(2015) 08 UK CK 0015

In the Uttarakhand High Court

Case No : Commercial Tax Revision No. 26 of 2010

Commissioner, Commercial Tax, Dehradun — APPELLANT

Vs

Rahis Ahmad — RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 9(2)
Uttar Pradesh Trade Tax Act, 1948 — Section 22

Citation : (2015) 85 VST 139

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : A.S. Rawat, Additional Advocate General, for the Appellant; Dhruv AgarwalAdvocateAdvocate assisted by S.K. Posti, for the Respondent

Judgement

K.M. Joseph, C.J.

1. The revision is filed by the State and arises from the following facts. The respondent-assessee is a registered dealer, who trades in wood and wood products. In the assessment year in question he had effected sales of its products in favour of two dealers operating in the State of Uttar Pradesh. The assessment was completed on the basis that in respect of the sales effected by the respondent-assessee to the dealers in the State of Uttar Pradesh, on the basis of inter-State sale effected to the buyers in the State of Uttar Pradesh, a transaction would not attract any tax. Apparently, this was done on the basis of form C made available by the respondent-dealer. Later on, power under section 22 of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as "the Act") was invoked. By the assessment, in respect of the transaction by way of inter-State sale it came to be visited with tax at the rate of 2.5 per cent. Feeling aggrieved, the assessee appealed. The appeal was successful. Resort to section 22 of the Act was frowned upon. The appeal carried by the State before the Tribunal was not successful and it is feeling aggrieved that the State is before us.

2. We heard learned Additional Advocate-General for the State Shri A.S. Rawat

and learned senior counsel for the revisionist Shri Dhruv Agarwal.

3. The learned Additional Advocate-General would submit, what has happened, is as follows:

The State of U.P. was bifurcated into two under section 9 of the Reorganization Act, 2000 and the State of Uttarakhand was born on November 9, 2000. On February 7, 2000 while the State was undivided, the State of Uttar Pradesh had issued a notification that in respect of sales against form IIIB under the Act, the rate of tax would be 2.5 per cent. Subsequently, the State of Uttar Pradesh, in exercise of its powers under the Act, issued a notification dated October 30, 2001. As per the same, the State of Uttar Pradesh reduced the rate of tax as against form IIIB from 2.5 per cent to nil. The assessing officer in the first order of assessment instead of relying on the notification issued by the State of Uttar Pradesh dated February 7, 2000, which was the notification applicable, chose to apparently rely on the later notification which was simply not applicable in respect of the State of Uttarakhand as the notification issued by the State of Uttar Pradesh after the formation of the State of Uttarakhand could have neither relevance nor efficacy yet it was seized upon by the officer to accept the return of the assessee in regard to the sale of the product as raw materials. In this context, it is relevant to notice the notification issued by the State of Uttarakhand dated December 26, 2000. It reads as follows:

"Whereas, the State Government is satisfied that it is necessary so to do in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Governor is pleased to direct that with effect from the date of publication of this notification in the official Gazette, the tax payable under sub-section (1) of the said section by any dealer having his place of business in the State of Uttaranchal in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any raw material, processing material, consumable stores, spare parts, accessories, components, fuel or lubricants and packing material to the dealer having his place of business in the State of Uttar Pradesh and possessing recognition certificate issued under section 4-B of the Uttar Pradesh Trade Tax Act, 1948 (Act No. XV of 1948), whose validity commences prior to November 9, 2000, for the use in the manufacture of goods or in the packing of goods manufactured by him, shall be calculated at such rate as would have been leviable on such sales against form IIIB prescribed under the said U.P. Act No. XV of 1948, subject to the condition that that dealer selling the goods furnishes the declaration in form C, or, as the case may be, the certificate in form D in accordance with the provisions of sub-section (4) of section 8 of the said Act No. 74 of 1956."

4. Therefore, the learned Additional Advocate-General would submit that a perusal of the notification would make it very clear that the words therein "shall

be calculated as such rate as would have been leviable on such sales against form IIIB prescribed under the Act" would mean and can mean only the rate of tax as prescribed by the notification dated February 7, 2000 issued by the State of Uttar Pradesh, which would continue to apply irrespective of any subsequent notification which may be brought on by the State of Uttar Pradesh, the reason being any notification issued by the State of Uttar Pradesh and after the creation of State of Uttarakhand would simply not apply. Therefore, it was perfectly not open to the assessing officer to correct the error in which he had fallen by resorting the power under section 22 of the Act and the appellate authority and the Tribunal were in error in not permitting the assessing officer to correct the error which was clear.

5. Per contra, Shri Agarwal, learned senior counsel appearing on behalf of the assessee would submit that the impugned order does not suffer from any infirmity. He would submit that it has been rightly held that resort cannot be made to section 22 . He would point put that, the power under section 22 of the Act can be invoked only in a case of a matter which does not require any debate and it cannot be resorted to in a case where it is not indisputable. In other words, if a dispute is raised, resort to section 22 of the Act is impermissible in law. In this regard he drew, our attention to the judgment of the apex court, reported in Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., which, according to him, arose under the very same provision, namely, section 22 of the Act, wherein we notice the following paragraphs (pages 753-754 and 755 in 10 VST):

"6. The learned counsel for the appellants submitted that this is a case where section 22 of the Act had no application. The said provision is only applicable to a case where the error is apparent on the face of the record; where the issue cannot be decided in an undisputable manner, section 22 has no application; and where a matter is disputable there can be no order under section 22 of the Act.

9. The Deputy Commissioner (Appeal) held that section 22 of the Act did not contemplate rectification of debatable issues and therefore, this was not a case where section 22 of the Act applies. Similar was the view taken by the Tribunal. It has been submitted by the appellant that the notification considered in Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, was dated May 30, 1975. Subsequently, there has been an amendment by Notification dated September 7, 1981 by which ''scrap'' has also been included in the entry. It is, therefore, submitted that the ratio in Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, applied as scrap has always been produced as a result of processing the original metal.

...

12. A bare look at section 22 of the Act makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of section 22 , the mistake must exist and the same must be apparent from the record. The

power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. ''Mistake'' means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. ''Apparent'' means visible; capable of being seen, obvious; plain. It means ''open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming''. A mistake which can be rectified under section 22 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration..."

6. The learned senior counsel for the respondent would also submit that actually this is a case where the notification dated December 26, 2000 countenances the applicability of the principle of incorporation by reference and he would refer to the judgment of the apex court, reported in Bajaya Vs. Gopikabai and Another, . It reads as follows:

"Legislation by referential incorporation falls into two categories, (a) where a statute by specific reference incorporates the provisions of another statute as at the time of adoption; and (2) where a statute incorporates by general reference the law concerning a particular subject as a genus. In case (a) the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. But in the category (b) it may be presumed that the legislative intent was to include all the subsequent amendments also made from time to time in the generic law on the subject adopted by general reference. On the above principle, the expression ''personal law'' referred to in section 151 of the M.P. Code comprehends the Hindu Succession Act, 1956 which will, therefore, govern the inheritance to the estate of the widow who died on November 6, 1956. (paras 26 and 27)"

7. Therefore, according to him, since it is a case of the statute referred to by way of reference, the subsequent notification even if it is issued by the State of Uttar Pradesh would be applicable. In other words, he would submit that what is relevant is the law applicable as of the date of the sale. As of the date of the sale he would submit in other words that the relevant notification would be the notification issued by the State of U.P. dated October 30, 2001 and in respect of the transactions which took place thereunder, the rate of tax is nil in regard to sales against form IIIB. The assessing officer had assessed the assessee as such and, therefore, no shelter could be taken under the provisions of section 22 of the Act.

8. Though two questions as substantial questions of law have been raised by the revisionist, but we notice in the order issuing notice only one following substantial question of law is framed:

"Whether the Commercial Tax Tribunal has erred in law in holding that the assessing authority cannot rectify its earlier order under section 22 of the U.P. Trade Tax Act, by invoking the jurisdiction under section 9(2) of the Central Sales Tax Act?"

9. Therefore, we are only concerned with the question, whether the reviewing of the matter under section 22 of the Act was permissible.

10. We have already noticed the facts. The assessment was completed, apparently, keeping in mind the notification issued by the State of Uttar Pradesh in 2001, no doubt, but it was the notification, which would govern the sales in the sense that it would be apposite with reference to the point of time, when the sales took place apparently. The assessing officer, later on, sought to revisit the assessment on the basis that the notification dated February 7, 2000 would be the notification which is applicable. The question is to be answered in this context not merely by reference to the notifications. On the other hand, it would have to be answered on a conspectus of the provisions contained in the notification dated December 26, 2000. In other words, the assessing officer would have had to apply his mind to a question whether the words sales against form IIIB prescribed under the U.P. Act "shall be calculated at such rate as would have been leviable on such sales against form IIIB prescribed under the U.P. Act" is capable of only one meaning. If the original assessment was afflicted with an error apparent, undoubtedly, the power could have been exercised. That, in turn, would depend upon the question as we have already indicated whether the word in the notification is susceptible of only one meaning. As we have noticed, the debate as is sought to be generated before us by the learned senior counsel for the assessee is that it is capable of another meaning. Then the matter passes from the realm of being undisputed to the realm of dispute. If that be so, being a matter of jurisdiction, as the authority would not have the authority to correct any kind of mistake but only the mistake which is apparent on the face of the record, we would think that the view which was taken by the Tribunal does not suffer from any infirmity. Accordingly, we answer the substantial question of law against the revisionist. The result would be that the revision will stand dismissed. No order as to cost.