

(1968) 08 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1750 of 1967

Beni Ram Mool Chand

APPELLANT

Vs

The Sales Tax Officer and Others

RESPONDENT

Date of Decision : 02-08-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 29

Citation : (1969) 23 STC 423

Hon'ble Judges : V.G. Oak, C.J.; T.P. Mukerjee, J

Bench : Division Bench

Advocate : Brij Lal Gupta, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

V.G. Oak, C.J.—This petition under Article 226 of the Constitution arises out of recovery proceedings under the Central Sales Tax Act and the U.P. Sales Tax Act, hereinafter referred to as the Central Act and the U.P. Act respectively. M/s. Beni Ram Mool Chand are the petitioners.

2. This is a firm carrying on the business of manufacturing and selling scents. The petitioner became liable to pay sales tax under the two statutes. The tax remained unpaid for a considerable time. The authorities, therefore, initiated proceedings for recovery of arrears of tax. The Collector of Farrukhabad issued on 28th March, 1967, a sale proclamation with respect to certain property belonging to the petitioner. According to the sale proclamation, the arrears outstanding against the petitioner amounted to Rs. 73,000 and odd. According to the petitioner, the claim of the respondents is highly exaggerated. The petitioner has, therefore, filed this petition for having the sale proclamation quashed. Annexure F to the petition is a copy of the sale proclamation.

3. According to the respondents, the petitioner became liable to pay interest on

arrears under Sub-section (1-A) of Section 8 of the U.P. Act, The main contention of Mr. Brij Lal Gupta appearing for the petitioner is that Sub-section (1-A) of Section 8 of the U.P. Act is invalid. Sub-section (1-A) of Section 8 of the U.P. Act states:-

If the tax payable under Sub-section (1) remains unpaid for six months after the expiry of the time specified in the notice of assessment and demand, or the commencement of the Uttar Pradesh Bikri-Kar (Dwitiya Sanshodhan) Adhiniyam, 1963, whichever is later, then without prejudice to any other liability or penalty which the defaulter may in consequence of such non-payment, incur under this Act, simple interest at the rate of eighteen per cent, per annum shall run on the amount then remaining due from the date of expiry of the time specified in the said notice, or from the commencement of the said Adhiniyam, as the case may be, and shall be added to the amount of tax and be deemed for all purposes to be part of the tax....

4. Mr. Brij Lal Gupta urged that the U.P. Legislature has no power to levy interest on arrears of sales tax. Entry No. 54 of List II of the Seventh Schedule to the Constitution of India confers on State Legislatures power to impose tax on the sale or purchase of goods. It is true that there is no reference to interest in entry No. 54. But it seems to us that power to charge interest on arrears of sales tax is a power incidental to the power to impose sales tax.

5. It was next urged for the petitioner that Sub-section (1-A) of Section 8 conflicts with Section 3-A of the U.P. Act. Sub-section (2) of Section 3-A of the U.P. Act lays down that single point taxation cannot exceed the rate of ten paise per rupee. Mr. Brij Lal Gupta pointed out that if interest is added to the original tax, the total tax may exceed the rate of ten paise per rupee, as laid down in Sub-section (2) of Section 3-A of the U.P. Act. There is apparently a conflict between Sub-section (2) of Section 3-A and Sub-section (1-A) of Section 8 of the U.P. Act. But we must bear in mind that both these provisions form parts of the same statute. Courts must make reasonable endeavour to reconcile the two provisions of the statute. To that extent, the provision of Sub-section (2) of Section 3-A must be understood as subject to the special provision of Sub-section (1-A) of Section 8 of the U.P. Act. The apparent conflict in the two provisions is not sufficient for striking down the provision of Sub-section (1-A) of Section 8 of the U.P. Act.

6. The validity of Sub-section (1-A) of Section 8 of the U.P. Act came up for consideration before a Division Bench of this Court in P. C. Bhandari and Co. v. Commissioner of Sales Tax, U.P., and Ors. (Writ Petition No. 2044 of 1967, decided on 11th July, 1967) Since reported at page 324 supra. It was held by the Division Bench that Sub-section (1-A) of Section 8 of the U.P. Act is valid. We respectfully agree.

7. Another contention of Mr. Brij Lal Gupta is that the recovery proceedings are invalid, because no notice of demand was issued as prescribed by Sub-section

(1) of Section 8 of the U.P. Act. This contention is well-founded. Sub-section (1) of Section 8 states :

The tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, not being less than fifteen days from the date of service of the notice of assessment and demand as may be specified in the notice. In default of such payment, the whole of the amount then remaining due shall become recoverable in accordance with Sub-section (8).

8. The amount mentioned in the sale proclamation (annexure F) is Ks. 73,000 and odd. Admittedly, the respondents did not serve upon the petitioner a demand notice for Rs. 73,000 and odd under Sub-section (1) of Section 8 of the U.P. Act read with Rule 45 of the U.P. Sales Tax Rules. The explanation offered by the respondents is that no such notice was necessary, because notice with respect to the tax assessed u/s 7 had already been issued ; and no extra notice is needed with respect to the interest which has accrued under Sub-section (1-A) of Section 8. We note that according to Sub-section (1-A) of Section 8, the interest so added is to be deemed for all purposes to be part of the tax. This language makes it clear that the interest is to be treated as part of the tax. So, all the incidents attaching to tax have to be taken into consideration with respect to the interest which so accrued. The opening words of Sub-section (1) of Section 8 are "the tax assessed under this Act..." The expression makes no mention of assessment u/s 7 of the Act. Consequently, the expression "the tax assessed under this Act" must be understood in a broad sense.

9. In *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, , the Income Tax Officer passed the assessment order and issued a notice of demand u/s 29 of the Income Tax Act for recovery of the tax. The assessee filed an appeal against the assessment order. The appeal was substantially allowed by the Appellate Assistant Commissioner. The assessment was reduced. No fresh notice of demand was issued. It was held by the Supreme Court that, on the amount of tax assessed being reduced as a result of orders of the Appellate Assistant Commissioner, a fresh demand notice had to be served on the respondent, before he could be treated as a defaulter, and recovery proceedings initiated against him.

10. The present petition is on a stronger footing than that in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, . In that case the liability of the assessee was reduced in appeal; it was held by the Supreme Court that a fresh notice of demand was necessary. In the instant case, the liability of the petitioner has been enhanced as a result of the operation of Sub-section (1-A) of Section 8 of the U.P. Act. In a case of this kind a fresh notice of demand is necessary. The idea "underlying Sub-sections (1) and (8) of Section 8 of the U.P. Act is that coercive measures should not be adopted unless the assessee receives a notice of demand intimating the amount payable by him.

11. There was a good deal of correspondence between the parties as regards the

exact liability of the petitioner. In September, 1966, the State Government passed an order permitting the petitioner to pay his dues in instalments. In pursuance of that decision, the respondents wrote a letter (annexure D) to the petitioner in September, 1966. In that letter the petitioner was informed that the total liability of the petitioner amounted Rs. 52,000 and odd. This amount consisted of - Rs. 39,000 and odd as sales tax assessed u/s 7 of the U.P. Act and a sum of Rs. 12,000 and odd on account of interest. A table (annexure DI) was attached to the letter (annexure D). We note that although the amount specified in the letter (annexure D) was Rs. 52,000 and odd, the amount specified in the sale proclamation (annexure F) is Rs. 73,000 and odd. So, even if it is assumed that the letter (annexure D) can be treated as a notice under Rule 45, that notice can hardly support the sale proclamation (annexure F). The petitioner is right in his contention that recovery proceedings were started under Sub-section (8) of Section 8 of the U.P. Act without issuing a demand notice as prescribed by Sub-section (1) of Section 8 of the U.P. Act and Rule 45. For this reason, the sale proclamation (annexure F) has to be quashed.

12. As already pointed out, the petitioner had to pay sales tax both under the Central Act and under the U.P. Act. The respondents have charged interest on arrears under both the Acts. Mr. Brij Lal Gupta contended that no interest can be charged on arrears under the Central Act. The Central Act does not contain any provision corresponding to Sub-section (1-A) of Section 8 of the U.P. Act.

13. The learned Junior Standing Counsel, however, relies upon Sub-section (3) of Section 9 of the Central Act. Section 9 of the Central Act provides for levy and collection of tax and penalties. Sub-section (3) of Section 9 of the Central Act states:

The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected ; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly....

14. The question now arises whether Sub-section (3) of Section 9 of the Central Act enables the- State authorities to press into service Sub-section (1-A) of Section 8 of the U.P. Act for the purpose of collecting interest on arrears under the Central Act.

15. In *State of Mysore v. Mysore Paper Mills Ltd.* [1964] 15 S.T.C. 176, it was held by the Mysore High Court that the phrase "in the same manner" in Section 9(3) of the Central Act does not make applicable all the incidents of the local

sales tax law to the assessment under the Central Sales Tax Act. What is contemplated by that phrase is that the procedure of making an assessment and collection of tax is the same as in the local Sales Tax Act.

16. In *Adinarayana Setty v. Commercial Tax Officer, Kolar* [1963] 14 S.T.C. 587, it was held by the Mysore High Court that by virtue of Section 9(3) of the Central Sales Tax Act, 1956, the provisions of the general sales tax law of the State, including provisions relating to penalties, will be applicable to the entire process of assessment, payment, collection and recovery of the tax payable under the Central Act. So, a dealer under the Central Act who defaults in making payment of the tax payable under that Act within the prescribed time, becomes liable to pay the penalty provided in Section 13(2) of the Mysore Sales Tax Act, 1957, in the same way in which a defaulting dealer under the Mysore Act incurs that liability.

17. It will be seen that in *Adinarayana Setty's* case [1963] 14 S.T.C. 587, the question before the Court was whether the defaulter was liable to pay penalty. In Sub-section (3) of Section 9 of the Central Act it has been made clear that the provisions of the local law relating to penalties are applicable for the recovery of tax due under the Central Act. In the present case we are not concerned with the recovery of any penalty. The question before this Court is whether interest is recoverable under the Central Act. It may be that interest charged under Sub-section (1-A) of Section 8 of the U.P. Act is in the nature of penalty. But it has been made clear in the sub-section that the interest so charged is to be deemed for all purposes to be part of the tax. By virtue of this provision, interest assumes the character of tax for all purposes. The present case is, therefore, distinguishable from *Adinarayana Setty's* case [1963] 14 S.T.C. 587.

18. The material words in Sub-section (3) of Section 9 of the Central Act are :

The authorities...empowered...shall...assess, collect and enforce payment of any tax including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed....

19. It will be seen that the machinery contemplated by Sub-section (3) of Section 9 of the Central Act has to be confined to the tax and penalty payable under the Central Act. The agency has not been empowered to impose a supplementary tax. Interest charged under Sub-section (1-A) of Section 8 of the U.P. Act assumes the character of supplementary tax. Imposition of such a supplementary tax has not been authorised by Sub-section (3) of Section 9 of the Central Act. We, therefore, accept the petitioner's contention that it cannot be made liable to pay interest on the arrears of tax under the Central Act by virtue of Sub-section (1-A) of Section 8 of the U.P. Act.

20. We are quashing the sale proclamation (annexure F). But it will be open to the respondents to issue a fresh notice of demand as prescribed by Sub-section (1) of Section 8 of the U.P. Act and Rule 45, and proceed to collect arrears of tax

under the Central Act, arrears of tax under the U.P. Act and interest payable on the arrears under the U.P. Act in accordance with law. The petitioner has raised the question of rebate. In the present proceeding we are not determining the total amount payable by the petitioner on account of tax and interest. It is not, therefore, necessary to deal with the question of rebate in the present proceeding. It will be open to the petitioner to raise the question of rebate before the respondents at the appropriate stage.

21. The petition is partly allowed. We quash the sale proclamation dated 28th March, 1967 (annexure F to the writ petition). Parties shall bear their own costs in this proceeding.