(2007) 05 AHC CK 0391

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Control Switch Gears Company Ltd. RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 8(1)

Citation : (2009) 20 VST 587

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") are directed against the order of the Tribunal dated January 25, 2000 relating to the assessment years 1991-92 and 1992-93 under the U.P. Trade Tax Act, 1948.

2. At the instance of the Revenue following questions have been raised:

(i) Whether on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to quash the demand of interest created u/s 8(1) of the U.P. Trade Tax Act for the tax legally payable on the turnover admitted by the dealer?

(ii) Whether the judgment of the Tribunal is correct in the eyes of law in the light of decision of the honourable Supreme Court in the case of Commissioner of Sales Tax, U.P. v. Qureshi Crucible Center [1993] 89 STC 467 : [1993] UPTC 901.

3. Brief facts of the case are that the dealer/opposite party (hereinafter referred to as, "the dealer") was carrying on the business of manufacture and sales of electronic goods. In the return, dealer had shown certain sales against form IIIB and admitted the tax liability at the concessional rate and claimed full exemption on some of the sales. It appears that before the assessing authority form IIIB for some of the sales were filed but form IIIB for some of the sales claiming full exemption and partial exemption could not be furnished. On account of non-furnishing of form IIIB, assessing authority disallowed the exemption as well as

partial exemption, as the case may be and levied the tax at the normal rate applicable to the goods. The assessing authority treated the tax assessed as the tax admittedly payable along with return and demanded the interest u/s 8(1) of the Act at two per cent from the date of filing of the return till the date of deposit. The levy of tax on such turnover at normal rate has been confirmed up to the stage of Tribunal but the Tribunal has deleted the interest u/s 8(1) of the Act. Being aggrieved by the order of the Tribunal, present revisions have been filed.

4. Learned Standing Counsel submitted that the dealer claimed the exemption or concessional rate of tax based on the furnishing of form IIIB. In the absence of form IIIB such turnover was liable to tax at the normal rate. It was on the dealer to substantiate the claim of exemption or concessional rate of tax as the case may be on furnishing of form IIIB. If dealer fails to furnish form IIIB, the tax at the normal rate of tax is deemed to be payable along with return when the liability to pay the tax was fixed u/s 7 of the Act read with rule 41 of the U.P. Trade Tax Rules, 1948. He submitted that issue involved has been considered in detail by this Court in the case of Commissioner of Trade Tax, U.P., Lucknow v. Jobex India reported in [2005] 28 NTN 175 and Commissioner of Trade Tax, U.P., Lucknow v. Deepak Hume Pipe Manufacturing Company reported in [2006] 29 NTN 104. He submitted that the stand of the department is supported by the decision of the apex court in the case of Commissioner of Sales Tax, U.P. v. Qureshi Crucible Center reported in [1993] 89 STC 467 : [1993] UPTC 901.

5. Sri K. Saxena, learned Counsel for the opposite party submitted that the statute does not require to furnish the forms along with return. Statute requires the dealer to furnish the form up to the stage of assessment. Therefore, up to the stage of assessment, there is always the "legitimate expectation and hope to get the form". He submitted that the conduct of the dealer and its "legitimate expectation and hope to get the form" can be examined from the bills raised by the dealer. In case if the bills suggest that the dealer has sold the goods against form IIIB and in case of claim of exemption had not charged the tax and in case of claim of concessional rate of tax charged the tax only to that extent then it would be a case of "legitimate expectation and hope to get the form" and in such a situation the tax assessed in the assessment order cannot be treated as the "tax admittedly payable" and the demand of interest u/s 8(1) of the Act cannot be raised. In support of his claim he relied upon the following decisions:

1. J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another,

2. M.B. Steel Corporation v. Commissioner of Sales Tax reported in [1995] UPTC 26

3. Commissioner of Sales Tax, U.P, Lucknow v. Angana Udyog, Ptansi reported in [1996] 23 STR 235;

4. Commissioner of Trade Tax v. Ram Ratan Ambrish Kumar reported in [2003]

22 NTN 522; and

5. Commissioner of Sales Tax Vs. Hindustan Aluminium Corporation,

6. I have given my anxious considerations to the rival submissions made by learned Counsel for the parties.

7. Let us examine some relevant provisions relating to the issue. It is relevant to refer Section 7, Section 7(1), (1A) of the Act, rule 25B(5) and rule 41(1), (2), (3) and (4) of the Rules, which read as follows:

Section 7. Determination of turnover and assessment of tax.--(1) Every dealer who is liable to pay tax under this Act shall submit such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed ; but assessing authority may in its discretion, for reasons to be recorded, extend the date for the submission of the return by any person or class of persons.

(1A) Before submitting the return under sub-section (1) or along with such return the dealer shall deposit in such manner as may be prescribed the amount of tax due on the turnover shown in such return.

Rule 25B. Authority from which declaration forms may be obtained; use, custody and maintenance of records of such forms and matters incidental thereto.-(1) to (4)

(5) A registered dealer who claims to have made sale to a dealer holding a recognition certificate shall, in respect of such claim, furnish to the Sales Tax Officer the portion marked ''original'' of the declaration form received by him from the purchasing dealer, up to the date on which he is required to furnish his accounts for final assessment in respect of the year to which the claim pertains. The Sales Tax Officer may, in his discretion, require the selling dealer to produce for inspection the portion of the declaration form marked ''duplicate''.

Rule 41. Submission of returns and assessment of tax.--(1) Every dealer liable to tax, the aggregate of whose turnover, as referred to in sub-section (2) of Section 3, in any assessment year exceeds rupees two lakhs, shall before the expiry of the next succeeding month, submit to the Sales Tax Officer, monthly return of his turnover in form IV, giving annexures I and II thereof, detailed information, according to code numbers notified by the State Government from time to time, in respect of each category of goods in which he carries on business:

Provided that the return for the month for February shall be submitted to the Sales Tax Officer on or before the twentieth day of March:

Provided further that the dealer may, instead of submitting a return as aforesaid, estimate his turnover for the years on the basis of the turnover admitted by him in his return/or disclosed in his account books, whichever is greater, for the immediately preceding year, calculate the amount of tax payable thereon and deposit a sum equal to one-twelfth thereof during each of the first two months of every quarter, and deposit the balance of tax due on the turnover admitted by him in his return for the relevant quarter, which shall be prepared and submitted in the manner laid down in this rule.

(2) Every dealer liable to pay tax under the Act, other than dealer referred to in sub-rule (1), shall submit to the Sales Tax Officer for the quarter ending June 30, September 30, December 31 and March 31, within a month of the expiry, of the quarter concerned, a return of his turnover in form IV giving detailed information in respect of each category of goods in which he carries on business:

Provided that it shall not be necessary for such dealer to furnish in annexures I and II detailed information according to code numbers in respect of goods in which business was carried on by him:

Provided further that a dealer whose total admitted tax liability during the assessment year immediately preceding did not exceed Rs. 500 and whose estimated admitted tax liability during the assessment year is not likely to exceed Rs. 500 may, instead of submitting a return as aforesaid, estimate his turnover on the basis of the turnover admitted by him in his return for the assessment year, immediately preceding, calculate the amount of tax payable thereon and deposit a sum equal to one fourth thereof within a month of the expiry of each of the first three quarters and deposit the balance of tax on the turnover admitted by him in his return for the assessment year, which shall be prepared and submitted in the manner laid down in this sub-rule, within a month of the expiry of the relevant assessment year.

Explanation I.--''Admitted tax liability means the tax which is payable under this Act on the turnover or, as the case may be, the turnover of purchases or both, as disclosed in the accounts maintained by the dealer or admitted by him in any return or proceeding under this Act, whichever is greater, or, if no accounts are maintained, then according to the estimate of the dealer.

Explanation II.--''Estimated admitted tax liability'' means the tax payable under the Act by the dealer on his estimated turnover or estimated turnover of purchases of the assessment year or both, as the case may be.

(3).... (4) Before submitting the return under sub-rule (1), sub-rule (2) or sub-rule (3), the dealer shall, in the manner laid down in these rules, deposit the total tax due under the Act on the turnover of sales or purchases or both, as the case may be, disclosed in the return and shall submit to the Sales Tax Officer, along with the return, the treasury challan, bank draft or cheque for the amount so deposited:

Provided that where a Government department wants to deposit the tax by book transfer, such department shall, before submitting such return, prepare a bill, in triplicate, for the amount of tax due, endorse it to the Sales Tax Officer in accordance with the financial rules on the subject and attach two copies thereof with such return. One of the copies shall be retained by the Sales Tax Officer and the other copy shall be sent to the Accountant General, Uttar Pradesh, for crediting the amount to the account of the Sales Tax Department.

8. Rules 12A, 12B and 12C of the Rules relate to the submission of forms IIIA, IIIC1, IIIC2 and IIID under the provisions of Sections 3A, 3AA, 3D and 3G of the Act. Under the aforesaid provisions, forms are required to be furnished before the assessing authority up to the time prescribed in sub-section (7) of rule 41 of the Rules, i.e., up to the time of the assessment proceedings.

9. Section 8(1) of the Act read as follows:

Section 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 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 purpose 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 of 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 greater, or, if no accounts are maintained, then according to the estimate of the dealer, and includes the amount payable u/s 3B.

10. Now let us examine the various decisions on the subject. In the case of Annapurna Biscuit Manufacturing Co. v. State of Uttar Pradesh reported in [1982] 50 STC 56 : [1980] UPTC 1320, Division Bench of this Court held as follows (page 66 of STC):

...The learned Counsel mentioned that as sale was made to registered dealers and such sales being exempt u/s 3D(1) the petitioner did not commit any error in determining the tax payable to be nil u/s 8(1). Therefore, its failure to file form could result in enhancement of ''lax in excess'' but the assessing authority could not while assessing tax create any demand for interest. Reliance was placed on Commissioner of Sales Tax v. Venus Auto Traders [1980] UPTC 273. None of the submissions have any merit in it. We have already indicated above that liability to pay interest under sub-section (1) of Section 8 is not affected by the deposit of tax assessed within the time specified. The only question, therefore, is whether the calculation of tax payable was in accordance with the Act. It is not disputed that if the petitioner effected sales to a person other than a registered dealer then it was liable to pay tax under subsection (2) of Section 3D. The liability to pay tax therefore depended on this crucial fact which is required to be proved by filing form IIIC(1) under sub-rules (6) and (7) of rule 12B. It is admitted that these forms were not filed. In the absence of these forms it cannot be said that the calculation of tax payable was in accordance with the Act.

11. In the case of Ram Sahai Dal Mills, Varanasi v. Sales Tax Officer, Varanasi reported in [1982] UPTC 600, Division Bench of this Court held that if the dealer did not file any declaration in form IIIC(1) for the claim of exemption, the dealer was liable to pay tax u/s 3D(2) of the Act and the same becomes the liability of tax in respect of these transactions u/s 8(2) of the Act. It has been further held that it was not a case of any bona fide dispute raised by the assessee. The tax in respect of these transactions should have been paid along with the filing of the return and since this was not done, the interest became chargeable u/s 8(1) of the Act.

12. In the case of Commissioner of Sales Tax, U.P. v. Indian Herbs Research and Supply Company reported in [1982] UPTC 804 , which is directly on the controversy involved in the present case, this Court has considered Section 8 of the Central Sales Tax Act, 1956 along with Section 8 of the U.P. Sales Tax Act, as amended by U.P. Act No. 38 of 1975 and has held that where a dealer is seeking exemption from levy of tax upon some part of the turnover unless he fulfils the statutory requirement for such a claim he shall have to pay interest upon the unpaid amount of tax calculated on the turnover worked out without regard to claim of exemption. In this case, the High Court disapproved the view of the Tribunal that interest for not filing of form "C" on the unpaid amount would be payable from the date of assessment. The reason is that in sub-section (1) of Section 8 of the Act, the starting point for the liability for payment of interest on the unpaid part of the admitted tax has been provided for and it is June 1, 1975 or the last date prescribed for payment of admitted tax, whichever is later. The Tribunal in the case in hand has not given any reason for deletion of levy of interest except saying that it is not proper in their opinion. The order of the Tribunal is thus laconic and cannot be sustained. The apex court examined Section 8(1) of the Act in the case of The Commissioner of Sales Tax Vs. Qureshi Cruchible center, and held that Section 8(1) of the Act does not say that non-payment should be mala fide. It has been further held that where the dealer calculated the tax at an inapplicable rate, dealer is liable to pay interest u/s 8(1) of the Act. The expression "tax admittedly payable" means the tax which is payable, inter alia according to the return filed by the dealer.

13. In the case of Commissioner of Trade Tax, U.P., Lucknow v. Deepak Hume Pipe Manufacturing Company [2006] 29 NTN 104 learned single judge of this Court held that the burden lay upon the dealer to file requisite form for the claim of exemption or concessional rate of tax, failing which normal rate of tax is payable. It is held that in case, if requisite form is not filed, the normal rate of tax is due and payable and for the non-payment of such tax, the interest u/s 8(1) of the Act is chargeable.

14. Similar view has been taken by learned single judge of this Court in the case of Commissioner of Trade Tax, U.P., Lucknow v. Jobex India [2005] 28 NTN 175.

15. Section 8(1) of the Act has been examined by the apex court along with interest u/s 8(1B) of the Act in the case of Commissioner of Sales Tax v.

Hindustan Aluminium Corporation [2002] 127 STC 258. The apex court held as follows (page 279):

4. What is required is a plain interpretation of the provisions of Section 8. Sub-section (1) thereof requires the assessee to deposit within the time prescribed or by August 31, 1975, whichever is later, the tax that is admittedly payable by him. What ''tax admittedly payable'' means, for the purpose, is set out in the Explanation to subsection (1). It means the tax payable under the Act on the assessee''s turnover as disclosed in his accounts or as admitted by him in his return or other proceeding under the Act, whichever is greater, or, if no accounts are maintained, according to his estimate. Sub-section (1A) deals with the post-assessment scenario. It says that the tax assessed under the Act shall be deposited within 30 days of service of notice of assessment and demand. Sub-section (IB) applies if the tax assessed is not deposited as required by sub-section (1A).

5. The dispute here, as aforestated, was in regard to the classification of the assessee''s products. Such classification dispute is ordinarily resolved in assessment proceedings and, if resolved against the assessee, the assessee has to make payment of the differential amount of tax as required by sub-section (1A) failing which the provisions of sub-section (IB) apply.

6. The requirement of sub-section (1) is that the assessee must pay tax on the amount of his turnover as particularised in the Explanation thereto. Interest under the provisions of sub-section (1) cannot be levied in respect of a dispute such as a classification dispute which is resolved only by the assessment. Sub-section (1) has no application to such a situation.

7. Having regard to the conclusion that we reach upon the plain words of Section 8, it is unnecessary to go into the assessee''s contention that a substantial part of the amount claimed by the Revenue as and by way of interest is under the provisions of the Central Sales Tax Act, 1956 and under that Act no interest is leviable.

16. The case of Hashmatullah and Company, Bareilly v. Commissioner of Sales Tax reported in [1995] UPTC 626. In this case on the non-furnishing of requisite form IIIA exemption has been denied and the tax has been assessed and the interest u/s 8(1) of the Act has been demanded. This court confirmed the levy of tax but deleted the interest. This court held as follows:

The next point raised in this case is about the leviability of interest on the tax levied on the aforesaid turnover. The assessing officer has levied interest u/s 8(1) of the Act and the levy has been upheld by the Tribunal. The dealer had been denying the taxability of the purchases on the ground that it were the sales that were taxable in the hands of the selling dealers because the revisionist did not furnish any form IIIA to them. The authorities below have treated the tax levied as the tax admittedly payable and the learned Tribunal has observed that the dealer had not wrongly admitted the liability for tax. Under the proviso to

Section 3AAAA as it stood at the relevant time no tax was leviable if it was proved to the satisfaction of the assessing authority that the goods so purchased had already been subjected to tax or may be subjected to tax u/s 3AAA. Therefore, the admission or non-admission by the assessee is to be considered at the point of time when he furnished return and simply because by the time the assessment proceedings are taken the seller has not been subjected to any tax it cannot be said that the dealer had wrongly denied its liability. It is only recently that Section 3AAAA has been amended by the U.P. Ordinance No. 7 of 1994 with retrospective effect and the legal position as explained in the case of Shivan Tannery v. Commissioner of Sales Tax [1995] UPTC 209 has emerged. Prior to that even purchases from unregistered dealers could not have been taxed if it could be established that they had been subjected to tax in the hands of those dealers. In the case of/. J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, the honourable Supreme Court while dealing with an identical provision under the Rajasthan Sales Tax Act observed that the law does not envisage the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid liability to pay interest. It was observed that so long as the assessee pays that tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation and it would be difficult to hold that the ''tax payable'' by him is not paid to visit him with the liability to pay interest. In my view, therefore, the dealer having not admitted the liability to pay tax in respect of the purchases in question and there being nothing to show that his denial was absolutely without any basis the disputed tax could not be treated as the tax admittedly payable by it. Therefore, no interest was leviable.

17. In the case of Commissioner of Sales Tax, U.P, Lucknow v. Angaria Udyog, Jhansi [1996] 23 STR 235 dealer was claiming exemption u/s 4A of the Act being new unit. On account of the requirement of application u/s 4A of the Act tax has been assessed and the interest u/s 8(1) of the Act has been demanded. The claim of the dealer was that since application u/s 4A of the Act was filed under the bona fide belief, the tax was not realised from the customers and neither the liability of tax has been admitted nor deposited and, therefore, interest u/s 8(1) of the Act was not chargeable. Tribunal accepted the plea of the dealer and deleted the tax. On the revision filed by the revisionist this Court held as follows:

In case, the eligibility certificate was granted u/s 4A, the dealer''s sales would have been exempt from tax. The dealer had moved an application for the grant of an eligibility certificate which was not disposed of in time and in the returns the dealer did not admit that any tax was payable on the turnover. The assessing officer levied interest u/s 8(1) of the Act, which was deleted by the Assistant Commissioner 0udicial). This order has been upheld by the Tribunal. Both the authorities have held that in the aforesaid circumstances the tax payable on the turnover could not be treated as admitted tax. This finding in my view is correct. There is no finding by the authorities below that the application u/s 4A of the

Act, was not bona fide and was a mere device to delay payment of admitted tax. The dealer''s bona fides are demonstrated by the fact that it did not charge any sales tax from its customers. In the circumstances, the Tribunal''s finding that the tax ultimately levied on the turnover was not admitted tax within the meaning of Section 8(1) of the Act, is legally correct.

18. In the case of Commissioner of Trade Tax v. Ram Raton Ambrish Kumar [2003] 22 NTN 522 for non-furnishing of requisite form IIIC1 exemption was denied and on the assessed turnover, interest u/s 8(1) of the Act was charged. The claim of the dealer was that no tax was charged from the customers and exemption was claimed in the return. Form could not be obtained because the business of the purchaser was closed. Tribunal accepted the plea and held that the dealer was under the bona fide belief and was in hope to get the requisite form IIIC1, which could not be obtained due to the closure of the business of the purchaser and accordingly deleted the demand of interest u/s 8(1) of the Act. The order of the Tribunal has been upheld by this Court.

19. From the above, it appears that there are different views of learned single judge of this Court on the issue relating to charge of interest. Thus, in my opinion matter requires consideration by the Full Bench of this Court in the light of the provisions of the Act, the decisions of the apex court in the case of J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422 : [1994] UPTC 893, Commissioner of Sales Tax v. Hindustan Aluminium Corporation [2002] 127 STC 258 : [1999] UPTC 1, Commissioner of Sales Tax, U.P. v. Qureshi Crucible Center [1993] 89 STC 467 : [1993] UPTC 901 and the Division Bench decision of this Court in the case of Annapurna Biscuit Manufacturing Co. v. State of Uttar Pradesh [1982] 50 STC 56 : [1980] UPTC 1320.

20. The question which requires consideration by the Full Bench are as follows:

(a) In view of the fact that the requisite forms for the claim of exemption/ concession is required to be filed during the course of assessment proceeding as per rule and in case of non-furnishing of form during the assessment proceeding tax is levied at the normal rate whether, interest u/s 8(1) can be demanded from the due date of the return in which turnover was disclosed and exemption/ concession has been claimed and tax at the normal rate has not been paid or from the date of assessment order or u/s 8(1B) in case of non-payment even after the assessment order.

(b) Whether in case of non-furnishing of requisite form by the time of assessment proceeding, the tax assessed at a normal rate can be said to be tax admittedly payable u/s 8(1) of the Act.

(c) Whether there is any scope for the consideration of legitimate expectation or hope or bona fide belief u/s 8(1) of the Act and what is the stage of determination of liability of tax whether return or assessment.

21. Let the file be placed before the honourable Chief Justice for the Constitution

of Full Bench.

