

Ganesh Sugar Mills

Vs

State of U.P. and Others

Civil Appeal No. 947(N) of 1972

(D. P. Madon, G. L. Oza JJ)

20.12.1985

JUDGMENT

MADON, J. -

1. The appellant Ganesh Sugar Mills, is a partnership firm carrying on the business of manufacturing sugar in the district of Gorakhpur in the State of Uttar Pradesh. Sub-section (1) of Section 3 of the U.P. Sugarcane (Purchase Tax) Act, 1961 (U.P. Act 9 of 1961) (hereinafter referred to in short as "the Act"), levies a tax on the purchase of sugarcane by the owner of a factory or a unit at the rates specified in the said sub-section to be collected in the manner prescribed by rules made under the Act. Sub-sections (3) and (5) of Section 3, as originally enacted, provided and sub-sections (4) and (8) of Section 3 provide as follows :

(3) Any tax payable under this Act, if not paid by the date prescribed for payment thereof, shall carry interest at the rate of six per cent per annum from such date till the date of payment.

(4) Where any tax payable under this Act, or interest thereon, or both, as the case may be, remains unpaid for a period exceeding fifteen days beyond the date prescribed for payment thereof, the person liable to pay the same shall, in addition to the amount of arrears of tax and interest thereon, be also liable to pay, by way of penalty, a further sum, not exceeding ten per cent of the total sum payable, calculated at such rate or rates as may be prescribed.

(5) Any person aggrieved by an order of assessment made under this Act, or by the imposition of interest under sub-section (3) or penalty under sub-section (4), may within thirty days of the intimation of that order, or imposition, as the case may be, prefer an appeal to the Cane Commissioner.

(8) The officer or authority empowered to collect the tax may forward to the Collector of the district where the factory or the unit, as case may be, is situate, a certificate under his signature specifying the amount of arrears of tax and interest, if any, due from any person, and on receipt of such certificate the Collector shall proceed to recover the amount specified from such person as if it were an arrear of land revenue.

2. By his notice dated December 14, 1967, the Cane Commissioner, Uttar Pradesh, intimated to the appellant Firm that under sub-sections (3) and (5) of Section 3 of the Act a sum of Rs 3,53,648 was

due as interest up to October 31, 1967, and called upon the appellant Firm to deposit the said amount in the Treasury within 15 days. The concluding paragraph of the said letter stated, "The entire record on the basis whereof the interest has been calculated can be seen in the office of the Cane Inspector concerned". By his notice dated March 13, 1970, the Additional Collector, Gorakhpur, intimated to the appellant Firm that the Cane Commissioner, Uttar Pradesh, had sent a certificate for recovery of a sum of Rs 3,83,745 "on account of interest of purchase tax ending March 31, 1969" and that on his failure to pay the said sum into the Treasury by March 20, 1970, coercive measures would be adopted. A copy of the said notice along with a recovery certificate was sent to the Tahsildar, Pharender, for taking necessary action in consultation with the Sub-Divisional Officer, Pharender, to whom also a copy of the said notice was sent for taking necessary action. The appellant Firm also received another notice dated March 13, 1970, from the Additional Collector, Gorakhpur, stating that a sum of Rs 1,85,575 on account of penalty for the year 1969-70 was outstanding against it up to February 28, 1970, and called upon it to deposit the said amount immediately in the Treasury.

3. On March 20, 1970, the appellant Firm filed a writ petition, being Civil Miscellaneous Writ Petition 1153 of 1970, before the Allahabad High Court contesting the validity of the said notice dated March 13, 1970, on the ground that no interest or penalty could be demanded under the Act unless an order was passed imposing such interest or penalty, and further on the ground that no details were supplied to the appellant Firm with respect to the amount of interest claimed and that no opportunity had been given to the appellant Firm to contest these demands. During the pendency of the writ petition in the High Court, the recovery certificate with respect of penalty was recalled by the Additional Collector and no question, therefore, relating to the said notice demanding penalty falls to be determined by us in this appeal.

4. The Allahabad High Court had held in certain other writ petitions that interest did not accrue automatically under Section 3(3) of the Act and, therefore, no interest could be claimed unless there was an order assessing interest. When the Governor of Uttar Pradesh promulgated the Uttar Pradesh Taxes and Fees Laws (Amendment) Ordinance, 1970 (U.P. Ordinance 14 of 1970), opportunity was taken also to amend the Act so as to increase the rate of interest as also to get over the above High Court judgment. This was done by Chapter V of the said Ordinance consisting of Sections 13 and 14. By clause (i) of Section 13 the rate of interest specified in sub-section (3) of Section 3 of the Act was increased from six per cent to nine per cent by substituting the words "nine per cent" for the words "six per cent". Sub-clause (b) of clause (i) of the said Section 13 inserted with retrospective effect in sub-section (3) and Explanation to sub-section (3) of Section 3 of the Act. Sub-clause (b) of clause (i) of the said Section 13 provided as follows :

(i) in sub-section (3)

(b) at the end, the following Explanation shall be inserted and be deemed always to have been inserted, namely :

Explanation. - Interest falling due under this sub-section shall be recoverable notwithstanding that no order or notice is passed or issued by any authority.

5. A further amendment in the Act was made by clause (ii) of the said Section 13. The said amendment was that for the words, figures and brackets, "Any person aggrieved by an order of assessment made under this Act or by demand of interest under sub-section (3) or by an order imposing penalty under sub-section (4), may, within thirty days of the intimation to him of the order

of demand" occurring in sub-section (5) of Section 3 of the Act, the words, figures and brackets "Any person aggrieved by an order of assessment made under this Act or by an order imposing penalty under sub-section (4) may within thirty days of the intimation to him of the order" were substituted with retrospective effect. Section 14 of the said Ordinance was a validating section and was in the following terms :

14. Validation. - Notwithstanding any judgment, decree or order of any court to the contrary, anything done or any action taken for the recovery of any interest fallen due under sub-section (3) of Section 3 of the principal Act shall be deemed to be and always to have been as valid as if the provisions of clauses (i)(b) and (ii) of Section 13 of this Ordinance were in force at all material times, and accordingly, no proceedings for recovery of such interest shall be deemed to be or ever to have been invalid on the ground of absence of any order or notice of assessment, imposition or demand of such interest before the initiation of such proceedings.

6. Chapter V of the said Ordinance was brought into force with effect on and from August 11, 1970, by Notification ST-4788/X-900(68)-70 dated August 10, 1970, published on page 1 of the U.P. Gazette Extraordinary dated August 10, 1970. Chapter V of the said Ordinance was repealed and replaced by the Uttar Pradesh Sugarcane (Purchase Tax) (Amendment) Act, 1970 (U.P Act No. 1 of 1971), with effect from August 11, 1970, namely, the date on which Chapter V of the said Ordinance was brought into force. Section 3 of the Amendment Act reproduced mutatis mutandis the provisions of Section 14 of the said Ordinance.

7. The writ petition of the appellant Firm was heard along with other writ petitions which raised similar contention with respect to the prerequisite of imposition of penalty and in view of the amendments made in the Act by the said Ordinance, all these petitions were dismissed with no order as to costs. The appellant Firm thereafter filed this appeal after obtaining a certificate from the High Court under clause (1) of Article 133 of the Constitution of India prior to the amendment of that clause by the Constitution (Thirtieth Amendment) Act, 1972, on the ground that the amount in dispute at the time of the filing of its writ petition and in dispute on appeal was more than Rs 20,000.

8. Whatever might have been the position earlier, after the above amendments were made with retrospective effect in sub-sections (3) and (5) of Section 3 of the Act, there is no scope left for the contention that a proceeding for recovery of interest on the amount of tax paid late was invalid on the ground that no order imposing or assessing such interest had been passed and the position has been put beyond all doubt by the validating provisions contained in Section 14 of the said Ordinance and repeated in Section 3 of the said Amendment Act. Under sub-section (3) of Section 3 of the Act, the rate of interest is a fixed one and if the tax is not paid by the prescribed date, interest begins to run automatically at the rate specified in that sub-section. The question of an order assessing or imposing interest would only arise where the rate of interest is not fixed but depends upon the discretion of the authority levying interest or where the charging of interest is discretionary with the authority. Under the Act there is no such discretion given to any authority. The rate of the interest is fixed as also the time from which it commences to run and the time when it stops running. Sub-section (3) of Section 3 provides that the interest is payable for the period from the date prescribed for payment of tax up to the date of payment of such tax. There can be thus no question of assessing the amount of interest payable. It is a matter of pure arithmetical calculation. The said Ordinance (which was replaced by the Amendment Act) inserted the Explanation to subsection (3) of Section 3 and amended subsection (5) of the Section 3 by deleting the reference to imposition of

interest with retrospective effect and on coming into force of Chapter V of the said Ordinance, the appellant Firm's contention that no interest could be demanded or recovered without an order assessing or imposing interest did not hold good any longer. The High Court was, therefore, right in rejecting this contention of the appellant Firm.

9. As regards the second contention of the appellant Firm that the said notice dated March 13, 1970, was vague and did not contain any particulars is concerned, it would appear that this contention was overlooked in the High Court, very probably because the appellant Firm's writ petition was heard along with several other writ petitions which were disposed of by a common judgment. Although this point does not appear to have been argued in the High Court, it was taken in the application for grant of certificate of fitness for appeal made to the High Court and in the statement of the case filed by the appellant Firm in this Court. As there is considerable force in this point, in the interest of justice, we have permitted it to be argued before us.

10. In its writ petition the appellant Firm had averred that it had paid by the prescribed time the tax due according to the returns filed by it. In the affidavit in reply filed by C.M. Kapoor, Senior Cane Development Inspector, in the office of the Cane Commissioner, U.P., it was that the returns filed by the appellant Firm were accepted as correct and interest was calculated on the delayed payment of tax. It was denied in the said affidavit in reply that the appellant Firm was not given an opportunity or not supplied with the details of the amount of interest claimed and for this purpose the last paragraph of the said notice dated December 14, 1967, was relied upon in which it was stated, "The entire record on the basis whereof interest has been calculated can be seen in the office of the Cane Inspector concerned."

11. Clause (a) of Section 2 of the Act defines the term "assessment year" as meaning "the period beginning on the first day of October in any year and ending on the thirtieth day of September in the year next following". Under Rule 5 of the Uttar Pradesh Sugarcane (Purchase Tax) Rules, 1961, the owner of a factory is to submit to the assessing officer before the eighteenth day of each calendar month a return in the prescribed form showing the quantity of sugarcane purchased by the factory during the preceding month and the amount of tax due under the Act and deposited by him in respect of such quantity of sugarcane together with the treasury receipt indicating the deposit made. A copy of such return is to be furnished to the Cane Commissioner, the collecting authority if he is a person other than the Cane Officer and to such other officer, if any, as the Cane Commissioner may specify in that behalf. Under Rule 4, within a fortnight of the close of each month up to the thirty-first day of March in an assessment year, the owner of a factory is to pay into the government treasury fifty percent of the amount due as purchase tax under the Act on the quantity of sugarcane purchased during such month. The balance fifty per cent of the amount of tax outstanding for payment is to be paid in equal monthly installments beginning from the fifteenth day of May and ending on the fifteenth day of September of the same year. The full amount of tax due on the purchase of sugarcane made during the month of April and onwards in any assessment year is, in addition to the installments hereinbefore mentioned, to be paid by the fifteenth day of the month next following such purchase. Under Rule 6, on receipt of a return submitted to him under Rule 5 the assessing officer is to ascertain whether the amount of tax has been correctly stated and if he finds that the amount of tax has not been correctly stated, he is, after giving the owner of the factory a reasonable opportunity of being heard, by order, to assess and determine the correct amount of tax and inform the owner of such factory of the amount so determined. On receipt of this information the owner of the factory is to deposit within a period of one week the amount due in the government treasury and inform the Assessing Officer about it. Under Rule 8(1), the amount of interest due on the arrears of tax under sub-section (3) of Section 3 is payable on the first day of the month next

following the month in respect of which such interest is due. Under Rule 9(2), where any arrears of tax, interest or penalty remains unpaid on the first day of October in any year, the collecting authority is straightway to take steps to recover the arrears as an arrear of land revenue. Rule 10 provides that the certificate to be forwarded by the collecting authority to the Collector under Section 3(8) of the Act is to be in Form V appended to the said Rules and is to specify the amount of arrears of tax and interest together with the amount of penalty, if any, imposed under sub-section (4) of Section 3 of the Act. The form of the recovery certificate requires the collecting authority to state the period for which the amount of purchase tax, interest and penalty is due.

12. From the provisions of the said Rules set out it is clear that a return under the Act is to be a monthly return, the tax due according to it is to be payable by installments and a recovery certificate is to state the period in respect of which tax, interest or penalty is due. Where there has been delayed payment of tax the period to be stated would be the period of delay in payment of tax due for a particular period. Here, there is no dispute that the amount of tax due has been paid. What is alleged is that tax was paid not by the prescribed date but later. The impugned notice dated March 13, 1970, merely states that the amount of interest claimed therein is "on account of interest on purchase tax ending March 31, 1969". Nowhere in this notice the period for which the tax was paid late has been indicated nor the period for which such tax was due. Unless these particulars are mentioned there would be no opportunity for the owner of a factory to ascertain whether the payment of tax was delayed or not and whether the amount claimed is correctly stated or not. Once the amount of tax and the period of delay is mentioned, the amount of interest payable thereon would be a matter of arithmetical calculation but to mention merely the amount of interest due up to a particular date can convey no information to the owner of a factory. Once a recovery certificate is forwarded to the Collector, under Section 147 of the Uttar Pradesh Land Revenue Act, 1901 (U.P. Act 3 of 1901), a writ of demand calling upon the defaulter to pay the amount within the time stated therein or a citation to appear is to issue. The object of issuing such writ of demand or citation to appear is to enable a person from whom the amount is due either to pay the amount before coercive measures are adopted against him to recover the amount or to contest the demand by adopting such remedy as may be open to him in law. Unless, therefore, the particulars of the amount of tax which has been paid late and the period of delay in paying such amount of tax are communicated to the person from whom interest on delayed payment of tax is claimed, he is deprived of any opportunity either to pay the amount of interest or to contest the demand. The argument urged on behalf of the respondents that an opportunity was given to the appellant Firm by stating in the said notice dated December 14, 1967, that the entire record on the basis of which interest had been calculated could be seen in the office of the concerned Cane Inspector is devoid of merit. It was for the authority to communicate the necessary particulars to the appellant Firm and not for the appellant Firm to take inspection in the office of the Cane Inspector and to hunt out such particulars. In any event, this offer to come and take inspection is made only in the said notice dated December 14, 1967, which was impugned in the appellant Firm's writ petition. What was impugned in the said writ petition was the said notice dated March 13, 1970, which contained of such offer.

13. The above defects would render the impugned notice dated March 13, 1970, liable to be quashed and set aside. In view, however, of the fact that this point was not argued before the High Court and also in view of the fact that a considerable time has elapsed since the issue of the said notice, we feel that the interest of justice would be met if instead of quashing the said notice we direct the Cane Commissioner, Uttar Pradesh, to furnish to the appellant Firm the required particulars and give an opportunity to the appellant Firm to show that the tax was not paid late.

14. In the result, while confirming the judgment of the High Court, in place of the order passed by

the High Court dismissing Civil Miscellaneous Writ Petition 1153 of 1970 filed by the appellant Firm we substitute the following order :

15. The Cane Commissioner Uttar Pradesh, will furnish to the appellant Firm within one month from today particulars of the amount of interest claimed in the notice dated March 13, 1970, given by the Additional Collector, Gorakhpur, to the appellant Firm, namely, the period for which the tax was paid late, the amount of such tax, and the dates when such tax was due and when it was in fact paid. If the appellant Firm contests any of these particulars, it will be open to it to file its objections before the Cane Commissioner within one month of the receipt of these particulars and the Cane Commissioner will dispose of such objections within one month thereafter after giving an opportunity of a hearing to the appellant Firm. If the Cane Commissioner finds that any amount of tax was paid late, the appellant Firm will pay interest due on the same within one month of the intimation to it of the Cane Commissioner's order on the objections, if any, filed by the appellant Firm and if no objections are filed by the appellant Firm, then within six weeks of the receipt by the appellant Firm of the particulars mentioned above. In default of payment as aforesaid, the Cane Commissioner will be entitled to adopt recovery proceedings of the amount of interest payable. No recovery proceedings in respect of interest for the period to which the said notice dated March 13, 1970 relates, will be taken until the date for payment specified by us above has expired.

16. There will be no order as to the costs of this appeal.

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