

M/s. Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid

Vs

The State of U.P. & Others

Civil Appeal No. 543 (NT) of 1970

(K.S. Hegde, H.R. Khanna JJ)

23.04.1973

JUDGEMENT

KHANNA, J. -

1. This appeal on certificate is directed against the Full Bench decision of Allahabad High Court answered by a majority of two one the following question referred to it by a Division Bench in the negative against the assessee-appellant :

"Whether, in order to recovery interest under section 8 (1-A) of the U.P. Sales Tax Act, it is necessary for the Sales Tax Officer to make an assessment order in respect of the interest and to issue notice of demand in respect of such interest."

2. The appellant, a partnership firm is a large scale manufacturer of biris. The appellant was assessed to tax under the U.P. Sales Tax Act, 1948 (U.P. Act No. 15 of 1948) (hereinafter referred to as the Act) for the assessment years 1957-58 and 1958-59 as per assessment orders dated June 10, 1959 and February 12, 1963 respectively. On an application sent by the appellant to the Minister of Finance, U.P. Government requesting for compounding of tax, an order was issued on May 6, 1959 staying the recovery of tax due from the appellant. The stay order was vacated by order dated September 25, 1967. On October 9, 1967 the Sales Tax Officer sent a recovery of arrears of sales tax for the year 1957-58 the recovery certificate also mentioned that interest at the rate of 18 per cent per annum calculated on the amount of tax with effect from February 1, 1964 till the date of final payment should also be recovered as arrears of land revenue in terms of the provisions of section 8 (1-A) of the Act. On October 25, 1967 another recovery certificate for recovering a sum of Rs. 26,238.08 in respect of the year 1958-59 on account of sales tax was sent by the Sales tax officer to the Collector Allahabad It was mentioned in the certificate that the aforesaid amount would carry interest at the rate of 18 per cent per annum calculated with effect from February 1, 1965 till the date of final payment and same too should be recovered as arrears of land revenue in terms of the provisions of section 8 (1-A) of the Act.

3. The case of the appellant firm is that the amount of the sales tax mentioned in the two recovery certificates was paid by it. The appellant, however, contested its liability to pay interest amounting to Rs. 1,38,000 on the amount of sales tax under section 8(1-A) of the Act. A petition under article 226 of the Constitution was consequently filed by the appellant in the High Court challenging the recovery of the interest amounting to Rs. 1,38,000 The main ground which was taken by the appellant in this connection was that without making an assessment order and without issuing a notice of demand the Sales Tax Officer had no jurisdiction to initiate proceedings for the recovery of interest. Reliance in this connection was placed on behalf of the appellant upon an earlier

Division Bench decision in the case of Bent Ram Mool Chand v. The Sales Tax Officer(1) wherein the Division Bench had held that issuance of a notice of demand was a condition precedent to the recovery of penal interest. As the correctness of that decision was challenged, the Division Bench hearing the writ petition of appellant referred the question reproduced earlier to the Full Bench. The Full Bench by a majority of two to one, as already mentioned, answered the question in the negative and against the appellant.

4. Before dealing with the contentions advanced in this Court, we may refer to the relevant provision of the Act. Section 3 of the Act creates liability to sales tax. Under this section every dealer is liable to pay tax on his turnover which shall be determined in such manner as may be prescribed. Section 7 provides for determination of turnover & assessment of tax. Section 8 deals with payment and recovery of tax. Sub-section (1), (1-A) and 8 of section 8 read as under :-

(1-A). If the tax payable under section (1) remains unpaid for six months after the expiry of the time specified in the notice of assessment and demand, or the commencement of the Uttar Pradesh Bikri-Kar (Dwitiya Sanshodhan) Adhinyam, 1963, whichever later then without prejudice to any other liability or penalty which the defaulter may, in consequence of such non-payment, incur under this Act. Simple interest at the rate of eighteen percent per annum shall run on the amount then remaining due from the date of expiry of the time specified in the said notice or from the commencement of the said Adhinyam, as the case may be, and shall be added to the amount of tax and be deemed for all purposes to be part of the tax :

Provided that where as a result of appeal, revision or reference, or of any other order of a competent court or authority, the amount of tax is varied, the interest shall be recalculated accordingly;

Provided further that the interest on the excess amount of tax payable under an order of enhancement shall run from the date of such order if such excess remains unpaid for six months after the order.

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(8) Any tax or other dues payable to the State Government under this Act or "any amount of money which a person is required to pay to the assessing authority under sub-section (3) or for which he is personally liable to the assessing authority under sub-section (6) shall be recoverable as arrears of land revenue."

5. It may be mentioned that sub-section (1-A) of Section 8 reproduced above was added by U.P. Sales Tax (Second Amendment) Act, 1963 (U.P. Act 3 of 1964). The above provision was apparently added with a view to lighten up the machinery for collection of sales tax and as a deterrent measure so that the dealers may not evade or delay the payment of tax U.P. Act 3 of 1964 also added sec. 33 of the Act. The material part of section 33 reads as under :

"In respect of any sum recoverable under this Act as arrears of land revenue the assessing authority may forward to the Collector a certificate under his signature specifying the sum due. Such certificate shall be conclusive evidence of the existence of the liability, of its amount, and of the person who is liable, and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue :"

6. Mr. Sen on behalf of the appellant has argued that it was essential for the Sales Tax Officer to

make an assessment order in respect of the interest before he could issue recovery certificate against the appellant. In any case, according to Mr. Sen, recovery certificate in respect of the interest could not be issued till such time a notice of demand in respect of the interest had been issued by the Sales Tax Officer to the appellant-firm. These contentions, in our opinion, are not well-founded. There is no provision in the Act which makes it obligatory on the part of the Sales Tax Officer to make an assessment in respect of interest which the amount of sales tax would carry under section 8 (1-A) of the Act. There is no provision in the Act which requires the issue of a notice of demand in respect of the interest by the Sales Tax Officer to the assessee before the Sales Tax Officer forwards recovery certificate to the Collector, Reference has been made by Mr. Sen to sub-section (3A) of section 8, according to which interest shall be deemed for all purposes to be part of the tax. The above deeming provision, in our opinion, has been added only for the purpose of recovery. The object apparently was that the amount of interest should be recovered in the same manner as the amount of sales tax. The amount of sales tax and other dues under sub-section D(8) of section 8 can be recovered as arrears of land revenue. It was with a view to put the matter beyond any pale of controversy and to obviate any objection that the interest of sales tax cannot be recovered and as land revenue that sub-section (1-A) provided that the interest shall be added to the amount of tax and be deemed for all purposes to be part of the tax.

7. According to section 8(1-A), simple interest at the rate of 18 per cent per annum shall run on the amount of arrears of sales-tax from the date specified in that sub-section. It would thus appear that the liability to pay interest is automatic and arises by operation of law. The amount of interest on the date of payment of tax is not constant but increases from day to day. The amount of interest can, therefore, be not predicated till such time as the arrears of sales tax are paid and it is consequently not possible to specify a definite figure in respect of the interest in the recovery certificate. At the time the arrears of sales tax are paid, there can be no difficulty in finding the amount of interest which has become due. The amount of tax on which interest is to accrue, the rate of interest, the date from which interest is to commence and the date upto which interest is to be counted are all known. It is, therefore, a matter of more arithmetical calculation to arrive at the figure of interest. We find nothing in any of the provisions of the Act as may warrant making of another assessment order by the Sales Tax Officer regarding the amount of interest or making it obligatory for him to issue a demand notice in respect of the interest before sending the recovery certificate to the Collector.

8. We are also not impressed by Mr. Sen's argument that the Sales Tax Officer should specify the amount of interest in the recovery certificate. As the amount of interest would go on increasing every day till the recovery of the sales-tax, it is plainly not possible to specify the exact amount of interest in the recovery certificate. The exact amount of interest can only be known on the day the arrears of sales-tax are paid. No elaborate procedure is required for determining the amount of interest because, as mentioned earlier, it is a matter of simple arithmetical calculation.

9. There was some argument before us on the point as to when U.P. Act 3 of 1964 came into force. This Act received the assent of the President on January 25, 1964 but was published in the official Gazette on February 1, 1964. It was submitted on behalf of the appellant that the Act came into force on the date it received the assent of the President. As against that, Mr. Manchanda on behalf of the respondents stated that the Act came into force on February 1, 1964, the day it was published in the official Gazette. The stand taken by Mr. Manchanda in this respect is correct because according to clause (b) of sub-section (1) of Sec 5 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904) where Any Uttar Pradesh Act made after the commencement of the Constitution, it shall come into operation on the day on which the amount thereto of the Governor or the President, as the

case may be require, is first published in the official Gazette. It may also be mentioned that in para 33 of the writ petition filed in the High Court the appellant too had taken the stand that the U.P. Act 8 of 1964 had come into force on February 1, 1964.

10. Argument has also been advanced by Mr. Sen that the interest on arrears of sales taxes could not be realised for the period during which the recovery of sales-tax was stayed. We find it difficult to accede to this contention because there is nothing in the language of section 8(1-A) of the Act which prevents the running of interest be cause of the operation of any stay order. Indeed, the liability to pay interest because of the operation of any stay order. Indeed, the liability to pay interest is created by the statute and the Sales Tax Officer has no discretion to grant exemption from the payment of interest.

11. Mr. Sen has pointed out that the amount of sales-tax payable by the appellant was reduced on appeal and the appellant is entitled to a consequential relief on that account. This is a matter which outside the ambit of the question which has been dealt with in the judgment under appeal. In case the appellant is entitled to any relief on account of reduction of the amount of sales tax in appeal, it would be for him to agitate the matter in appropriate proceedings.

12. The appeal consequently fails and is dismissed with costs.

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