

The Sales Tax Officer, Sector I, Kanpur and Another

Vs

M/S. Dwarika Prasad Sheo Karan Dass

Civil Appeal No. 2061 of 1971

(H.R. Khanna, V.R. Krishna Iyer JJ)

19.11.1976

JUDGMENT

KHANNA, J. –

1. This appeal on certificate is against the judgment of Allahabad High Court where by the High Court accepted petition under Article 226 of the Constitution of India filed by the respondent and quashed the recovery proceedings initiated by the appellant.

2. The respondent-firm was assessed to sales tax under the U.P. Sales Tax Act, 1948 (hereinafter referred to as the Act) for the assessment year 1958-59. The respondent went up in appeal and the tax demand was reduced in appeal. On revision filed by the respondent the total demand of sales tax was further reduced. The respondent made various payments towards the amount of tax found due from him. The sales tax authorities initiated proceedings for recovering the balance of the tax and realising interest at the rate of 18 per cent from February 1, 1964 on part of the tax demand. These recovery proceedings were challenged by the respondent by means of writ petition on the ground that a fresh notice of demand should have been issued to him in respect of the amount as reduced in appeal and revision. Unless that was done, the respondent could not be treated as a defaulter. The liability for payment of interest of the respondent was also questioned. The High Court accepted the first contention and quashed the recovery proceedings.

3. We have heard Mr. Manchanda on behalf of the appellant. No one appeared on behalf of the respondent. Mr. Ramamurthi, however, argued the case amicus curiae. After giving the matter our consideration, we are of the opinion that the judgment under appeal cannot be sustained.

4. Two questions arise for determination in this appeal. The first question is whether the respondent is liable to pay interest on the amount due from him as sales tax. The answer to this question, in our opinion, should be in the affirmative in view of the provisions of sub-section (1-A) of Section 8 of the Act. The aforesaid sub-section as also sub-sections (1) and (8) of that section read as under :

8. Payment and recovery of tax. - (1) The tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, not being less than fifteen days from the date of service of the notice of assessment and demand as may be specified in the notice. In default of such payment, the whole of the amount then remaining due shall become recoverable in accordance with sub-section (8).

(1-A) If the tax payable under sub-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) Adhiniyam, 1963, whichever is 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 per cent 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 Adhiniyam, as the case may be, and shall be added to the amount of tax and the 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. . . .

(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.

This Court considered the above provisions in the case of Haji Lal Mohd. Biri Works v. State of U.P. [(1973 32 STC 496 : (1974) 3 SCC 137 : 1973 SCC (Tax) 479] and held that the liability to pay interest under Section 8(1-A) is automatic and arises by operation of law. It was further observed in that case that it is not necessary for the Sales Tax Officer to specify the amount of interest in the recovery certificate. We may add that there is no dispute in the present case that the notice of assessment and demand was served upon the assessee-respondent. The respondent cannot, therefore, escape liability for payment of interest.

5. The second question which arises for consideration is whether it was necessary for the sales tax authorities to issue a fresh notice of demand to the respondent after the tax assessed by the Sales Tax Officer was reduced on appeal and further reduced on revision. So far as this question is concerned, we find that sub-section (9) has been added in Section 8 of the Act by the U.P. Sales Tax (Amendment) Act (3 of 1971). The aforesaid sub-section reads as under :

(9) Notwithstanding anything contained in sub-sections (1) and (1-A) and notwithstanding any judgment, decree or order of any court, tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act is served upon a dealer by an assessing authority and an appeal, revision or other proceeding is filed in respect of such tax or dues, then -

(a) where as a result of such appeal, revision or proceeding the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice only in respect of the amount by which such tax or other dues are enhanced and any proceeding in relation to the amount specified in the notice already served upon him before the disposal of such appeal, revision or other proceeding may be continued from the stage at which it stood immediately before such disposal;

(b) where as a result of such appeal, revision or other proceeding the amount of such

tax or other dues is reduced, -

(i) it shall not be necessary for the assessing authority to serve upon the dealer a fresh notice;

(ii) if any recovery proceedings are pending, the assessing authority shall give intimation of the fact of such reduction to the Collector who shall thereupon take steps for the recovery of only the reduced amount; and

(iii) any proceedings initiated on the basis of the notice or notices served upon the dealer before the disposal of such appeal, revision or other proceeding, including any recovery proceedings may be continued in relation to the amount so reduced from the stage at which it stood immediately before such disposal;

(c) no fresh notice shall be necessary in any case where the amount of the tax or other dues is not varied as a result of such appeal, revision or other proceeding.

It is apparent from clause (b) of sub-section (9) that where as a result of appeal, revision or other proceedings the amount of the tax or other dues is reduced, it shall not be necessary for the assessing authority to serve upon the dealer a fresh notice. The Allahabad High Court has also taken the same view in the case of Firm Parshuram Rameshwar Lal v. State of U.P. [(1974 33 STC 540 (ALL).]

6. In view of the above, we accept the appeal, set aside the judgment of the High Court and dismiss the writ petition filed by the respondent. The parties in the circumstances shall bear their own costs throughout.

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