
(2003) 04 AHC CK 0241
In the Allahabad High Court

Commissioner, Sales Tax

APPELLANT

Vs

Kothari Chemicals

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Citation : (2008) 11 VST 498

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These are two revisions filed by the Commissioner of Sales Tax against the order of Tribunal dated September 18, 1990 relating to assessment year 1982-83 both under the U. P. Sales Tax Act, 1948 as well as under the Central Sales Tax Act, 1956.

2. The dealer-opposite party was carrying on the business of pan masala. For the month of May, 1982, dealer had filed monthly return both under the U.P. Sales Tax Act as well as under the Central Sales Tax Act as required under Rule 41 and deposited the admitted tax by cheque along-with return on June 29, 1982. It appears that the cheque was not presented in the bank up to July 21, 1982 and on July 22, 1982, Income Tax department had attached the bank account of the dealer which was released on July 29, 1982. It appears that the cheque was presented with the bank during the period July 22, 1982 to July 29, 1982 and the same was dishonoured. Dealer on receipt of an information that the cheque was dishonoured, deposited the admitted tax on July 30, 1982 by pay order. Later on, the assessing authority issued notice directing the dealer to deposit interest on the admitted tax u/s 8(1) for late deposit of tax, inasmuch as, tax was due to be deposited on June 30, 1982 while it was deposited on July 30, 1982. Dealer filed two appeals before the Deputy Commissioner (Appeals) which were rejected. Dealer filed two second appeals before the Tribunal which were allowed and being aggrieved by the orders of the Tribunal, the present two revisions have been filed.

3. I have heard the learned Standing Counsel and Sri P. Agarwal, counsel appearing on behalf of dealer-opposite party. The Tribunal had held that the demand of interest by the assessing authority was not justified. It had been held that the amount was deposited on June 29, 1982 by cheque along with the return and the said cheque was not presented in the bank up to July 21, 1982 and further on July 22, 1982, the Income Tax raid was conducted and the bank account was seized on July 22, 1982 and when the bank account was released on July 29, 1982, dealer deposited the amount by way of pay order on July 30, 1982. The Tribunal observed that the assessing authority had not held that the dealer failed to pay the admitted tax along with the return without reasonable cause or payment was not made due to the cause which was not reasonable and the assessing authority had not recorded any finding that there was any mala fide on the part of the dealer. The Tribunal further observed that since the dealer had deposited the cheque for the month of May, 1982 on June 29, 1982 along with return and position of credit balance in the bank account at the time of seizure on July 22, 1982 was Rs. 8,12,042.01 for the encashment of the aforesaid cheque. In the opinion of the Tribunal, the payment when made was a valid discharge of the amount, due against it as there was money available in the bank account and the cheque was dishonoured because Income Tax raid was conducted on the appellant-firm and the bank account was seized on July 22, 1982 under the orders of Commissioner, Income Tax, Kanpur, hence, no interest could have been charged from the payment. Learned Standing Counsel submitted that for the charge of interest u/s 8(1), consideration of mala fide or reasonable cause as considered by the Tribunal, was not relevant. He submitted that the payment by cheque was conditional payment subject to its encashment and since the cheque was not encashed, it could not be treated as deposit as on June 29, 1982 when the cheque was given. According to him, deposit should be treated to have been made on July 30, 1982 which was admittedly beyond the prescribed time and hence, interest u/s 8(1) was chargeable. Learned Counsel for the dealer-opposite party submitted that the view of the Tribunal was correct and in support of it, he cited a Division Bench judgment of this court in the case of Baldeo Prasad Sita Ram, Kanpur v. State of Uttar Pradesh reported in [1992] 87 STC 245 SC : [1992] UPTC 36.

4. I have considered the submissions of both the counsel for the parties.

In my opinion, the order of the Tribunal is legally incorrect. In the case of Damadilal and Others Vs. Parashram and Others, , defendant had tendered the arrears of rent by a cheque within the prescribed time. The question for consideration before the court was whether the tender was valid. In this connection, apex court observed that it is no doubt true that the issuance of the cheque does not operate as a discharge of the obligation unless it is encashed, and it is treated as a conditional payment, yet, this is a sufficient tender of the arrears if the cheque is not dishonoured. In view of the matter, there is no doubt that the cheque unless it is dishonoured is a payment, but it is a conditional payment subject to its encashment. If the cheque is dishonoured for any reason,

it cannot be said to be the payment by cheque on the specified date. The validity of cheque is for six months, therefore, after the issuance of cheque, party should be vigilant and careful that whenever the cheque is presented within six months, it should be encashed. But in the present case, the cheque was presented between July 22, 1982 to July 29, 1982 and was dishonoured. The presentation of cheque during the aforesaid period cannot be said to be presentation in an unreasonable period and cannot be said to be unreasonable delay in presentation of cheque on the part of the Sales Tax Department. If the bank account of the dealer was attached by Income Tax Department on July 22, 1982, the dealer should have taken necessary steps and should have asked the Sales Tax Officer, not to present the cheque. No such steps have been taken. In any view of the matter, whatever may be the reason for non-encashment of cheque, but the fact remains that the cheque was dishonoured, by which, admitted tax said to be deposited on June 29, 1982 and hence, it cannot be said that the admitted tax was deposited in time.

5. The decision of the Division Bench of this court in the case of Baldeo Prasad Sita Ram, Kanpur v. State of Uttar Pradesh reported in [1992] 87 STC 245 : [1992] UPTC 36 is not applicable to the present case and distinguishable. In the said case for the month of May, 1984, tax was deposited vide cheque No. 470980 dated June 26, 1984. When the cheque was not presented in the month of January, 1985, a letter was written by the dealer to the assessing authority. Again on August 29, 1985, a reminder was sent to the assessing authority to the effect that as period of six months since issuance of cheque has elapsed, the petitioner was ready to revalidate the cheque, but in the case of delay, petitioner could not be responsible. On October 4, 1986, dealer sent another letter to the assessing authority to get the information about the presentation of cheque. It appears that the cheque was presented to the bank for payment on July 9, 1986 and it was dishonoured on the ground that the validity of cheque expired. On these facts, the Division Bench held that "...On the facts of the instant case, it would be wholly unjust and improper both in law and in fact to require the petitioner to pay interest because the department failed to do its duty and realise the proceeds of the cheque in time. It is also evident from the correspondence referred earlier that the petitioner had made offer more than once to revalidate the cheque or to issue fresh cheque in lieu of the earlier one on the condition that the petitioner shall not be made liable for any interest on account of delayed payment, but such an offer was neither accepted nor turned down. In such a situation if the tax could not be realised, the department itself has to be blamed. Liability to pay interest u/s 8(1) accrues only when the default in payment of admitted tax is attributable to the assessee alone, which is not the situation, as it obtained in the instant case". As stated above in the present case, cheque was presented within a reasonable time and there was no lapse on the part of Sales Tax Department.

6. In my view for charge of interest u/s 8(1) there is no scope for consideration of any reasonable cause or mala fide. The consideration of reasonable cause and

mala fide, may be relevant for the purposes of penalty u/s 15A(1)(a) for delayed deposit of tax but not relevant for interest u/s 8(1). Section 8(1) says that the tax admittedly payable shall be deposited within the time prescribed, failing which, simple interest at the rate of two 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 or till the date of payment of such amount.

7. For the reasons stated above, the order of Tribunal is not correct and liable to be set aside.

8. In the result, the revisions are allowed and the order of Tribunal dated September 18, 1990 passed in Appeal Nos. 888 of 1984 and 889 of 1984 are set aside and it is held that the dealer was liable for interest u/s 8(1) for delayed payment of admitted tax.