(2014) 03 AHC CK 0005

In the Allahabad High Court

Case No : Writ Tax No. 204 of 2014

Allanasons Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 6, 6A

Citation : (2014) 76 VST 548

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Rahul Agarwal and Bharatji Agrawal, Advocates for the Appellant

Judgement

1. The petitioner, inter alia, carries on the business of export of frozen buffalo meat. The head office of the petitioner is in Mumbai, while it has a branch at Sahibabad in district Ghaziabad. According to the petitioner, its head office receives orders from foreign purchasers for the supply of frozen meat. The petitioner allegedly fulfils its export orders by purchasing the frozen meat from the State of Uttar Pradesh and dispatches the consignments to Mumbai through its branch at Sahibabad. The consignments are thereafter consolidated into containers for export out of India. The petitioner has stated that the entire transaction takes place against form H under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act"). For the assessment year 2009-10, a notice has been issued to the petitioner by the Deputy Commissioner, Commercial Tax, Division-15, Ghaziabad, calling for a disclosure of information. The notice, inter alia, informs the petitioner of the necessity of furnishing form F and draws the attention of the petitioner to the fact that it had not complied with the requirement thus far. Upon receipt of the notice, the petitioner moved the Sales Tax Officer (C-124) at the Central Repository in Mumbai on 13th June 2013 for issuance of form F. The petitioner was informed by a communication dated June 27, 2013 that form F could not be issued since form H in respect of certain transactions, as indicated in the letter, had already been issued.

2. The relief which the petitioner now seeks even before the assessment can be completed is principally for restraining the assessing officer from deeming those sales in the course of exports which are duly covered by form H between the branch office at Sahibabad and the head office at Mumbai to be inter-State sales only on the ground of refusal of the Maharashtra VAT authorities to issue form F in respect of the transactions. In the alternative, the petitioner has sought to challenge the validity of section 6A of the Act.

3. Sub-sections (1) and (3) of section 5 of the Act provide as follows :

"5. When is a sale or purchase of goods said to take place in the course of import or export.--(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2)...

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export."

4. Section 6A was introduced with effect from May 11, 2002 by way of an amendment. Section 6A is to the following effect :

"6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.--(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority within the prescribed time or within such further time as that authority may, for sufficient cause, permit a declaration, duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale''."

5. The provisions of section 6A of the Act were considered by the Supreme Court in Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, and it was held as follows (paras 57 and 58, page 508 in 134 STC) :

"74. Section 6A of the Act although provides for a burden of proof, the same has to be read in the context of section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not fall within the definition of ''sale'' would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in sub-section (1) of section 6A the dealer had an option of filing a declaration in form F; after such amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale. It is to be noticed that for the aforementioned purpose also, the Parliament advisedly used the expression ''deemed''. If the expression ''deemed'' is interpreted differently, an incongruity would ensue.

75. In absence of any indication that the Parliament while enacting sub-section (2) of section 6A did not intend to make the deeming provisions to be a conclusive fact as regards occasion of the transaction having taken place otherwise than as a result of sale, it would have dealt with the matter differently."

6. The deeming fiction in section 6A was introduced, it may be noted, by Act No. 20 of 2002. According to the petitioner, the Maharashtra VAT authorities have declined to issue form F for no fault of the petitioner and consequently, the assessing authority must proceed in accordance with the following observations which are contained in a judgment of the Supreme Court in Ambica Steels Ltd. Vs. State of U.P. and Others, :

"We are informed that certain State(s) within whose jurisdiction the transferee is located is/are not issuing F forms. In such an eventuality it would be open to the assessing officer to complete reassessment proceedings on its own merits after examining the transaction between the parties, keeping in mind the circumstance that the assessee is not in a position to obtain the F form, for no fault of his."

7. Following the judgment of Ambica Steels Ltd. Vs. State of U.P. and Others, , a circular was issued by the Additional Commissioner, Grade-I, Commercial Tax on October 29, 2013. However, according to the petitioner, the Deputy Commissioner, Commercial Tax has, by a communication dated January 6, 2014, taken a view that submission of form F is a mandatory requirement and has sought to distinguish the observations in Ambica Steels Ltd. Vs. State of U.P. and Others, on the ground that they were made in the context of goods which were returned after carrying out job work.

8. The decision of the Division Bench in A.C.P.L. Jewels Private Ltd. Vs. Union of India (UOI) and Others, involved a situation where the order of reassessment had already been passed.

9. At this stage, we are not inclined to entertain this petition in view of the fact that the assessment proceedings for assessment year 2009-10 are still pending. All that the assessing officer has done by his notice dated September 14, 2013 is to call upon the petitioner to submit information and has furnished an opportunity of a personal hearing. Undoubtedly, during the course of the

assessment proceedings, all the submissions which have been made by the petitioner in these proceedings, can be made before and considered by the assessing authority. The petitioner essentially seeks a direction to the assessing officer in regard to the manner in which he must form a view in the course of the assessment proceedings. The assessing officer, as a creature of statute, is bound to enforce the provisions of the Central Sales Tax Act and is governed by the binding precedents of the Supreme Court on the subject. Consequently, at this stage, it would not be appropriate or proper for the court to entertain the petition.

10. Hence, this petition is clearly premature and it would not be appropriate or proper for the court to entertain this petition. In the circumstances, at this stage, it is not necessary to consider the constitutional validity of the provisions of section 6A of the Act. We leave it open to the petitioner to raise all the submissions before the assessing officer, who shall, it is needless to add, decide the matter in the course of the assessment proceedings independently in accordance with law. The petition is, accordingly, disposed of. There shall be no order as to costs.