinds of iron and steel and is assessed by the assessing authority, respondent No. 3, Assistant Commissioner of Trade Tax,

U. P. Respondent No. 2, the Commissioner of Trade Tax, U. P. (in short, "the Commissioner") issued a circular dated January 20, 2006 u/s 8C(3A) of the Act. According to the aforesaid circular dated January 20, 2006, the traders of the iron and steel who are engaged in import of these commodities have been directed to furnish security as and when they apply for requisite forms. Four different categories of iron and steel have been classified and the Commissioner has given an average price to all the categories, and the dealers are required to furnish security at the rate of four per cent of the value of the goods to safeguard the interest of Revenue. The said circular dated January 20, 2006 covers only the registered dealers who have applied for registration under U.P. and Central Sales Tax Act (in short, "the Act") on or after April 1, 2001. The traders registered before this date have been exempted from furnishing any security for issuance of the requisite forms. Paragraph 3 of the aforesaid circular states that the requisite forms will only be issued after the payment of cash security to be duly made otherwise the dealers will not be provided with the requisite forms which are required for import of iron and steel from outside the State.

4. It has been further alleged that the traders in the iron and steel industry work on very little profit margins and if they are made to furnish security at such high rates then their business will come to a stand still and the policy of the State Government has actually enriched the traders who are registered prior to April 1, 2001 and on the other hand the dealers registered after the aforesaid date are losing heavily in their business.

5. The learned Counsel for the petitioner has further submitted that the wholesale price of the ingots as calculated in view of the circular dated January 20, 2006 issued by the Commissioner of Trade Tax, respondent No. 2, is much higher than the actual market value of the goods and therefore, the amount which is required by the dealers to furnish as security actually comes out much more than the tax payable on the goods. He further submitted that the circular specifically exempted the traders who have been registered before April 1, 2001 without giving any reasons for such a classification/discrimination and there is no valid reason for making any such classification and it is violative of Article 14 of the Constitution of India and is liable to be struck down.

6. It has further been submitted that Section 8C(3A) provides that the Commissioner can pass a general order in writing charging cash security from a dealer of notified commodity but in the present case the order of the Commissioner is not generally applicable but is applicable to those dealers who are registered after March 31, 2001. Therefore, the circular issued by the Commissioner is in contradiction of Section 8C(3A).

7. The learned standing counsel on the other hand has supported the impugned circular and has contended that neither the circular is arbitrary nor discriminatory. He has further contended that the impugned circular has been issued by the

Commissioner in accordance with the Section 8C(3A) of the Act and the rates fixed by the Commissioner in the circular has a rational basis.

8. Heard Sri Praveen Kumar, learned Counsel for the petitioner and learned standing counsel appearing on behalf for the respondents and perused the record.

9. To appreciate the contention of the parties it will be useful to refer to Section 8C(3A) of the U. P. Trade Tax Act, 1948 which reads as under:

8C. Security in the interest of Revenue.-(1) to (3)

(3A) Notwithstanding anything contained in Sub-section (2) or Sub-section (3), the Commissioner may, in respect of any goods notified by the State Government in this behalf, by a general order in writing, direct that a cash security of such amount as may be specified in such order shall be required to be furnished by a dealer or person requiring any of the forms prescribed under this Act.

10. Iron and steel is categorized in four sets. For a reasonable and rational fixation of cash security u/s 8C(3A) of the Act, the record of the case reveals that for the fixation of security amount, a committee of senior officers was constituted by the Commissioner and the said Committee considered the prevalent market rates between November 16, 2005 to November 30, 2005 of different categories of iron and steel collected by the research section of Trade Tax Department and the selling rates collected from the reputed manufacturers like M/s. TISCO and M/s. Steel Authority of India, Kanpur as on January 4, 2006.

11. The first contention of the learned Counsel for the petitioner is that the rates fixed in the circular are arbitrary and much higher than the actual market value of goods as has been fixed in the circular. Therefore, the amount which the dealers are required to furnish as security actually is far more than the tax payable on the goods.

12. In this regard, paragraph 2E of the counter-affidavit filed by the respondents is reproduced below:

That for the fixation of security amount, a committee of senior officers was constituted by respondent No. 2 (Commissioner, Trade Tax, U. P.) which met on January 5, 2006. The said committee considered the prevalent market rates between 16th November to 30th November, 2005 of different categories of iron and steel collected by the research section of Trade Tax Department and the selling rates collected from the reputed manufacturers like M/s. TISCO and M/s. Steel Authority of India, Kanpur as on January 4, 2006. On the basis of rates collected the following average wholesale price in the following four categories were found:

Particulars	Wholesale rate per M.T.	Trade tax the rate

Pig iron, spung iron, caste iron and different kind of iron scrap.	Rs. 10,500	420
Ingots, billets, bloom, slab, steel semies.	Rs. 17,500	700
Steel bar (round, rod, square, etc.), and still strucrural, angle, joist, channel, T and Z section, etc.	Rs. 23,000	920
Sheets, strip, steel tube, wire, etc.	Rs. 30,000	1,200

Considering the fluctuations and other factors the aforesaid committee proposed security amount per M. T., at the rate of Rs. 450, Rs. 750, Rs. 1,000 and Rs. 1,200, respectively for the abovementioned four categories. The amount of cash security as proposed by the committee was considered and accepted by respondent No. 2 and thereafter, the impugned circular/general order dated January 20, 2006 was issued. A true copy of the minutes of meeting dated January 5, 2006 of the committee constituted by respondent No. 2 is annexed herewith and is marked as annexure No. 1 to this counter-affidavit.

13. Therefore, the rates of the notified goods have been fixed by respondent No. 2 as provided in the circular dated January 20, 2006 on the basis of the prevalent market rates between 16th November to 30th November, 2005 of different categories of iron and steel fixed by the committee, consisting of senior officers of the Trade Tax Department, after collecting the rates from the reputed manufacturers like M/s. TISCO and M/s. Steel Authority of India, Kanpur and thereafter on the basis of the said datas, the average wholesale price was fixed. Thus it is apparent that before fixing the rates and security amount, committee of senior officers was constituted for the said purpose and consequently the report of the said committee was duly considered and accepted by respondent No. 2. Thereupon, the impugned circular order dated January 20, 2006 was issued.

14. Thus, in view of the aforesaid facts and circumstances of the case, we are of the view that rates and security fixed in the circular are not arbitrary.

15. Second contention of the petitioner is that the cut-off date January 20, 2006 is arbitrary and unreasonable because the circular covers only those registered traders who have applied for registration under the U.P. Sales Tax Act on or after April 1, 2001 and the traders before these dates have been exempted from furnishing any security for the issuance of the requisite forms. As a corollary to the aforesaid submission, it has been contended that such a classification is discriminatory, whimsical and arbitrary and violative of Article 14 of the Constitution of India and has no nexus to the objects sought to be achieved.

16. We have given our thoughtful and anxious consideration to this argument, and in our opinion, the arguments are totally misconceived and untenable. It has been stated in paragraph 3G of the counter-affidavit that the respondent's Department also collected the datas regarding estimated evaded taxable zone wise sale of iron and steel. All the Zonal Additional Commissioners and Zonal Joint Commissioners (SIB/Enforcement) were consulted and the consensus was reached that in recent few years a tendency is developing that many of the traders obtained registration and after doing the business for one or two years in iron and steel, they disappear evading the tax and thus resulting in huge evasion/loss of tax and as such it was recommended by consensus in the meeting of all the Zonal Additional Commissioner and Zonal Joint Commissioner that condition of cash security u/s 8C(3A) of the Act in respect of iron and steel be waived/not enforced in respect of traders registered up to March 31, 2001. The true copy of the datas of evaded sales zone wise along with recommendation letter dated January 19, 2006 has been appended as annexure III to the counter-affidavit.

17. The aforementioned letter dated January 19, 2006 enclosing the datas regarding estimated evaded taxable zone wise sale of iron and steel clearly indicates that the evasion of tax is more rampant in the recent past years preceding the issuance of circular. Therefore, the authorities were of the view that the old sellers who are in business since quite a long time have earned goodwill and are more tested in comparison to the dealers who have been registered just a few years back, preceding the date of the issuance of the circular.

18. In the case of [University Grants Commission Vs. Sadhana Chaudhary and Others](#), the apex court has observed that the choice of a date as a basis for classification cannot always be arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances when fixing a line of the point is necessary and there is no mathematical or logical way of fixing it precisely.

19. The cogent and convincing reasons have been assigned by the respondents in fixing the cut-off date April 1, 2001. It is for the Government to decide the cut-off date as a part of executive policy and the reasons assigned by the respondents cannot be said to be arbitrary or violative of Article 14 of the Constitution. Fixing a cut-off date is well within the powers of the Government as long as reasons thereof are neither arbitrary nor unreasonable.

20. In view of the above, we are of the considered opinion that the cut-off date as provided in the present matter, cannot be said to be artificial or without any rational basis, so as to attract wrath of Article 14 of the Constitution.

21. The allegation of the petitioner regarding adjustment of excess amount of security is not being given to him, has been denied by the respondents. It has been submitted by the respondents that the adjustment is allowed towards the liability in

monthly returns and for excess security. Declaration forms which are being issued to the petitioner against the excess amount of security calculated by him. In this connection, paragraph No. 3H of the counter-affidavit is relevant, which is reproduced below:

3H. That the allegation of the petitioner that adjustment of excess amount of security is not being given to him is incorrect. The fact is that the adjustment is not being given to him is incorrect. The fact is that the adjustment is allowed towards that liability in monthly returns and for excess security. Declaration forms are being issued to the petitioner against the excess amount of security calculated by him. The aforesaid averments are evidenced from the application of the petitioner dated July 20, 2006 for obtaining declaration form by seeking adjustment of excess amount of security as per his own calculation form by seeking adjustment of excess amount of security as per his own calculation and the forms were issued to him. A true copy of the application of the petitioner dated July 20, 2006 for obtaining 10 declaration forms along with the computation return for the month of June and order passed by the assessing authority on the application, are being collectively filed herewith as annexure No. 4 to this counter-affidavit.

22. Thus, the allegation of deposit of excess amount or refund or harassment and blocked money are wholly baseless. Since, against the excess amount of security, the petitioners can obtain fresh declaration forms and if any amount deposited by the petitioner is found in excess of tax liability determined in the assessment order, the same is liable to be refunded to him in accordance with law, provided that the adjustment of such excess amount has not already been made by the petitioner to obtain fresh declaration forms.

23. The learned Counsel for the petitioner has relied upon the decision of [Girraj Stone Crusher Private Limited Vs. Commissioner of Trade Tax](#), wherein it has been held that cash security for issuance of a form XXXI must have reasonable nexus to the tax payable on the sale of goods for which form XXXI is required. Circular demanding Rs. 530 per form was held to be wholly arbitrary, unreasonable and without any nexus to the tax liability. We have already discussed hereinafter that the rate and the security fixed by the respondents, in the present case is not at all arbitrary or unreasonable and rational basis have been provided by the respondents while fixing the rates and securities therefore the aforesaid authority cited by the petitioner has no bearing on the case in hand.

24. Even in the case of *Girraj Stone Crusher Private Limited* (2003) 131 STC 523 : (2003) UPTC 241 this Court has upheld the power of the Commissioner of Trade Tax to adopt any reasonable and rational method for demanding cash security u/s 8C(3A) of the Act. There should have nexus to the amount of tax which would be payable. If it is not being deposited u/s 8C(3A) of the Act, the Commissioner had power to direct for deposit of cash security to issue some declaration forms in respect to particular goods which power has been upheld by this Court in several

case. Moreover, it starts with a non obstante and thus gives the overriding power to the Commissioner to direct for deposit of cash security.

25. It has also been held by this Court in the case of *West Coal Handling Agent v. Commissioner of Sales Tax* (1989) UPTC 1402 that the court should be reluctant to interfere in exercise of the power fixing the amount of security. The only consideration should be whether the authorities have adhered to the norms and acted in the manner which renders the entire exercise arbitrary.

26. In the case of *Saurabh and Brothers, Siddharthnagar v. State of U.P.* (1993) UPTC 833 this Court has upheld the validity of Sub-section (3A) of Section 8C of the Act. It has held as follows:

3. We do not think merely demanding cash security under Sub-section (3A) of Section 8C makes the provision ultra vires. Security demanded could be in any shape. Security means securing now for some happenings in future which if not recoverable could be recovered out of security taken earlier. This security could be in any shape, may be even in the form of cash. Thus, if Legislature provided this cash security in certain situations under Sub-section (3A) could not be said to be ultra vires. Secondly, such security remains blocked up for several years leading the provisions as unreasonable is also misconceived. No provision of an enactment would be ultra vires only on account of any hardship to a particular dealer. Further under Sub-section (8), on an application by a dealer or the person concerned, the authority could order the return of the surety bond or refund of any amount or part thereof deposited as security if it is not required for the purposes of this Act. Apart from this even if an adverse order is passed both first and second appeal lies against that order. Thus, we do not find any merit in this contention also.

27. The last submission of the petitioner is that Section 8C(3A) provides that Commissioner can pass general order in writing, charging cash security from a dealer of a notified commodity but in the present case order of the Commissioner is not generally applicable but is applicable to all those dealers who are registered after March 31, 2001, therefore, the circular issued by the Commissioner dated January 21, 2006 is in violative to Section 8C(3A) of the Act.

28. This argument of the petitioner is also misconceived and wholly untenable. The Section 8C(3A) of the Act provides that the Commissioner may, in respect of any goods notified by the State Government in this behalf by a general order in writing, direct that the cash security of such amount shall be required to be furnished by a dealer. Therefore, the emphasis is on the notified goods and the general order is in respect to notified goods for which the rate as well as security has been fixed. It is not being disputed that u/s 8C(3A) of the Act, the Commissioner has the power to direct the dealer to furnish a cash security for issuance of declaration forms in respect of particular goods, which power has been upheld by this Court in several cases. Moreover, it starts with non obstante clause and thus it gives an overriding

power to the Commissioner to direct that a cash security shall be required to be furnished by a dealer. The plea that it is not a general order, is devoid of any substance in as much as no particular form of issuing an order has been prescribed under the Act or the Rules framed thereunder. The general order relates/applicable to the goods notified and there is no prohibition that valid classification cannot be made with respect to class of dealers engaged in the said business provided that the classification is valid; reasonable and has nexus with the object sought to be achieved.

29. In view of the aforesaid discussions, it cannot be said that there is no nexus between the object sought to be achieved and the provisions fixing the rate of the notified goods and security as well as the fixing the cut off date, i.e., April 1, 2001. So even testing it on the principles of delegated legislation, the impugned circular cannot be adjudged to be ultra vires.

30. In the result, we do not find any merit in these petitions, they are accordingly dismissed. There shall be, however, no order as to costs.