(2003) 09 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 453 of 1988

Dalmia Dairy Industries Ltd. APPELLANT

Vs

The State of Uttar Pradesh RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:
Central Sales Tax Act, 1956 — Section 6A
Uttar Pradesh Trade Tax Act, 1948 — Section 21

Citation : (2003) 09 AHC CK 0092

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : Bharat Ji Agarwal and Rajesh Kumar Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed challenging the notice issued; under-section 21 of the U.P. Sales Tax Act (now called the U.P. Trade Tax Act) in respect of Assessment year 1982-83 both under U.P.and Central Sales Tax Act vide Annexure-3 and 4 to the writ petition

2. Heard learned counsel for the parties.

3. In this case when the petition was filed an interim order was passed on 29.2.88 staying the re-assessment proceedings u/s Hie petitioner is a Company registered under the Indian Companies Act, which has a sales depot at Ghaziabad: The: petitioner carries on the business of manufacture and sale of Dairy products such as baby food, skimmed milk powder and/hee etc. which is manafactured at its factory at Bharatpur in Rajasthan. To cater to the demand in Northern India and avoid transportation problems petitioner transfers a major pan of the goods from Bharatpur to its sales depot at Ghaziabad After transferring the stocks from Bharatpur to the sales depot the petitioner affects sales in the State of Uttar Pradesh and also re-transfers the goods to its other sales depots/branches in various States in Northern India. It is alleged in

paragraph 2 of the writ petition that the petitioners sales depots are not authorized to make any purchases.

4. The petitioner is assessed under the U.P. and Central Sales Tax Act on the sales effected in U.P. and also in respect of sales/stock transfers from its Ghaziabad Sales depot to the other States. For Assessment Year 1982-83 the respondent No. 2 Assistant Commissioner (Assessment) VIII, Sales Tax, Ghaziabad who was the assessing authority of the petitioner at the relevant time passed assessment orders dated 19.2.1986 under the U.P. and Central Sales Tax Act Under the U.P. Sales Tax Act, the taxable turnover of the petitioner was determined al Rs. 1,01,82,439.45p, whereas under the Central Sales Tax Act the respondent No. 2 declared the petitioner as nor taxable. True copies of these Assessment orders are Annexure-1 and 2 to the writ petition

5. It is alleged in paragraph 5 of the Wit petition that to the utter surprise of the petitioner it received two notices dated 28.12.1987 issued by the respondent No. 2 u/s 21 of the U.P. and Central Sales Tax for the Assessment year 1982-83 Annexure-3 and 4 to the writ petition. The petitioner filed an Application on 18.2.1988 requesting the respondent No. 2 to furnish the reasons for issuing the said (notices). In that application it was also mentioned that for the relevant Assessment Year 1982-83 assessments had been completed after Caking into consideration all the records of the transaction and other materials and there exists no reasons to believe that any part 0f the turnover has escaped assessinent to tax or under assessed. The petitioner therefore recuested that; thenotices be withdrawn. The petitioner also alleged that notices were issued after expiry of four years land hence were illegal True copies: of these applications are Annxure-5 and 6 to the writ petition.

6. It is alleged in paragraph 8 of the writ petition that the impugned notices were issued mechanically and on a mere change of opinion by respondent No. 2 and to make a roving and fishing enquiry. It. is alleged that there was no materials on which respondent No. 2 formed an opinioin that petitioners'' turnover has escaped , assessment and the entire , proceedings u/s 21 were without jurisdiction. In paragraph 9, of the petition it is alleged that the period of limitation for taking (sic) u/s 21 were four years from the end of the assessment year i.e. by 31.3.1987 and hence the impugned notices which were issued on 28.12.87 were illegal as being barred by limitation.

7. It appears that the U.P. Governor promulgated the U.P. Sales tax (Amendment & Validation) Ordinance, 1987.amending the U.P. Sales Tax Act on 27.4.87. Photostat copy of the Ordinance is Annexure-7 to the writ petition. It is mentioned therein that Assessment or Re- assessment for Assessment Year 1982-83 may be made by 31.3.1988 The Ordinance had since been replaced by the U.P.Act No. 17 of 1987 vide Annexure-8 to the writ petition.

8. It is alleged in paragraph 12 of the petition that the period of limitation, for re-assessment for the Assesment Year 1982-83 had expired on 31.3.1987 and

hence the aforesaid amendment cannot revive- the right barred by the statute, as it cannot take away the vested right; which had accrued, to the petitioner. The petitioner has also challenged the validity of the U.P.Act No. 17 of 1987.

9. A counter affidavit has been filed by the Jt. Secy., Institutanal Finance, U.P. and we have perused the samel It is alleged therein that the Legislature can amend the law retrospectively and hence the aforesaid U.P.Act No. 17 of the 1987 U.P.Ordinanee No. 8 of 1987 are valid.

10. A counter affidavit has also been filed by; respondent No. 2. In paragraph 3 of the same it is alleged that while conducting assessment proceedings of the year 1983-84 the deponent, noticed that certain challans for the year 1982-83 which was also referred in a survey dated 23.6.1983 were not accounted for in the books of accounts e.g. challan No. 1003 dated 27.6.82 was prepared in the name of Sri Arjun Lal and Brothers, Chandigarh and good were sent to Chandigarh. There were challans No. 1002 to 1005, which indicated that goods have been sent from Ghaziabad to Chandigarh. In view of section 6 A of the Central Sales Tax there was a presumption that these goods have been sent by way of inter-state sales. At the time of hearing of the proceedings for the year 1983-84, the authorized representative off the petitioner admitted that the aforesaid challans pertains to the year 1982-83. Hence, it is alleged that the deponent has reason to believe that certain turnover for the year 1982-83 had escaped assessment to tax. Hence notice u/s 21; was issued. The contention of the petitioner that it was not aware of the material on the basis of which proceedings u/s 21 were initiated is denied in the counter affidavit. After the said notice the petitioners'' representative appeared before the respondent No. 2 as stated in paragraph 3(b) of the counter affidavit arid hence they were fully aware of the material. In paragraph 3(c) of the counter affidavit it is stated that the petition was moved on 29.2.88 while the re-assessment ; order u/s 21 had already been framed against the petitioner from 20.2.88 and demand notice has been sent with this order through the process server on 25.2.87 and again on 29.2.88 when the firm was found closed hence the notice was sent by Registered post dated 1.3.88 but it did not return back after it service. True copy of the assessment u/s 21 for the year 1982-83 is enclosed; as Annexure-CA-3 to the counter affidavit. In paragraph 5 of the same it is stated that the petitioner made inter sales to Ex-U.P. dealers, which was not accounted by earlier.

11. In our opinion there is no force in this petition. The peiriod of limitation had been extended to 31.3.88 by U.P. Ordinance No. 8 of 1987, which was replaced by the U.P.Act No. 117 of 1987. It is well settled that the law can be amended retrospectivel vide Vijay Kumar Surender Kumar v. S.T.O. 1999 U.P.T.C. 368 (DB). In and considered opinion it is not a case of mere change of opinion but there was material before the respondent No. 2, which justified initiating proceedings u/s 21 Details of the said material are given in paragraph. 3 of the counter affidavit filed by Captain. A. Singh (the respondent No. 2 Moreover, re-assessment order has already been parsed u/s 21 on 20.2.88 as I stated in

paragraph 3 of the counter affidavit. Hence the petitioner has a clear right of appeal against the said order and this Court should not interfere when there is alternative remedy of appeal particularly in tax laws vide Khandehval Soya Industries Ltd. v. State of U.P. decided on 27.8.2003 by the division bench of this Court. It has been held by the Supreme Court in Jaipuria Brothers Ltd. v. State of U.P. (1965) 16 STC 494 and in Addl. Commissioner v. Jyoti Traders 1999 UPTC 45 that extending the period of limitation u/s 21 with retrospective effect is valid. The petitioner has clear right of appeal against the order u/s 21 dated 20,2.88 and this Court should relegate the petitioner to alternative rernedy of appeal as held by the Supreme Court in Titaghar Paper Mills v. State of Orissa 1983 S 603 , Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, In The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow, the Supreme Court held that the sufficiency of grounds, which induced the Assessing authority to act u/s 21, is not justifiable, There is no force in this petition and it is dismissed. Interim order is vacated.

