(2006) 08 AHC CK 0282

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Shyamo Devi Industries RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 21

Citation : (2008) 17 VST 404

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—These two revisions arise out of a common order dated December 23, 1994 passed by the Trade Tax Tribunal in Second Appeal No. 458 of 1991 (1985-86) and Second Appeal No. 629 of 1991 (1985-86) and can be conveniently disposed of by this common judgment.

Heard Sri B.K. Pandey, the learned Standing Counsel, appearing for the revisionist and Sri M. Manglik for the respondent.

2. Proceedings u/s 21 of the U.P. Trade Tax Act, 1948 hereinafter referred to as "the Act". Brief facts of the aforesaid case are:

Assessment order of the respondent-assessee was passed on December 10, 1989 in which no tax was imposed. An information was received from the Trade Tax Officer that the assessee has sold 342 kg. mentha oil to a firm M/s. Ajmani Chemicals, Rampur, which sale being not verifiable from the account books and documents submitted by the assessee at the time of original assessment. A belief was formed that the turnover has escaped the assessment to tax and therefore notice u/s 21 of the Act was issued which was duly served on the assessee. In reply to the notice the assessee appeared and filed his reply. The assessee objected to very initiation of proceedings on the ground that there was no material to come to the conclusion that any turnover has escaped assessment. The Trade Tax Officer vide his order dated September 27, 1990 passed reassessment order imposing tax liability of Rs. 35,800. Against the said order dated September 27, 1990 an appeal was filed before the Assistant Commissioner Qudicial) being Appeal No. 822 of 1990. The appellate authority confirmed the reassessment order and dismissed the appeal. Against the order of first appellate authority Second Appeal No. 458 of 1991 was filed by the assessee which has been allowed by the Tribunal against which order the present revision has been filed. The question which has been raised in this revision is "whether, on the facts and circumstances of the case, the learned Tribunal was justified to hold that the proceedings initiated u/s 21 of the U. P. Trade Tax Act were not justified.

3. The facts giving rise to revision No. 828 of 1995 are:

The assessee-respondent was granted recognition certificate on June 9, 1985 u/s 4B of the Act, 1948 for purchase of mentha oil (raw material). For the year 1985-86 assessment order was passed on June 21, 1989 and books of account of the dealer were accepted. The dealer disclosed the purchase of mentha oil direct from farmers in his accounts but on inquiry it was alleged by the department that the dealer actually made purchase from M/s. Ashia Chemicals, Rampur, where those farmers get extracted their oil and sold it to Ashia Chemicals. The assessing authority after affording opportunity to the dealer vide order dated September 26, 1990 cancelled the recognition certificate from June 9, 1985. Aggrieved against the aforesaid order the dealer .preferred an appeal before the Assistant Commissioner (Judicial) who vide order dated March 25, 1991 allowed the appeal of the dealer. The Commissioner of Sales Tax filed a Second Appeal before the Trade Tax Tribunal which has been dismissed by the order dated December 28, 1994 against which the revision has been filed by the revisionist. The question raised in the revision is "whether, on the facts and circumstances of the case, the learned Trade Tax Tribunal is justified to dismiss the appeal of the Department to hold that the assessee has not violated the condition of recognition certificate".

4. The learned Standing Counsel, appearing for the revisionist in support of the Revision No. 808 of 1995 challenging the order of the Tribunal arising out of the proceedings u/s 21 contended that the Tribunal committed error in taking the view that there was no valid material with the assessing authority for initiating proceedings u/s 21 of the Act. He submits that there was information from the Trade Tax Officer regarding sale of 342 kg of mentha oil to M/s. Ajmani Chemicals, Rampur, which was not verifiable from the account books and documents submitted by the assessee. The learned Counsel appearing for the assessee refuting the above submission reiterated that there was no valid material for initiating proceedings u/s 21 of the Act. There being no positive material to come to the conclusion that any turnover has escaped assessment, the proceedings u/s 21 of the Act were initiated only on account of change of opinion.

5. The question as to when the proceedings u/s 21 of the Act can be validly

initiated came for consideration before this court on several occasions. The legal position in this regard has been enunciated by the Division Bench of this court in M.L. Shukla & Co. v. Sales Tax Officer, Sector 17 Kanpur [1981] UPTC 396. The Division Bench held that Section 21 empowers the assessing authority to assess or reassess a dealer if he has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment. Following has been laid down in paragraph 5:

5. This provision empowers the assessing authority to assess or reassess a dealer if he has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment. Dealing with the key words in the provision ''reason to believe'' the Supreme Court in Commissioner of Sales Tax v. Bhagwan Industries (P.) Ltd. [1973] 31 STC 293 observed thus:

...In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this court, for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence.

Exactly similar view was expressed by the Supreme Court in S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, while interpreting the expression ''reason to believe'' in Section 34 of the Indian Income Tax Act, 1922. As observed by the Supreme Court in Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax, the formation of the required belief is a condition precedent : the fulfilment of this condition is not a mere formality, it is mandatory and failure to fulfil that condition would vitiate the entire proceedings. The belief must be held in good faith. It cannot be arbitrary or capricious but based on, or justified by facts. It would not be sufficient that the assessing authority should have reason to suspect that the turnover has escaped assessment.

6. Again this court in Commissioner of Sales Tax v. Bansidhar Ram Bilas [1980]

UPTC 1010 analysing the provisions of Section 21 laid down the following in paragraph 4:

4. After carefully considering the rival submissions I am of the opinion that there is no merit in these revisions. At the relevant time Sub-section (1) of Section 21 was as under:

21(1). If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for any year, the assessing authority may, after issuing notice to the dealer, and making such enquiries as may be necessary, assess or reassess him to tax.

The proviso and the Explanation to this Sub-section are not relevant for the present purpose. It would be seen that the key words of this Sub-section are ''reason to believe'' and these words came up for consideration before the Supreme Court in Commissioner of Sales Tax v. Bhagwan Industries (P.) Ltd. [1973] 31 STC 293. The view taken was that reasonable grounds necessarily postulate that they must be germane to the formation of belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or the Supreme Court, for the sufficiency of the grounds which induced the assessing authority to act is not justiciable issue. What can be challenged is existence of the belief but not the sufficiency of the reasons for the belief. At the same time it is necessary that the belief must be held in good faith and should not be a mere pretence.

7. In view of the law as laid down by this court in the above cases it is well-settled that the assessing authority would be clothed with jurisdiction to take action u/s 21 if on relevant grounds he has formed belief regarding escaped assessment. The grounds have to be relevant and have nexus with the formation of belief.

8. In the present case both the assessing authority and the first appellate authority held that there is material for initiating proceedings u/s 21, i.e., the information from the Sales Tax Officer regarding sale of 342 kg mentha oil to M/s. Ajmani Chemicals, Rampur, which was not verifiable from the account books of the assessee. Thus in the present case the assessing authority formed belief after receiving the definite information regarding sale by the assessee to M/s. Ajmani Chemicals, Rampur of 342 Kg. of Mentha oil which was not verifiable from the account books of the assessee. The information of sale of 342 kg mentha oil to M/s. Ajmani Chemicals, Rampur cannot be said to be irrelevant in forming the opinion by the assessing authority regarding escaped assessment. The proceedings were initiated u/s 21 when the authority was satisfied after receiving the information that the said sale is not verifiable from the account

books of the assessee. The findings of the assessing authority were confirmed by the first appellate authority. The Tribunal took the view that the material accepted by the assessing authority was not positive material to believe that any turnover has escaped assessment to tax. The Tribunal has relied on the Division Bench judgment of this court in M.L. Shukla & Co. v. Sales Tax Officer, Sector 17, Kanpur [1981] UPTC 396. There cannot be any dispute to the proposition as laid down by this court in M.L. Shukla & Co. v. Sales Tax Officer, Sector 17, Kanpur [1981] UPTC 39. The Tribunal committed error in coming to the conclusion that the above information was not a positive material. On the proposition laid down by the Division Bench of this court in the case of M.L. Shukla & Co. v. Sales Tax Officer, Sector 17, Kanpur [1981] UPTC 396 the initiation of proceedings u/s 21 were fully justifiable. No positive finding has been recorded by the Tribunal that the sale of 342 kg of mentha oil with regard to which information was received was verifiable from the account books of the assessee of the relevant assessment year. The Tribunal has observed that only short opportunity was allowed to the assessee. In the present case the information of sale of 342 kg of mentha oil to M/s. Ajmani Chemicals, Rampur, was brought to the notice of the assessee. The assessee was well-aware of the allegations and the case of the department which allegations were also replied by the assessee in reply to the show-cause notice. In similar set of facts the Division Bench of this court in Commissioner of Sales Tax, U.P. v. Shah Kamraj Sumer Mal and Co. Agra [1976] 38 STC 459 : [1976] UPTC 317 repelled the argument of breach of natural justice. In the aforesaid case Section 21 proceedings were initiated on the basis of extracts of another firm namely, M/s. Kunji Lal Har Dayal which was made in favour of the assessee. The argument of the assessee regarding noncompliance of the natural justice was repelled in paragraph 21 of the judgment which is being quoted below:

2. See at Page 461 of [1976] 38 STC We shall consider the questions referred in seriatim. As appears from the supplementary statement of the case and also the original statement of the case submitted that the extract of the entries of the account books of the firm, M/s. Kunji Lal Har Dayal, showing purchases of liquid gold by the assessee was made available to the assessee. The assessee did not lead and documentary evidence in rebuttal. It contended itself by leading oral evidence to deny the purchases. The Sales Tax Officer believing the documentary evidence, disbelieved the statement. The purchases were held to be proved on the basis of the extracts from the account books of M/s. Kunji Lal Har Dayal. The assessee was not taken by surprise by the Sales Tax Officer relying on this document. In fact, he had full notice of the fact that the Department was relying upon the proof of the purchases on this extract, and led evidence to rebut it. In these circumstances, it cannot be said that any principle of natural justice was violated in relying upon the extracts of the account books. We are therefore of the view that there was sufficient compliance of principles of natural justice, inasmuch as the extracts had been made available to the assessee and it had full opportunity to disprove them....

In view of the foregoing discussion the proceedings initiated u/s 21 were based on relevant positive material and it cannot be said to be mere change of opinion of the assessing authority. The question is answered accordingly.

9. Now, coming to the Revision No. 828 of 1995, the submission raised by the learned Standing Counsel is that there was breach of condition of recognition and the assessing authority has rightly cancelled the recognition certificate vide order dated September 26, 1990 with effect from June 9, 1985. Replying the submission Sri M. Manglik learned Counsel appearing for the assessee contended that the recognition certificate could not have been cancelled retrospectively. He submitted that the allegations made in the order were also not proved. No opportunity of cross-examination was given to the assessee from the farmers who alleged to have sold their mentha oil directly to M/s. Ashia Chemicals, Rampur. Learned Counsel contends that on both counts the order of the assessing authority is erroneous and has rightly been set aside by the first appellate court. The order of the Tribunal has been supported by the learned Counsel for the respondent. Reliance has been placed on Division Bench judgments of this court in Sivalik Collulose Ltd. Gajraula, District Moradabad v. State of U.P. [1992] UPTC 1, Jitendra Oil Mills, Farrukhabad v. State of U.P. [1994] UPTC 950 and Commissioner of Trade Tax v. Jitendra Oil Mill, Farrukhabad [1998] UPTC 712. The Tribunal held that the assessing authority was not right in cancelling the recognition certificate with retrospective effect. The order of first appellate authority setting aside the order of assessing authority cancelling the recognition certificate with retrospective effect has been upheld by the Tribunal. The Division Bench of this court in Jitendra Oil Mills, Farrukhabad v. State of U.P. [1994] UPTC 950 laid down following in paragraphs 3 and 4:

3. The fate of these writ petitions hinges on the reply of the question as to whether by means of an order, which is not a piece of legislation, the recognition certificate granted earlier can be cancelled with retrospective effect. The same question came up before this court in the case of Sivalik Collulose Ltd. Gujarat, District Moradabad v. State of U.P. reported in [1992] UPTC 1 wherein the Division Bench consisting of honourable A.P. Misra and honourable R.R. Misra JJ., observed as follows:

That the order cancelling the registration certificate of the dealer to the extent that it was to have retrospective effect was illegal, but the order would be deemed to be effective from the date of service of the same on the dealer.

4. We respectfully agree with the observations made by the Bench in the case of Sivalik Collulose Ltd. [1992] UPTC 1. Although the impugned order may have a prospective operation but such an order which has been passed with retrospective effect cannot be sustained to that extent.

10. In the present case the Tribunal has also recorded finding that there was no valid reason for cancelling the recognition certificate in addition to the view that the recognition certificate cannot be cancelled retrospectively. I do not find any infirmity in the finding recorded by the Tribunal and the Revision No. 828 of 1995

is liable to be rejected.

11. In the result Revision No. 808 of 1995 is allowed. The order of the Tribunal dated December 23, 1994 in so far as it had allowed Second Appeal No. 458 of 1991 is set aside. Revision No. 828 of 1995 is dismissed and the order of the Tribunal passed in Second Appeal No. 629 of 1991 is maintained. Parties shall bear their own costs.