
(1980) 12 AHC CK 0036
In the Allahabad High Court
Case No : Sales Tax Revision No. 206 of 1980

Commissioner, Sales Tax

APPELLANT

Vs

Steel Engineering Corporation

RESPONDENT

Date of Decision : 16-12-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Income Tax Act, 1961 — Section 147
Central Sales Tax Act, 1956 — Section 14
Income Tax Act, 1961 — Section 147
Central Sales Tax Act, 1956 — Section 14
Income Tax Act, 1961 — Section 147

Citation : (1981) 48 STC 432

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Respondent

Final Decision : Partly Allowed

Judgement

R.R. Rastogi, J.—The Commissioner, Sales Tax, Lucknow, has filed this revision u/s 11(1) of the U. P. Sales Tax Act, hereinafter "the Act". It relates to the assessment year 1972-73. The respondent-assessee carried on business in sales of M. S. tubes and tabular sheds as also undertook contract work. For the assessment year 1972-73 the assessee had disclosed its gross turnover at Rs. 2,23,332.53 and net at Rs. 2,13,026.13. The assessee had claimed exemption in regard to the turnover of agricultural implements amounting to Rs. 7,175 and of construction work amounting to Rs. 3,031 42. The accounts of the assessee were accepted and exemption was allowed on these turnovers as claimed. Further, the net turnover represented sales of M. S. tubes at Rs. 1,26,401.13 and of tabular sheds at Rs. 86,625. In regard to these sales the assessee's claim was that since these items were declared goods u/s 14 of the Central Sales Tax Act, hereafter referred to as "the Central Act", he was liable to tax at 3 per cent. This contention as well was accepted by the Sales Tax Officer and in this way total tax

liability of Rs. 6,390.78 was raised. Subsequently, it was found by the Sales Tax Officer that proper rate of tax had not been applied on the disclosed turnover and exemption too had been wrongly allowed in respect of the turnover of construction work. Accordingly action was taken u/s 21 of the Act and a notice was issued to the assessee. The assessee contested the notice on the grounds that action was not justified since no fresh material had been brought on record and merely as a result of change of opinion such action could not be taken. This objection was repelled by the Sales Tax Officer and he levied tax on the turnover in respect of construction work at 4 per cent, on sales of M. S. tubes at 6.5 per cent and on sales of tabular sheds at 4 per cent. This resulted in an additional liability of Rs. 5,411.52 and to that was added a sum of Rs. 937.30 by way of interest.

2. The assessee's appeal having failed he took up the matter in revision before the Additional Judge (Revisions), Saharanpur, and challenged the validity of initiation of proceedings u/s 21 of the Act. The learned Additional Judge (Revisions) did not agree with the assessee and held that Section 21 of the Act could be invoked if proper rate of tax had not been applied and also the exemption had been wrongly allowed. However, in his opinion there can be no doubt that each and every error cannot be set right within the purview of Section 21 of the U. P. Sales Tax Act. Merely on the basis of a change of opinion either about the rate of tax or about exemption, Section 21 could not be invoked. On that view it was held that since in the original assessment it had been accepted that the aforesaid two items were declared goods and that the assessee was entitled to exemption in respect of the out-turn of construction work, on second thoughts that order could not be interfered with. Accordingly the assessment made u/s 21 of the Act was quashed. It is against that order the present revision has been directed.

3. It would be seen that the gross turnover declared by the assessee represented sales of tabular sheds, M. S. tubes and agricultural implements and receipts from contract work. So far as the sales of agricultural implements are concerned, exemption had been rightly allowed and that item did not figure in the proceedings u/s 21 of the Act. As regards the out-turn in respect of the contract work, since the question is not free from doubt as to whether this out-turn represented sales or supplies made in the course of the works contract, I agree with the learned Additional Judge (Revisions) that action could not have been taken u/s 21 since that would have been only as a result of second thought. It is now settled that an action u/s 21 of the Act cannot be taken as a result of second thought or change of opinion.

4. The question that survives for consideration is in regard to sales of tabular sheds and M. S. tubes, The assessee's case in the original proceedings was that they were declared goods u/s 14 of the Central Act. Accepting the same tax was levied at 3 per cent. Subsequently, it was found that these were not declared goods and were liable to be taxed at a higher rate. In regard to these items,

therefore, it shall also have to be seen as to whether they are or are not declared goods u/s 14 of the Act.

5. It has been submitted before me by the learned standing counsel that in regard to these two items there was a clear error of law committed by the Sales Tax Officer in the original assessment order and, that being so, it would be a case of under-assessment for which action could be taken u/s 21 of the Act. It was further contended that M. S. tubes and tabular sheds will not be covered by Section 14(iv) of the Central Act. According to the learned standing counsel it was not a case of change of opinion but it was a case of non-application of mind on the part of the Sales Tax Officer at the time of the making of the original assessment. On the other hand, from the side of the assessee it was submitted by Sri Bharatji Agarwal that these two items will be covered by Section 14(iv) of the Central Act and apart from that if a wrong view had been taken by the Sales Tax Officer while making the original assessment, the remedy of the Commissioner was to file an appeal against that order. Section 21 could not be invoked for correcting such an error and thus, it was a clear case of change of opinion. It was also stated that in order to find out the nature of the disputed items one cannot proceed merely on assumptions and the question can be decided only after considering the manufacturing process, etc. Anyhow, the question of the nature of goods was not free from arguments. It could have been decided only in the assessment made under Rule 41(7) of the Rules framed under the Act and not in proceedings u/s 21. Reliance has been placed from both the sides on a number of decisions.

6. I have given my careful and anxious consideration to the submissions made before me and I find considerable substance in what has been contended by the learned standing counsel. I shall first refer to the scope of Section 21(1) of the Act. It reads:

Assessment of tax on the turnover not assessed during the year.-(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer or tax according to law :

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment, or full assessment, as the case may be.

7. The explanation to this sub-section as also the other sub-sections of this section are not relevant for the present purpose. The key words of the subsection are "reason to believe". The formation of belief regarding escaped assessment constitutes the sine qua non for taking action under this section. The grounds for

formation of belief must be relevant and have a nexus with the formation of belief regarding escaped assessment. Escapement of assessment may be due to various reasons. The whole or any part of the turnover of a dealer for any assessment year or part thereof may have escaped assessment to tax. There may have been under-assessment or assessment may have been made at a rate lower than that at which it should have been made. If any deduction or exemption has been wrongly allowed then also action can be taken under this provision.

8. In *Hindustan Insulated Cable Co. v. Commissioner of Sales Tax* 1978 U.P.T.C. 561, omission to notice a survey report which was misplaced was regarded as proper material on which the Sales Tax Officer could reasonably believe that the turnover of the assessee had escaped assessment. The view taken in *Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others*, was followed. At page 334 it was observed by the Supreme Court:

In *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, this court laid down that the expression "has escaped assessment" in Section 34(1)(b) of the Indian Income Tax Act, 1922, is applicable not only where the income has not been assessed owing to inadvertence or oversight or owing to the fact that no return has been submitted, but also where a return has been submitted but the Income Tax Officer erroneously failed to tax a part of the assessable income.

9. Thus, oversight or inadvertence or failure on the part of the Income Tax Officer to tax a part of the assessable income was considered as sufficient for action u/s 34(1)(b) and there is no reason for not extending this principle to an action u/s 21 of the Act. It is of course correct that if action has been taken u/s 21 merely on change of opinion, it will not be upheld (see *Commissioner of Sales Tax v. Jagdish Prasad Satish Prasad* 1979 U.P.T.C. 820 and *Commissioner of Sales Tax v. Dwarik Das Varun Kumar* 1979 U.P.T.C. 1152).

10. The question therefore that would arise is whether the application of rate of tax on sales of these two items was as a result of consideration of the relevant provisions contained u/s 14(iv) of the Central Act and whether these two items constitute declared goods. If the Sales Tax Officer had taken into consideration these aspects of the case, then certainly subsequent action taken u/s 21 would be as a result of second thought but if it was not so, then it would be a case of non-application of mind and certainly the action would be justified. On behalf of the assessee reliance was placed on *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, . In that case action had been taken u/s 147(b) of the Income Tax Act, 1961, and it was observed:

Now, in the case before us, the Income Tax Officer had, when he made the original assessment, considered the provisions of sections 9 and 10. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion on material already considered by him.

11. The learned counsel for the assessee also invited my attention to a decision of this Court in Commissioner of Income Tax Vs. Nem Kumar Jain Ratan Kumar and Others, . I was a party to that decision. In regard to the scope of Section 147(b) the same view was taken in that case. It is not possible to hold that the view taken in those cases in regard to the scope of the words "in consequence of information" occurring in Section 147(b) would be of help here because those words do not find place in Section 21 of the Act. Apart from this there is also nothing on record to show that the Sales Tax Officer while making the original assessment had examined the claim of the assessee that the disputed items were declared goods with reference to the relevant provisions.

12. Section 14 of the Central Act declares certain goods to be of special importance in inter-State trade or commerce and in Clause (iv) "iron and steel" are one of the goods so provided for. This clause as originally indicated was as under:

(iv) Iron and steel, that is to say,-

(a) pig iron and iron scrap;

(b) iron plates sold in the same form in which they are directly produced by the rolling mill;

(c) steel scrap, steel ingots, steel billets, steel bars and rods ;

(d) (i) steel plates,

(ii) steel sheets, sold in the same form in which they (iii) sheet bars and tin bars, are directly produced by the rolling (iv) rolled steel sections, mill. (v) tool alloy steel

13. By the Central Sales Tax (Amendment) Act, 1972 (61 of 1972), with effect from 1st April, 1973, this clause has been redrafted and now iron and steel is divided into 16 categories which embrace widely different commercial commodities. Some of the enumerated items can serve as raw materials out of which other goods are made and others are definitely varieties of manufactured goods. So far as the present case is concerned, Clause (iv) as it stood before the aforesaid amendment would apply and not the amended one. The question which arises in this connection is as to whether this clause was meant to enumerate separately taxable goods or just to illustrate what is one taxable substance "iron and steel". This question came up before the Supreme Court in State of Tamil Nadu v. Pyare Lal Malhotra 1976 U.P.T.C. 282 (S.C.). While explaining the import of the expression "that is to say", it was observed, "such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word "includes" is generally employed. In unusual cases, depending upon the context of the words "that is to say", this expression may be followed by illustrating instances". It was further observed :

But, in the context of single point sales tax, subject to special conditions when

imposed on separate- categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods in a given list. The purpose of an enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it.

14. It is, therefore, clear that the import of the expression "that is to say" is to exhaustively enumerate the kinds of goods given in the four sub-clauses of Clause (iv). The enumeration is exhaustive and not illustrative and unless a particular commodity can fall within any of the items enumerated therein, it would not be regarded as iron and steel. I find that M.S. tubes and tabular sheds are not covered within the goods enumerated in this clause and hence they could not have been treated as declared goods.

15. The attempt of the learned counsel for the assessee was to bring these items under Sub-clause (d)(iv), i.e., "rolled steel sections". I do not think that this contention can be accepted because in the first instance the note against the brackets in front of the five smaller sub-divisions of (d) makes it clear that they can be regarded as iron and steel only if they are sold in the same form in which they are directly produced by the rolling mill. Such was never the case of the assessee and, apart from this, as held in *Commissioner of Sales Tax v. Ashwini and Co.* [1973] 32 S.T.C. 618, the question whether iron hoops can fall within the category of rolled steel sections can be answered only in case the process of the manufacture of that item is known. Apart from this steel tubes were held to be mill stores liable to tax at 6 per cent in *Commissioner of Sales Tax v. Bombay Machinery Co., Allahabad* 1980 U.P.T.C. 724.

16. An almost similar question had come up for consideration before me in *Commissioner of Sales Tax v. Chand Stores* 1980 A.T.J. 74. In that case for the assessment year 1969-70, the turnover of pullovers, cardigans, etc., was taxed at 3 per cent. Subsequently, it was found that the turnover of those goods was taxable at 6 per cent and hence proceedings were taken u/s 21 of the Act. In *Ram Lal 6-Brothers v. Commissioner of Sales Tax* 1979 A.T.J. 41, it had been held by this Court that woollen cardigans and woollen pullovers are woollen goods and not woollen hosiery liable to be taxed at 6 per cent and not at 3 per cent. Following that decision the action of the Sales Tax Officer in *Chand Stores* 1980 A.T.J. 74 was upheld. I am inclined to take the same view in the present case because when M. S. tubes and tabular sheds are not covered by Section 14(iv) of the Central Act, they could not be treated as declared goods liable to tax at 3 per cent. The sales thereof were taxable at a higher rate and certainly it was a case where there had been escapement of assessment to tax because of the application of a rate lower than that at which the disputed turnover was assessable under the Act.

17. In my opinion, therefore, the view taken by the Additional Judge (Revisions) is erroneous in law and cannot be sustained. The action u/s 21 had been validly

taken in regard to the turnover of M.S. tubes and tabular sheds.

18. The revision, hence, succeeds and is allowed in part and the order of the Sales Tax Officer in so far as the levy of tax on sales of M.S. tubes and tabular sheds is concerned is restored. The Commissioner is entitled to costs which are assessed at Rs. 200.