
(2003) 08 AHC CK 0120
In the Allahabad High Court
Case No : Sales Tax Revision No. 1254 of 1991

Devidayal Aluminium Pvt. Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12
Central Sales Tax Act, 1956 — Section 8(2A)
Uttar Pradesh Sales Tax Act, 1948 — Section 30, 7, 8, 8(1), 8(4)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 41

Citation : (2006) 143 STC 199

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—Whether the appeal filed by the dealer-applicant was maintainable u/s 9 of U.P. Sales Tax Act, 1948, in view of Clause (1-B) of Section 9 of the Act, is the question involved in the present case.

2. The dispute relates to the assessment year 1986-87 with regard to inter-State sale. The applicant-dealer in the monthly returns admitted the tax liability at the rate of 2 per cent. The disclosed gross turnover is Rs. 23,45,666.02.

3. The assessee admitted sale of pressure cookers, spare parts and aluminium utensils and admitted the tax liability at the rate of 4 per cent covered by form C. It could not produce form C in respect of admitted turnover of the aforesaid items for Rs. 94,599.23. The assessing authority imposed tax at the rate of 10 per cent. In the return the applicant admitted the sale of aluminium coil with and without form C at the rate of 2 per cent. The assessing authority imposed tax on sale of aluminium coil covered by form C at the rate of 4 per cent and aluminium coils not covered by form C, tax was imposed at the rate of 10 per cent. Appeal against the aforesaid assessment order dated December 29, 1990 was dismissed

by the Deputy Commissioner (Appeals), Sales Tax, on the ground that the assessee has failed to comply with the provisions of Sub-section (1-B)(a) of Section 9 of the Act. It was also held by the assessing authority as well as by first appellate authority that Supreme Court in the case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, has held that aluminium coils is taxable as an unclassified item. The Tribunal confirmed the said order in appeal. Hence present revision at the instance of the applicant.

4. It is relevant to quote Section 9(1-B)(a) of the said Act, as under :

9-Appeal--(1) ...(1-A) ...

(1-B) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of not less than,--

(a) the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any proceedings under this Act, whichever is greater, where all the returns for the assessment year have been filed, or...

A bare perusal of the aforesaid provision shows that no appeal against the assessment order shall be entertained unless the appellant has furnished satisfactory proof of payment of amount of tax or fees due under the Act on the turnover of sales admitted by the appellant in the return filed by him or at any stage in the proceedings under the Act. It further provides that the appellant is required to deposit the amount of tax or fees, etc., admitted by him in the return or at any stage in any proceedings, whichever is greater. It was submitted by the learned Counsel for the applicant that the applicant has admitted the tax in the return at 2 per cent. He could not, inspite of best effort, obtain certain forms C. But the fact remains that in the return the tax was admitted by him at the rate of 2 per cent. Therefore, the appeal filed by him cannot be rejected for want of compliance of the aforesaid Clause (a) to Sub-section (1-B) of Section 9 of the Act. Now the question, which arises for determination, is what is the meaning of "tax due under the Act" and "admitted by the appellant in the return filed by him" and admission, if any, of the appellant, in any proceedings under this Act.

5. Strong reliance was placed by Sri Bharat Ji Agrawal, learned Senior Advocate for the applicant upon 1980 UPTC 273 (Commissioner of Sales Tax v. Venus Auto Traders). It was a case where the assessee had admitted tax in the return at the rate of 3 per cent and calculated the admitted tax at the rate of 3 per cent for the purposes of filing appeal. The said rate of tax of 3 per cent was applicable on the condition of furnishing of form D. Form D could not be filed before the assessing authority and, therefore, tax at the rate of 10 per cent was imposed. It was held that failure to file form D may have resulted in losing benefits of concessional rate of tax, but by that admitted tax did not become payable at 10 per cent. To the same effect there is an there case reported in Commissioner, Sales Tax Vs. Bishambhar Dutt Mohan Lal, . It interpreted the proviso, as it stood

up to October 1, 1970. The word "admitted by the appellant" has been interpreted with reference to phrase "tax due under this Act". It was held that the amount of tax shown by him in the return has reference to the tax admitted by the dealer to be due from him under the Act. In cases where there is a dispute between the dealer and the department as to the correct rate of tax to be applied in respect of the turnover of a particular category of goods, it would become anomalous to require the appellate authority to decide correct rate of tax at the preliminary stage, when that question is in issue in the appeal itself.

6. However, it appears that a different view has been taken by another learned single Judge reported in 1980 UPTC 536 (Commissioner of Sales Tax v. National Industries). In this case the court was considering the requirement of "tax admitted" to be deposited as a condition precedent for the entertainment of application u/s 30 of the Act. Section 30 of the Act provides filing of application for setting aside ex parte assessment or penalty order. Proviso to Section 30 reads as follows :

Provided that no such application for setting aside an ex parte order of assessment or penalty shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the dealer to be due.

In that case, in para 3 of the ruling it has been observed that in Section 9(1) almost similar expression occurs. According to the learned single Judge the requirement to deposit "admitted tax" u/s 9 as well as under the proviso to Section 30 is the same. Learned single Judge while interpreting the expression "tax admitted" as occurring in the proviso to Section 30, has placed reliance upon the judgment of Supreme Court, delivered in the case of Kanpur Vanaspati Stores, Kanpur Vs. The Commissioner of Sales Tax, U.P., Lucknow, Supreme Court has laid down following three things :

- (1) The assessee is bound by the admission of turnover and rate of tax made by him before the assessing authority ;
- (2) It is not open to an assessee to go back on the admissions made before the assessing authority at the time of filing of an appeal and deny the tax liability totally ; and,
- (3) Denial of liability to tax on the admission of a reduced liability than fixed must be a bona fide one."

Supreme Court was considering the question as to whether it is open to the dealer to say that he is not admitting any tax liability at the time of filing of the appeal although in the return filed by him admission of tax liability was there.

7. The aforesaid controversy came into consideration again before another learned single judge of this Court reported in 1991 UPTC 689 (Rajeshwar Prasad and Company v. Commissioner of Sales Tax). Learned single judge in the aforesaid case was faced with the aforesaid apparently two conflicting views of

this Court. The judgment of learned single Judge delivered in National Industries, Mirzapur 1980 UPTC 536 was distinguished. It was found that in the case of National Industries, Mirzapur 1980 UPTC 536 assessee had disclosed certain inter-State turnover and form C were furnished not in respect of entire turnover. It was held that there was no bona fide dispute raised by the assessee in respect of payment of tax and there was no denial of liability to tax and thus he could not claim the tax liability to be reduced in absence of furnishing of "C form" and, therefore, it was held that the admitted tax was not paid and proof was not furnished. The distinguishing feature, as pointed out by the learned single Judge in the case of Rajeshwar Prasad and Company 1991 UPTC 689 distinguished the case of Venus Auto Traders 1980 UPTC 273 the anchor sheet of the applicant's counsel.

8. Before making any further observation, it is appropriate at this stage to examine the relevant provisions under Central Sales Tax Act. Chapter III of the Central Sales Tax Act deals with inter-State sales. It contains Section 8, which provides rates of tax on sales in the course of inter-State trade and commerce. Sub-section (1) of Section 8 provides that every dealer, who in the course of inter-State trade or commerce, (a) sells to the Government any goods ; or (b) sells to a registered dealer other than Government goods of the description referred to in Sub-section (3) ; shall be liable to pay tax at the rate of 4 per cent of his turnover. The aforesaid Sub-section (1) of Section 8 shall not apply to any sale in the course of inter-State trade and commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner, forms C and D, as prescribed under Sub-section (4) of Section 8. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 provides the manner of filing of forms C and D. Failure of the assessee-dealer to furnish requisite form will disentitle him to urge that sales were made either to the Government or to registered dealer. Section 8 of the Act fixes different rates of tax on sales in the course of inter-State trade and commerce. The Central Sales Tax Act divides inter-State sales into four categories, namely :

- (1) Sales to the Government
- (2) Sales to the registered dealer
- (3) Sale of goods, which are declared to be of special importance in the inter-State trade and commerce.
- (4) Sale of other goods.

In absence of forms C and D sales will be treated as sale to unregistered dealer and the liability of tax would be of 10 per cent. Now the question arises whether in the facts of the present when a dealer has been unable to furnish forms C and D, still can it be held that sale were made to the Government or to a registered dealer. The prescribed form provides necessary evidence to show that sales were effected to the Government or to a registered dealer. Indisputably the said forms are lacking inspite of best effort made by the applicant. The requisite forms could

not be furnished even at the time of hearing of second appeal.

9. Section 9(1-B)(a) provides that no appeal shall be entertained unless the appellant has furnished satisfactory proof of payment of tax admitted by the appellant in the return filed by him or at any stage in any proceedings, under the Act. Rule 41 of U.P. Trade Tax Rules, 1948 provides submission of return and assessment of tax. The returns are required to be filed u/s 7 of the Act. Explanation I to Rule 41 defines "admitted tax liability". The admitted tax liability means the tax which is payable under this Act on the turnover as disclosed in the books of account maintained by the dealer. There are two aspects of the matter so far as it is concerned with Sub-section (1-B)(a) of Section 9. The first is that the dealer has to provide sufficient proof of payment of tax admitted by him in the return. The second aspect is that in the subsequent stage, in any proceedings, if the dealer admitted greater tax liability, he will have to furnish satisfactory proof of payment of greater amount before entertainment of appeal. This aspect of the matter does not appear to have been taken into account in the aforesaid cases. There is no dispute that in absence of requisite forms C and D the liability of appellant is to pay tax at the rate of 10 per cent. A dealer is entitled to pay tax at the lesser rate at the time of filing of the return, as under law he is entitled to file requisite certificates, at the subsequent prescribed stage. The said stage having been crossed and inability of the dealer to furnish requisite forms may amount failure of the appellant to furnish "satisfactory proof of payment of tax. It may amount admission of grater amount of tax at the subsequent stage and proceedings.

10. At this stage it is necessary to revert back to the facts of the present case. As mentioned above, indisputably, the applicant could not file certain C forms in respect of turnover of pressure cookers and its spares and aluminium utensils. In absence of form C obviously the liability to pay tax was at the rate of 10 per cent. Similarly, in respect of aluminium coils Supreme Court in the case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, held that aluminium roll products and its extrusions cannot be described as "metal" for the purposes of Notification No. 4949 dated May 30, 1975. This judgment is dated July 28, 1981 and had come into existence during the pendency of assessment proceedings and was noticed by the assessing authority in paragraph 7 of the assessment order. In view of this authoritative pronouncement by Supreme Court non-payment of tax at the rate applicable to unclassified goods will amount non-payment of admitted tax within the meaning of Section 9(1-B) of the Act. Clause (a) to Section 9(1-B) also says that the appellant is liable to pay tax admitted in the return filed by him or at any stage in any proceeding under this Act, which ever is greater. The judgment of this Court in the case of Rajeshwar Prasad and Company 1991 UPTC 689 is fully applicable to the fact of the present case.

11. A further argument was sought to be raised by learned Counsel for the applicant that in the return the rate of tax was admitted in respect of aluminium

coils at 2 per cent. In view of Section 8(2-A) of the Central Sales Tax Act, 1956, filing or not filing of form C will not make any difference. He proceeded further and tried to place reliance upon a case of the assessee itself reported in Commissioner of Sales Tax v. Devi Dayal Aluminium Industries 1992 UPTC 1145. It was contended that in view of decision of this Court in the case of assessee itself there was no outstanding dues as regards the admitted tax liability is concerned and, as such, appeal was maintainable. This argument is devoid of any merit. The first appeal was filed on or after February 6, 1991 as is apparent from annexure 1A to the affidavit filed along with memo of appeal. The judgment in the case of assessee as mentioned above was delivered subsequently on September 10, 1992. Meaning thereby ruling of 1992 UPTC 1145 (Commissioner of Sales Tax v. Devi Dayal Aluminium Industries) was not available to the dealer at the time of filing of the first appeal. Apart from it, the aforesaid judgment has been set aside by Supreme Court in civil appeal arising out of SLP (Civil) No. 3188 of 1995 decided on August 24, 1997. Again in Commissioner of Sales Tax v. Vijay Aluminium Works 1999 UPTC 1089 this Court has held that the judgment of Supreme Court in the case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, still holds field. Feeble attempt was made by the learned Counsel for the applicant to distinguish the aforesaid judgment of Supreme Court given in the case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, . In view of definite pronouncement made by Supreme Court and by another learned single Judge it is not open for me to entertain the said plea.

12. The case of Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, was very much there during the assessment proceeding. The applicant has failed to file requisite form C up to the Tribunal stage. Thus there is no error in the order of the Tribunal holding that the applicant has failed to comply with the provisions of Section 9(1-B)(a) of the Act.

13. I do not find any merit in the revision. The revision is dismissed.