

The S. T. O., Moradabad and Another

Vs

M/S. H. Farid Ahmed & Sons

Civil Appeals Nos. 95 and 96 of 1971

(V.R. Krishna Iyer, Syed M. Fazal Ali JJ)

12.09.1975

JUDGMENT

FAZAL ALI, J. -

1. These appeals by the Sales-tax Officer have come up to this Court by certificate of fitness granted by the High Court of Allahabad. The appeals involve a very short point, turning upon the interpretation of Section 7A of the U. P. Sales Tax Act (hereinafter referred to as the Act). It appears that the respondent is a partnership firm, carrying on business in the district of Moradabad. The assessment quarters in question are two quarters of 1968. By an order dated December 31, 1968, the Sales-tax Officer found from the turnover of the firm as revealed from the quarterly returns filed by the assessee that it disclosed an assessable income. The Sales-tax Officer, therefore, proceeded to make a provisional assessment in respect of the portion of the assessment year concerned, purporting to act under Section 7A of the U. P. Sales Tax Act. The assessee being aggrieved by this order, instead of going in appeal against the order, challenged the same before the High Court praying that the Sales-tax Officer had no jurisdiction to make a provisional assessment, because the assessee had in fact filed a return. This argument appears to have found favour with the High Court which quashed the order of the Sales-tax Officer and held that the Sales-tax Officer could have made a provisional assessment to the best of his judgment only if no return had been filed by the assessee.

2. Mr. Manchanda appearing in support of the appeals has contended that the High Court has completely overlooked the purport and ambit of Section 7A of the Act, which does not exclude but in fact implies the provisions of the Act, including Section 7(3). The sheet-anchor of the High Court's judgment is Section 7(3) which runs thus :

If no return is submitted by the dealer under sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall after making such enquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof :

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

The High Court was of the opinion that as conditions mentioned in Section 7(3) did not apply to the facts of the present case inasmuch as it was not a case in which the assessee had not filed a return at

all, no assessment could have been made by the Sales-tax Officer. In our opinion, the High Court was in error in taking this view. Section 7A runs thus :

(1) The State Government may require any dealer to submit a return of his turnover of a portion of the assessment year, and the assessing authority may, without prejudice to the provisions of Section 7 make provisional assessment in respect of such portion of the assessment year in accordance with the provisions of this Act in so far as they may be made applicable if the turnover of the dealer as determined by the assessing authority for such portion of the assessment year is not less than such proportion of the amount, if any, specified in or notified under sub-section (2) of Section 3 or sub-section (2) of Section 3-D, as the case may be, as the period under assessment bears to twelve months.

(2) Where the assessing authority has made a provisional assessment under sub-section (1), it shall not, by reason of such assessment, be precluded from re-determining in the turnover and making the assessment for the whole year.

3. This section clearly authorizes the assessing authority to make a provisional assessment in respect of the assessment year to the best of his judgment, and does not contain any pre-conditions at all. On the other hand, it applies the provisions of the Act which includes the provisions of Section 7(3), which is the provision that confers power on the assessing authority to make an assessment to the best of his judgment. The High Court was rather carried away by the language of Rule 41(3) which runs thus :

(3) If no return is submitted in respect of any quarter or month, as the case may be, within the period or if the return is submitted without the payment of tax in the manner prescribed in Rule 48, the Sales Tax Officer shall, after making such enquiries as he considers necessary, determine the turnover to the best of his judgment, provisionally assess the tax payable for the quarter or the month, as the case may be and serve upon the dealer a notice in Form XI and the dealer shall pay the sum demanded within the time and in the manner specified in the notice.

It is no doubt true that sub-rule (3) contains a provision that the provisional assessment to the best of the judgment can be made where no return is submitted, but this rule has to be read as supplemental to the provisions of the parent Act. We cannot interpret the rule in a way so as to come into conflict with the parent Act, in which case the Act will prevail. What this rule implies is that whether the return is filed by the assessee or not, the assessing authority will have the power to make a provisional assessment. In these circumstances, therefore, we are not able to see any real inconsistency between Section 7A and Rule 41(3) of the Rules framed under the Act. For these reasons, we are clearly of the opinion that the sales tax authority, namely, the Sales-tax Officer in the circumstances was fully justified in making the provisional assessment under the provisions of Section 7A of the Act and the High Court was wrong in quashing this order. We feel that if the interpretation given by the High Court is accepted, it will amount to giving a licence to the assessee to escape final assessment by filing wrong quarterly returns and deflating the profits earned by them. The result is that both the appeals are allowed. The judgments and orders of the High Court are set aside, but in the circumstances we leave the parties to bear their costs throughout. The order passed by this Court, however, will not preclude the

assessee from challenging the correctness of levy of penalty before the statutory authorities in accordance with law, if he is in time.

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