

SUPREME COURT OF INDIA

Pepsico India Holdings Ltd.

Vs.

Commissioner of Trade

C.A.No.2926 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

05.04.2011

JUDGMENT

Dr. Mukundakam Sharma,J.,

SLP (Civil) No. 10522 of 2008

1. Leave granted.

2. The present appeal arises out of the judgment dated 10.12.2007 passed by the learned Single Judge of the High Court of Allahabad (Lucknow Bench) whereby the learned Single Judge has dismissed the tax revision filed by the Appellant under section 11 of the U. P. Trade Tax Act (hereinafter referred to as "the Act") impugning the judgment dated 14.8.2007 passed by the Trade Tax Tribunal, Lucknow rejecting the second appeal of the appellant/assessee.

3. Various issues were raised before the Tribunal as well as the High Court with respect to the liability of the appellant/assessee to pay tax which, in nutshell, are as follows: -

“(i) That there is no transfer of rights of users by the assessee when he realized rental charges for glass bottles and crates.

(ii) The forums did not consider the terms of the agreement/contract between the assessee and his selling agents/consumers.

(iii) The interest charge on the tax could not have been charged under Section 8(1) as the case falls under Section 8(1B).”

4. However, in the present appeal the issues Nos. (i) and (ii) were dropped by the appellant as, in the intervening period, the above said two issues were finally settled by the judgment of this court in the case of State of Orissa and another v. Asiatic Gases Ltd. (2007) 5 SCC

766. In the said case this court held that the previous decision of this Court in *Aggarwal Bros. v. State of Haryana*¹ is fully applicable to rentals charged in respect of the containers for goods that cannot be sold without containers. This court held that the containers constitute an integral part of the commodities in question and the container together with the contents therein is a "composite personality" and constitutes "goods" eligible to sales tax.

5. Accordingly, the only issue which requires consideration in the present appeal is whether the appellant is liable to pay interest on the tax due under Section 8 (1) of the Act i.e. @ 2 % per mensem from the date the tax was due or under Section 8 (1B) i.e. @ 1.5 % per mensum from the date of the assessment order and demand notice.

6. The High Court and the other forums below, for the reasons mentioned therein, have held that the appellant is liable to pay interest on the delayed payment of tax under section 8 (1) of the Act (i.e. @ 2 % per mensem from the date of filing of returns). Whereas, it is the appellants case that the interest is payable as per section 8 (1B) of the Act (i.e. @ 1.5 % per mensum from the expiration of the date mentioned in the assessment order which in the present case is March 15, 2002).

7. As a short question is involved we need not mention the facts of the case in great detail. In brief the facts leading to the filing of the present appeal are that the appellant is engaged in the manufacturing and selling of the beverages and is having bottling plants in the state of Uttar Pradesh. The dispute pertains to the trade tax payable on its turnover of Rupees 8.54 crores in respect of rentals by distributors of glass bottles and crates for assessment year 1999-2000. The appellant disputed the liability to pay tax on such turnover as well as the interest, as according to them no tax is payable on the rental of glass bottles and crates as the same did not amount to a transfer of right to use the goods for value or consideration under section 3-F of the Act. However, the said submission was negated by the first and second appellate authority as well as, on revision, by the High Court. As mentioned hereinabove, the challenge to the liability to pay tax was dropped by the appellant in the light of the judgment passed by this Hon'ble court in *Asiatic Gases Ltd.* case (supra).

8. We heard the learned counsel appearing for both the parties and perused the record. It was submitted by the learned senior counsel appearing for the Appellant that as it was the bonafide belief of the appellant/assessee that they were not liable to pay tax on the turnover realized as rental from the bottles and crates, therefore, the tax should be charged only from the date of the assessment order and not from the date of filing of the returns. It was further submitted that section 8 (1) of the Act only becomes applicable when the assessee had admitted its tax liability in its accounts or its return and as the appellant/assessee had disputed the liability to pay tax and raised a bonafide dispute they would not be liable to pay interest under Section 8 (1) of the Act. Resultantly, interest, if any, can only be charged under Section B (1B) which covers the cases which does not fall within the ambit of Section 8 (1) of the Act.

9. All the abovesaid contentions were negated by the counsel appearing for the respondent and it was submitted that after disclosing the turnover in its accounts a dealer cannot run

away from his liability to pay tax by raising false and frivolous dispute. In case, if he does so then he will be liable to pay penal rate of interest under section 8 (1) of the Act.

10. Section 8 (1) of the act, prior to its amendment in 2002, is reproduced below:

"8. Payment and recovery of tax:

(1) The tax admittedly payable shall be deposited within the time prescribed or by the thirty-first day of August, 1975, whichever is later failing which simple interest at the rate of 2 per cent per mensem shall become due and be payable on the unpaid amount with effect from the day immediately following the last date prescribed or till the date of payment of such amount, whichever is later and nothing contained in section 7 shall prevent or have the effect of postponing the liability to pay such interest.

Explanation: - For the purposes of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, the turnover or purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or proceeding under this Act, whichever is granted, or, if no accounts were maintained then according to the estimate of the dealer and includes the amount payable under Section 3B or sub-section (6) of section 4B."

11. The explanation to the said subsection clearly defines the term "the tax admittedly payable" and illustrates the situation in which the tax would be deemed to be admittedly payable, the same are as follows: -

“(i) The tax which is payable under this Act on the turnover of sales, as the case may be, the turnover of purchase, or both, as disclosed in the accounts maintained by the dealer.

(ii) The tax admitted by the dealers in any return or proceeding under this act, whichever is greater.

(iii) If no accounts were maintained, then according to the estimate of the dealer and includes the amount payable under section 3-B or subsection (6) of section 4-B.”

12. It is not in dispute in the present case that the appellant has themselves mentioned in their accounts the turnover in respect of rentals by distributors of glass bottles and crates. However, the appellant has disputed that the said turnover is liable to tax under the Act.

13. The question that emerged for adjudication before forum and Court below was that whether the tax is payable under the Act on the turnover from rentals of glass bottles and crates. The Court has answered the question in affirmative and confirmed that on such turnovers the tax will be payable under the Act.

14. The appellant had taken the chance to get a judicial verdict on the said issue. Once it has been confirmed that the tax is payable under the Act, the same becomes payable from the date when it was due and not from the date when the judicial verdict was pronounced (unless and until, in a case, the court specifies a particular date from which it shall be payable). Thus, once it has been confirmed by the Court that the tax is payable under the Act it would be covered within the definition of the term "the tax admittedly payable" as defined in the explanation to section 8 (1) and, in case, the tax had not been paid then the same becomes payable along with interest as mentioned in section 8 (1) of the Act.

15. Provisions of subsection (1B) of section 8 of the act will come into operation only if the case is not covered under subsection (1) of section 8 of the Act. The opening words of the said subsection (1B) states "if the tax, other than the tax referred to in subsection 1, assessed by the assessing authority is not paid". The said subsection is reproduced herein below for reference: -

"Section 8(1B) - If the tax, other than the tax referred to in sub-section (1), assessed by any Assessing Authority is not paid within the period specified in the notice of assessment and demand referred to in sub-section (1-A), simple interest at the rate of one and half per cent per mensem on the unpaid amount calculated from the date of expiration of the period specified in such notice shall become due and be payable."

16. As in the present case the tax becomes admittedly payable once it has been held that the tax is payable under the Act, the interest would be payable in terms of subsection (1) of section 8 of the Act and not in terms of subsection (1B) of Section 8 of the Act.

17. This court in the case of *Commissioner of Sales Tax v. Qureshi Crucible Centre*², has held that where a dealer fails to pay tax at the correct rate because he claimed not to know the revision in the rate, the dealer remains liable to pay interest at a higher rate, penal rate under section 8 (1) from the date when the tax became due and payable. In such a case, the dealer cannot claim that he is liable only from the date of the assessment order fixing the correct rate of tax. Similarly, in case where the dealer has taken a chance and it has been held that the tax is payable under Act, the same becomes payable from the date when it was due.

18. Accordingly, the present appeal dismissed but without any orders as to costs.

¹(1999) 9 SCC 0182

²(1993) Supp. 3 SCC 0495