
(1981) 07 AHC CK 0008

In the Allahabad High Court

Case No : S.T.R. No's. 167, 168 and 170 of 1981

Commissioner of Sales Tax

APPELLANT

Vs

Prakash Trading Co.

RESPONDENT

Date of Decision : 14-07-1981

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 15A(1)(g)

Citation : (1982) 51 STC 342

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : M.K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—Dissatisfied with the setting aside of penalty orders passed u/s 15-A(1)(g) of the U. P. Sales Tax Act for carrying on business without registration u/s 8-A in the assessment year 1973-74 to 1976-77 by the revising authority and the appellate authority, the Commissioner of Sales Tax has filed these revisions and raised an issue of wider impact of competency and jurisdiction of honour of penalty orders.

2. To hammer the point Sri V.D. Singh, the learned standing counsel, has compared Sub-clause (g) with various Sub-clauses and has highlighted the legislative intention of excluding mens rea from this clause thereby rendering an act of mere non-registration punishable per se. In order to appreciate this submission of the learned standing counsel material portions of Section 15-A are re-extracted below:

15-A. (1) If the assessing authority is satisfied that any dealer or other person-

(a) has, without reasonable cause, failed to furnish the return of his turnover or to furnish it within the time allowed and in the manner prescribed, or to deposit the tax due under this Act before furnishing the return or along with the return, as required under the provisions of this Act; or

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) being liable for registration under this Act, carries on or continues to carry on business without obtaining registration or without furnishing the security demanded u/s 8-C;...

it may, after such inquiry, if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him,-

(i) in a case referred to in Clause (a), Clause (b) or Clause (e), a sum not less than ten per cent, but not exceeding twenty-five per cent of the tax due if the tax due is up to ten thousand rupees and fifty per cent of the tax due if the tax due is above ten thousand rupees;

(ii) ...

(iii) ...

(iv) in a case referred to in Clause (g), a sum of rupees one hundred for each month or part thereof for the default during the first three months and rupees five hundred for every month or part thereof after the first three months during which the default continues.

3. Imposition of penalty under taxing statutes for defaults without element of mens rea is now firmly established. In *R.S. Joshi, Sales Tax Officer v. Ajit Mills Ltd.* 1979 UPTC 171 (SC), the Honourable Supreme Court while upholding the constitutional validity of forfeiture provision in the Gujarat Sales Tax Act observed :

The classical view that "no mens rea, no crime" has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea.

4. But it is not an authority as submitted by the learned standing counsel for the proposition that wherever mens rea is excluded the authorities are left with no discretion. That would make the levy automatic. The provision then could have read that an assessee who does not get itself registered shall be liable to pay penalty at the rate provided. But the scheme of the Act is otherwise. The assessing authority has to be "satisfied" that the breach contemplated in the Sub-clause has been committed. This satisfaction has to be arrived at after making such enquiry and issue of notice to the assessee. Then the assessing authority

may, if he considers necessary, impose penalty as provided even. There is no statutory compulsion, rather it is discretionary although exercise of discretion cannot be arbitrary. In *Hindustan Steel Ltd. Vs. State of Orissa*, the Honourable Supreme Court while considering an identical provision in the Orissa Sales Tax Act held :

An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will also not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.

5. Further the amount of penalty is exorbitant. It is deterrent in nature. It may at times be more than the tax itself. The anxiety of the department to deter the dishonest assessee can be appreciated but interpretation of the provision in a manner so as to work unjustly and harshly even against an honest and bona fide assessee cannot be accepted. A comparison of Clauses (i) and (iv) shall indicate that penalty for non-filing of return, late filing of return or non-payment of tax, which must be without reasonable cause, i. e., there must be mens rea, is between 10 to 50 per cent of the tax assessed or due whereas penalty for non-registration is between Rs. 100 to Rs. 500 per month. If the argument of the learned standing counsel is accepted then even deliberate act of the assessee entails the lesser penalty than innocent and inadvertent omission. The argument of automatic levy of penalty or its imposition on mere proof of non-registration irrespective of the fact and circumstances has to be rejected.

6. Admittedly, the assessee carried on business in bristles with its purchasing centre at Deoria and head office at Bombay since 1964. In the assessment years 1965-66, 1966-67, etc., no liability was held as it was held that the assessee only transferred bristles from Deoria to Bombay for sale to United Kingdom. Tax on purchase of bristles was imposed for the first time in 1970. The assessee carried on business of purchase; it became liable to obtain registration u/s 8-A of the Act. But being unaware of it the assessee committed a default and carried on business, filed its return in the prescribed manner and deposited the tax for the years in dispute. Its turnover for 1973-74 was more than six lacs. In 1976 the assessment proceedings for 1973-74 appeared to have been taken and then it transpired that the assessee was not registered. Consequently, on 28th August, 1976, the notice in question was issued. Having received this notice the assessee immediately applied on 30th August, 1976, for registration along with late fee which was accepted by the department. On these facts the question is whether the conduct of the assessee was bona fide and whether the authorities committed any error in exercising the discretion in its favour. The provision of registration is contained in Section 8-A of the Act. It requires a dealer to get

itself registered. The purpose of registration is to enable the department to know beforehand who are dealers and from whom the tax is to be realised. To the dealer the benefit is that as a matter of law it is entitled to recover the tax from customers. There is no difference in rate of tax for a registered and an unregistered dealer. The fee for registration is nominal. The liability to pay tax u/s 3 is on a dealer who carries on business of buying and selling. A dealer has been defined u/s 2(c). It is not confined to registered dealer only. In the circumstances by not getting itself registered the assessee was not going to gain anything. It had filed its return which was in lacs. It paid the tax as required under the law. What possible intention could there be in not getting itself registered ? The only motive which could be inferred against the assessee could be of evading the tax as required under the law. But where the assessee not only files his returns but also deposits the tax, maintains the account books as required under the law and no defect is found in it, it is difficult to understand how such an assessee can be considered as a person who is trying to flout the provisions of law to evade tax.

7. The learned standing counsel relied on *Ram Lakhan Ved Prakash v. Commissioner of Sales Tax 1981 UPTC 280*. It urged that in view of this decision it is clear that an assessee is liable to be penalised for failure of registration. The case is distinguishable on facts. In that case the assessee got itself registered in earlier years but in the assessment year in dispute it did not get itself registered. The question was whether the default was technical in nature and whether the assessee could be absolved of his liability under this Sub-clause. It was held by brother Rastogi, J.:

This shows that the assessee was conscious of its statutory obligation of getting the registration certificate renewed year after year. For the year under consideration the assessee deposited the renewal fee on 22nd March, 1977, i. e., within time, but did not submit any application for renewal. In other words, the assessee carried on business without any registration as required by the statute.

8. This decision, therefore, cannot be an authority where the dealer inadvertently or under a bona fide belief does not obtain registration. It is no doubt true that brother Rastogi, J., observed thus :

In the present case as well, in my opinion, mens rea is excluded from Clause (g) of Section 15-A(1) and for default on the part of a dealer liable for registration to carry on or continue to carry on business without obtaining registration, a heavy penalty is levied, may be germane to legislative policy but not for judicial compassion.

9. But as pointed out above the facts of the case were so glaring that no other conclusion could have been arrived at than that which was arrived by brother Rastogi, J. Even while considering the *Hindustan Steel Ltd. Vs. State of Orissa*, it was observed by him that an assessee could take advantage if it could prove that default was not conscious. The exclusion of mens rea is one thing and the

exercise of discretion is another. As the matter has been put beyond controversy by the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, it is not necessary to dilate any further.

10. In the end the learned counsel submitted that the decision in R. S. Joshi, Sales Tax Officer v. Ajit Mills 1979 UPTC 171 impliedly overrules the decision in Hindustan Steel Ltd. Vs. State of Orissa, . The argument proceeds on misconception and wrong understanding of the nature of decision rendered in R.S. Joshi's case 1979 UPTC 171 . That was concerned with legislative competence whereas Hindustan Steel Ltd.'s case [1979] 25 STC 211 (SC) was concerned with exercise of discretion. There is no clash in the two. Competence to enact a provision is one thing but the exercise of power under the provision is another.

11. As pointed out above the conduct of the assessee was bona fide and therefore, the case was squarely covered by the principles laid down in Hindustan Steel Ltd. Vs. State of Orissa, . The exercise of discretion by the appellate and the revising authority cannot be said to be arbitrary and is not liable to interference by this Court.

12. In the result the revisions fail and are dismissed with costs which are assessed to Rs. 200 each set.