M/s Fertilizer Corporation of India Ltd.

Vs

State of Bihar

Civil Appeal No. 948-950 of 1975

(Sabyasachi Mukharji, S. Ranganathan JJ)

04.12.1987

JUDGMENT

RANGANATHAN, J. –

1. These three appeals by the Fertilizer Corporation of India Limited (hereinafter referred to as 'the assessee') arise out of its sales tax assessments for the assessment years 1959-60, 1960-61 and 1961-62 under the Bihar Sales Tax Act, 1959, (hereinafter referred to as 'the Act'). They raise a very short but interesting question regarding the entitlement of the assessee to the rebate of tax provided for in Section 15 of the Act.

2. At the outset, a reference may be made to the salient portions of certain relevant provisions of the Act. Section 14(1) provides that every registered dealer shall furnish such returns within such period and to such authority as may be prescribed. The prescribed authority is the Assistant Commissioner of Sales Tax who is also the assessing authority. Under Rule 10 of the Rules framed under the Act, the assessee should file quarterly returns. Such returns are to be filed within one calendar month of the expiry of the period to which they relate. Sub-section (3) of Section 14 provides for an extension of time for the filing of the return. It reads :

> If the prescribed authority is satisfied that a dealer is, for reasonable cause, unable to furnish any return within the prescribed period or the period fixed under the proviso to sub-section (1), the said authority may extend the period for submission of the return.

Section 20 of the Act requires that, before any registered dealer furnishes a return under the Act, he should pay into a Government Treasury the full amount of tax due under the Act according to such return and should also furnish along with the return a receipt from such Treasury showing the payment of the said amount. Section 15 is the provision entitling the assessee to a rebate. It reads as follows :

> 15. Rebate. - A rebate at the rate of one per centum of the amount of tax admitted to be due in the return furnished under sub-section (1) of Section 14 in the prescribed manner and within the prescribed or extended period shall be allowed to a registered dealer who has paid such amount according to the provisions of sub-section (2) of Section 20 :

Provided that where the amount finally assessed on the dealer is less than the admitted amount, rate at the said rate shall be allowed only on the amount so assessed :

> Provided further that the State Government may, by notification, and subject to such conditions or restrictions as may be specified therein, enhance or reduce the rate of rebate in respect of registered dealers generally or any class of such dealers.

It may be noted that, under the proviso of Section 22 of the Act, a registered dealer is entitled to deduct from the amount of tax due from him under the Act according to his return any amount which may be admissible as rebate under the provisions of Section 15.

3. In the present case, the assessee filed its quarterly returns under Section 14(1) of the Act but, except for the second quarter of 1960-61, the returns were all filed belatedly. To illustrate, the returns for the second, third and fourth quarters of 1959-60, were filed by the assessee only on November 7, 1959, February 11, 1960 and June 1, 1960. In other words, the returns were late by a few days. It is common ground that there was no application made by the assessee to the prescribed authority for extension of the time prescribed under the Act for the filing of the return. The assessee however, paid the taxes before the due dates of the respective returns, availed itself on the rebate and deducted the same while paying the tax due on the returns filed by it.

4. The short question that arose before the Tribunal as well as the High Court was whether the assessee was entitled to the rebate under Section 15. The Tribunal held that the rebate is available to an assessee only if -

> (i) the tax on the basis of returns is paid as prescribed in Section 20; and
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> (ii) the quarterly returns of the assessee had been filed within the prescribed period or extended period.

As the assessee had not filed its returns within the prescribed period and, since the assessee had sought no extension, it was held that the assessee was not entitled to the rebate. The assessee sought for a reference and, before the High Court, relied on a decision of the same High Court in Jamuna Flour & Oil Mills Pvt. Ltd. v. State of Bihar ((1968) 22 STC 1 (Pat)). The facts of the case were similar to those of the present case and the assessee had been held entitled to the rebate. It is sufficient to extract the relevant portion of the head note :

> For the quarter ending June 30, 1961, the assessee had paid the tax due before July 31, 1961, but it actually filed the return only on August 1, 1961. The assessee was assessed on the basis of the return submitted by it, but its claim for rebate under Section 15 of the Bihar Sales Tax Act, 1959, was rejected by the taxing authority on the ground that for the purpose of eligibility for rebate under Section 15, the assessee must fulfil two conditions, viz., (1) the tax due for the quarter must be paid before the end of the succeeding month, and (2) the return must also be filed by the end of the succeeding month : Held, that the assessee was entitled to the rebate under Section 15 of the quarter ending June 30, 1961.

Although the return was submitted one day late, as the assessee was assessed not under the best of judgment principle but on the return submitted by it, it must be said that, impliedly, the period for furnishing the return was extended by one day as permitted by Section 14(3). The passing of an express order by the taxing authority, regarding its satisfaction about the existence of reasonable cause for failure to furnish the return by July 31, 1961, was not necessary.

On a proper construction of Section 15 read with Section 20, the eligibility for claiming rebate

arises if the amount is paid under Section 20(2). That portion of Section 15, which refers to the filing of return within the prescribed period, should not be construed as a condition for a right to claim rebate. The reference to the return in Section 15 is for the purpose of ascertaining the amount of tax admitted to be due, and it is not meant to restrict the assessee's right to claim rebate.

The two judges who heard the case of the assessee were divided in their opinion on the question at issue. The matter was, therefore, referred to a larger bench. This bench (by a majority of 2 to 1) took the same view as Tribunal. The assessee is in appeal before us, canvassing the correctness of the decision of the Full Bench.

5. We have given careful though to the contentions of the counsel for the parties and the differing views expressed by the judges who heard the above two cases. We have reached the conclusion that the view taken by the High Court in Jamuna Flour and Oil Mills (Pvt.) Ltd. v. State of Bihar ((1968) 22 STC 1 (Pat)), is the better view on a proper construction of the relevant statutory provisions. The object of Section 15 of the Act is to confer a benefit on an assessee for prompt payment of the tax. In this case there is no dispute that the assessee had paid the tax before the due dates. There is also no dispute that the tax paid accords with the tax due on the basis of returns. The only question is whether the assessee should be penalised by being denied the rebate due to it because there was a short delay in the filing of the returns.

6. The argument on behalf of the revenue which has appealed to the High Court is this. Section 15 is not a taxing provision but one which confers a benefit or concession to assessee. Settled principles of construction of taxing statutes require that such conditions should be strictly construed. The section lays down two conditions for the grant of benefit or concession of which one is not fulfilled. Though the assessee had paid the taxes in time, it had neither filed returns within the prescribed time nor cared to obtain an extension for filing the same. There is no reason why such an assessee should be shown any lenience and given a benefit which it does not deserve on the language of the statute.

7. Granting the correctness of the above argument and assuming that it is also a condition precedent for the grant of rebate that the assessee should have filed its return within the prescribed or extended period, we think it can be said that the said condition is fulfilled in the present case. The return was admittedly not filed within the time prescribed under Section 14(1). Has it been filed, then, within the extended period ? In answering this question, certain features of the Act have to be kept in mind. The first is that the Act does not set out any particular procedure for obtaining extension of time. It does not prescribe any form of application. It does not say that such application must be filed before the expiry of the prescribed period. It does not require that the prescribed authority must pass an order recording his satisfaction that the time should be extended and grating time. The second is that, under the provisions of the Act three consequences are envisaged where a return is not filed within the prescribed time or extended time :

(i) the assessee will lose the benefit of rebate under Section 15;

(ii) the assessee will run the risk of a penalty under Section 14(4);

(iii) the assessee will also run the risk of a best judgment assessment under Section 16(4).

In the present case, the assessing authority has neither levied a penalty nor made a best judgment assessment. The assessment orders, while adverting to the delay in the filing of the returns, do not

record a finding that the delay was without reasonable (sic cause). These are circumstance from which, we think, it is reasonable to infer that the returns, though filed belatedly, have been accepted and acted upon by the prescribed authority. We see no reason why an extension of time cannot be inferred from the attendant circumstances in this case.

8. Learned counsel for the assessee also suggests a different kind of approach to the issue before us. He submits that all that Section 15 aims at is to grant a tax rebate of 1 per cent of the amount of tax admitted to be due as per the return filed by the assessee. The further words used in Section 15 to describe the return, namely, that it should be a return filed in the prescribed manner and within the prescribed or extended period are merely words descriptive of the procedure of filing a return. The basic condition necessary for claiming the tax rebate is only that there should be a valid return and that the tax on the basis of the valid return should have been paid by the assessee. He submits that while the substantive part of the condition should be strictly construed by insisting upon the presence of a valid return, the procedural aspect referred to can well receive a liberal construction. In the present case, he points out, there is no dispute that the returns filed by the assessee were valid. In fact the assessments have been made on the basis of the returns filed. The tax has been paid even before the submission of the returns. There is no suggestion that the tax paid fell short of the tax due on the return. This is also not a case where the assessed tax is much higher than the tax admitted on the basis of the returns. In these circumstances, he argues, the assessee must be held to have fulfilled the conditions prescribed in Section 15.

9. Learned counsel for the assessee referred to certain decisions in support of such a rule of construction. In CIT v. Kulu Valley Transport Co. Pvt. Ltd. ((1970) 77 ITR 518 : (1970) 2 SCC 192) the court had to construe a provision intended to benefit the assessee. Under Section 22(2-A) of the Income Tax Act, 1922, a return of loss had to be filed within the time prescribed for return under Section 22(1) if the assessee wanted to carry forward the loss claimed. It was not so filed but was nevertheless treated as a valid return by reading the provisions of Section 22(1) and 22(3) of the Act jointly and giving a liberal interpretation to Section 22(2-A). In the case of Gursahai Saigal v. CIT ((1963) 48 ITR 1 SC), the question was regarding the charge of interest under Section 18-A(8) of the same Act. This provision did reveal a lacuna but reading the provision along with Section 18-A(6), the court gave effect to the intendment of the legislature. It was explained that Section 18-A(8) was not a provision creating a charge of tax but only laying down the machinery for its calculation or procedure for its collection. The dictum of Scott, L.J. in Allen v. Trehearne ((1968) 22 STC 1 (Pat), that machinery provisions should be interpreted largely and generously in order not to defeat the main object of liability laid down by the statute was referred to. The following observations of the Privy Council in CIT v. Mahaliram Ramjidas ((1940)8 ITR 442 (PC)), were also relied upon :

The section, although it is part of taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that construction should be preferred which makes the machinery workable .....

10. Though the above decisions arose under a different enactment and on different statutory language, they dealt with somewhat analogous situations and furnish useful guidance here. They do lend support to the assessee's contention. It does seem that the condition in Section 15 referring to a return has a substantive as well as procedural content and it may not be inappropriate to construe the latter somewhat liberally and generously so long as the principle object of the provision is not frustrated.

11. For these reasons, we are of the opinion that the High Court should have answered the question, as re-framed by it, in the negative and in favour of the assessee. We approve the decision in Jamuna Flour & Oil Mills Pvt. Ltd. v. State of Bihar ((1968) 22 STC 1 (Pat)) and reverse the decision in the present case.

12. The appeal is allowed. But, in the circumstances of the case, we made no order as to costs.

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