(2014) 03 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) No. 1744 of 2010

Durga Enterprises APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

General Clauses Act, 1897 — Section 6
Uttar Pradesh Trade Tax Act, 1948 — Section 1
Uttar Pradesh Value Added Tax Act, 2008 — Section 19, 42, 8(2-A), 81

Citation : (2014) 5 ADJ 20

Hon'ble Judges : Mahesh Chandra Tripathi, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : N.C. Gupta, Advocate for the Appellant; C.B. Tripathi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Shri N.C. Gupta, learned counsel for the petitioner and Shri C.B. Tripathi, learned Special Counsel for the State. By this writ petition, the petitioner has prayed for quashing the circular dated 21.6.10 (Annexure No. 3 to the writ petition) issued by Commission, Trade Tax, U.P. providing for taking of cash security while importing coal at the time of issuing ''Form-38''. Learned counsel for the petitioner submitted that u/s 19 of the U.P. Value added Tax Act, 2008 security can be taken in respect of any goods notified by the Government in that behalf under 2008 Act. He submit that no notification have been issued u/s 19 sub-section 3 notifying the coal on which security can be taken, hence the circular issued by the Commissioner is without jurisdiction.

2. Shri Gupta submits that any notification issued under U.P. Sales Tax Act 1948 cannot be relied on. Learned counsel for the petitioner further submits that u/s 81 of 2008 Act notifications issued under U.P. Trade Tax Act 1948 have been saved. The notifications on which reliance is being placed having not issued under U.P. Trade Tax Act 1948 the circular may be struck down.

3. Shri C.B. Tripathi, learned Special counsel for the State replying to the contention of the learned counsel for the petitioner states that notification issued under U.P. Sales Tax Act/U.P. Trade Tax Act are saved by Section 81 sub-section 2(a) of 2008 Act. He submits that notification was issued on 31.3.86 under the U.P. Sales Tax Act notifying coal on which security can be taken, which notification is still operative by virtue of Section 81 and hence circular of the Commissioner is fully within the jurisdiction. He further submits that U.P. Trade Tax Act 1948 is the Act which was earlier known as U.P. Sales Tax Act, 1948 and mention of U.P. Trade Tax Act in Section 81 is inconsequential.

4. We have considered submissions of learned counsel for the parties and perused the records.

5. Section 19 sub-section (3) of 2008 Act on which reliance has been placed provides as follows:

Notwithstanding anything contained in sub-section (1) or sub-section (2) the Commissioner may, in respect of any goods notified by the Government in this behalf, by a general order in writing, direct that a cash security of such amount as may be specified in such order shall be required to be furnished by a dealer or person requiring any of the forms prescribed under this Act.

6. Next provision which needs to be noted is Section 81 sub-section 1 and sub-section 2, which are relevant in the present case are as follows:

(1) The Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948) (hereinafter in this section referred to as the repealed enactment) is hereby repealed.

(2) Notwithstanding such repeal-

(a) any notification, rule, regulation, order or notice issued or any appointment or declaration made, or confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any action taken under the repealed enactment and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made granted, done or taken under the corresponding provisions of this Act.

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, shall not be affected and manufacturing units enjoying facility of moratorium for payment of tax u/s 8(2-A) of the said Act shall be entitled to claim moratorium for payment of tax in accordance with provisions of Section 42.

7. The issue before us is as to whether notification dated 31.3.86 issued under the U.P. Sales Tax Act, 1948 can be treated to be notification under sub-section (3) of Section 19.

8. By Section 81 sub-section (1) of 2008 of Act the U.P. Trade Tax Act, 1948 has been repealed. However, sub-section (2) of Section 81 begins with the non-obstante clause that notwithstanding such repeal notifications issued under

repealed enactment in force immediately before such commencement so far as it is not in consistent with the provisions of 2008 Act shall be that deemed to have been issued under the corresponding provisions of this Act. Section 81 sub-section (2) creates a legal fiction. The saving under sub-section 2 of Section 81 is explicit and clear that all notifications issued under U.P. Trade Tax Act, 1948, which were in operation at the time of commencement of 2008 Act shall continue.

9. The submission which was pressed by learned counsel for the petitioner is that notification dated 31.3.86 was issued under U.P. Sales Tax Act, 1948 and saving u/s 81 is with regard to U.P. Trade Tax Act, 1948. The U.P. Sales Tax Act, 1948 was enacted to levy tax on sales and purchase of goods in U.P. The U.P. Sales Tax Act 1948 was extensively amended by U.P. Act No. 31 of 1995. By the said amendment in Section 1 sub-section (1) name of the Act-U.P. Sales Tax Act, 1948 was amended by the following:

10. Section 1 sub-section 1 of U.P. Trade Tax Act as amended is as follows:

This Act may be called the Uttar Pradesh (Trade Tax) Act, 1948.

11. Sub-section (3) of Section 1 further provides that it shall be deemed to have come into force from April, 1, 1948. Section 1 thus provides that after amendment by U.P. Act No. 31 of 1995 the U.P. Sales Tax Act shall be called U.P. Trade Tax Act, 1948 and it shall be deemed to have come into force from April 1, 1948. Thus, the mention of U.P. Trade Tax Act 1948 in Section 81 shall also cover the notifications and action taken under U.P. Sales Tax Act, 1948 prior to amendment by the U.P. Act No. 31 of 1995.

12. We do not find any substance in the submission of learned counsel for the petitioner that notifications issued under U.P. Sales Tax Act, 1948 prior to its amendment in 1995 are not saved. Learned counsel for the petitioner has lastly referred to The General Clauses Act, 1897 and has relied on Section 6 as quoted below:

6. Effect of repeal--

Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not Revive anything not in force or existing at the time at which the repeal takes effect, or Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or Affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

13. The consequence of repeal mentioned u/s 6 takes place unless a different

intention appears. Section 81 indicates a clear intention intending to continue notifications issued under the Trade Tax Act 1948 which are not in consistent to 2008 Act, hence the consequences mentioned u/s 6 of The General Clauses Act have to be read subject to Section 81 of 2008 Act which was intended by Section 81 of the Repeal Act. The consequences as provided u/s 6 has to be interpreted and read in accordance with the provisions of repeal Act and savings in 2008 Act. Section 6 of the General causes Act, thus, does not in any manner support the submissions made by learned counsel for the petitioner.

14. Shri C.B. Tripathi has also placed reliance in the judgment of Gammon India Ltd. Vs. Spl. Chief Secretary and Others, . Shri C.B. Tripathi submits that the Hon''ble Apex Court considering identical provisions of Section 18 of AP VAT Act laid down in paragraph 41 and paragraph 46 which are quoted as below:

41. Section 6 of the General Clauses Act, 1897 is predominantly based on Section 38 of the English Interpretation Act, 1889. We have already reproduced Section 38 of the English Interpretation Act, 1889. In order to discern and evaluate the strong similarity between the Indian and English Law on this subject, we deem it appropriate to set out Section 6 of the Indian General Clauses Act, 1897.

6. Effect of repeal--

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

46. The principle which has been laid down in this case is that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for

expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purposes of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore, subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

15. Learned counsel for the respondent has further placed reliance on a Division Bench decision in the case of Ram Singh Kushwaha v. State of U.P. and others, decided on 3.10.12 in Writ Tax No. 1110 of 2012.

16. The aforesaid two decisions fully supports the interpretations made by us of Section 81 of 2008 Act.

17. We do not find any merit in the aforesaid arguments made by learned counsel for the petitioner. The writ petition is dismissed.

