

Commissioner, Sales Tax, U. P., Lucknow

Vs

M/s. Anoop Wines, Khuldabad, Allahabad

Special Leave Petition (Civil) No. 14274 of 1985

(S. Ranganathan, Sabyasachi Mukharji JJ)

26.08. 1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This is a petition for leave to appeal against the decision of the High Court of Allahabad, dated February 7, 1985.

2. It is a matter dealing with sales tax. The dealer commenced business of foreign liquor from May 1, 1976. From the record, it appears that a survey was made on August 7, 1976 and the respondent was directed to get itself registered for 1977-78 as a dealer. It did not. This was so in spite of having been directed to do so in respect of 1976-77 and, as such, penalty was imposed. The Sales Tax Officer by his order dated December 16, 1977 imposed penalty for Rs. 4500 for non-registration under Section 15-A(i)(g) of the Uttar Pradesh Sales Tax Act, 1948 (hereinafter called 'the Act'). Section 15-A empowers the assessing authority, if satisfied that any dealer had not done certain things as contained in the various sub-clauses of sub-section (1) therein stated it would be liable to penalty. The dealer is liable if he fails to obtain transit pass or to deliver the same as provided in Section 28-B of the Act. It is on this score, that is to say, failure to obtain or deliver transit pass that the dealer was found guilty and was penalised. Against the aforesaid order, the respondent-dealer filed on appeal before the Assistant Commissioner (Judicial) Sales Tax, Allahabad Range, Allahabad. The said Assistant Commissioner by his order dated March 31, 1980 dismissed the appeal and confirmed the order of the Sales Tax Officer. Aggrieved thereby the dealer preferred a revision before the Additional Judge (Revisions) Sales Tax, which was subsequently transferred to the Sales Tax Tribunal, Allahabad Bench, Allahabad. The Sales Tax Tribunal by its order dated February 27, 1984 dismissed the appeal of the dealer and confirmed the order of the Assistant Commissioner (Judicial) Sales Tax. Aggrieved thereby the assessee challenged the same in the High Court by way of revision. The High Court in the impugned judgment allowed the revision. The High Court noted the contention of the assessee that it was not under the legal obligation to seek registration and therefore, the question of any penalty under Section 15-A(1)(g) of the Act did not arise.

3. In this connection it is relevant to refer to Section 8-A of the Act. Section 8-A so far as material for our present purpose provides as follows :

8-A. Registration of dealers and realization of tax by dealers. - (1)(a) Every dealer who sells any goods imported by him from outside Uttar Pradesh the turnover whereof is liable to tax under sub-section (1) of Section 3-A; and

(b) every dealer who is liable to pay tax under any other provision of this Act; and

(c) every dealer who would, but for any exemption made or granted under this Act, be liable to pay tax thereunder, provided his actual or estimated turnover for the assessment year is not less than fifty thousand rupees in the case of manufacturers and one lakh rupees in the case of other dealers or such larger amount as may be notified under sub-section (2) of Section 3; and

(d) every dealer commencing business during the course of an assessment year whose average monthly estimated turnover for the remainder of the year, or whose actual turnover in any month during the aforesaid period, is not less than one-twelfth of fifty thousand rupees in the case of manufacturers and one lakh rupees in the case of other dealers or of such large amount as may be notified under sub-section (2) of Section 3;

shall apply for registration or renewal, as the case may be, to the assessing authority in such form, in such manner and within such period as may be prescribed. The application for registration or renewal shall, as from the assessment year 1978-79, be made for a period of three assessment years and the applications for subsequent renewals shall be made for every three years hereinafter referred to as the triennial renewal.

4. We are not, in the instant case, concerned with the different provisos and the subsequent clauses. It appears that clause (d) has no application to the facts of this case. The dealer indeed in this case did not commence business during the course of the assessment year and as such he was not registrable in terms of that section. Clause (d) of the said section refers to a dealer who has commenced business during the course of an assessment year. It is abundantly clear in this case that the assessee had started his business in the preceding year and is not the one who commenced his business during the course of the assessment year 1977-78, therefore, clause (d) is inapplicable to the assessee. The High Court noted that he is not said to have been covered by any other clause of sub-section (1) of Section 8-A. That is the parameter within which the matter was canvassed before the authorities below. Counsel for the revenue, however, sought to urge before us that the order for the imposition of penalty could have been and should have been justified on clause (c) of Section 8-A(1) being a dealer who would, but for any exemption made or granted under the Act, be liable to pay tax thereunder, provided his actual or estimated turnover for the assessment year is not less than fifty thousand rupees. This point was never agitated before the authorities below. The assessee or the dealer had never any occasion to meet this case. It is not a question of sustaining jurisdiction by reference to a wrong section as was done in the case of *L. Hazari Mal Kuthiala v. ITO* ((1961) 41 ITR 12, 20 : AIR 1961 SC 200) where this Court held that if a particular action is valid under one section, it cannot be rendered invalid because reference was made to another section, and it makes no difference if the two empowering provisions are in the same statute. But this principle will have no application where in a penal action no notice was given or resort to such a provision was made to the delinquent or the offending party.

5. In that view of the matter, we are of the opinion that without calling upon the assessee or the dealer to explain its claim on Section 8-A(1)(c) the imposition of the penalty which was sought to be sustained and maintained under clause (d) of Section 8-A(1) of the Act cannot be sustained in this case by reference to clause (c).

6. In the premises, the High Court was right in the view it took. The petition raises no substantial question of law which requires looking into or interference by this Court. The petition, therefore, fails and is dismissed accordingly.

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