

(2013) 07 AHC CK 0007

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 397 of 2013

Farooq Agencies

APPELLANT

Vs

Commissioner, Commercial Tax

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2014) 69 VST 391

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—The assessee before this-court seeks quashing of the order of the Trade Tax Tribunal, Allahabad dated March 20, 2013 where-under it has been held that since the assessee had in aggregate a turnover, in terms of sub-section (2) of section 3, of more than Rs. 50 lacs, he was liable to pay development tax at the rate of one per cent as per the notification issued by the State Government in exercise of power u/s 3H of the U.P. Trade Tax Act, 1948. Challenging the order so passed by the Tribunal, counsel for the petitioner contends that the assessment year 2007-08 has to be divided in two parts; first period being April 1, 2007 to December 31, 2007, i.e., the date up to which the U.P. Trade Tax Act was applicable and the second period with effect from January 1, 2008 to March 31, 2008 when the provisions of the Value Added Tax (VAT) became operative. It is the case that for the period covered by the U.P. Trade Tax Act his total turnover did not exceed Rs. 50 lacs, therefore the provisions of section 3H were not attracted. It is his case that the Department could not have applied the provisions of section 18 of the U.P. Trade Tax Act for the purpose of working out the aggregate turnover u/s 3(1) of the U.P. Trade Tax Act for applying the provisions of section 3H.

2. He submits that the assessee had not discontinued his business under the U.P. Trade Tax Act. His business had continued uninterrupted for the entire assessment year, 2007-08. However, in view of the provision applicable for the

period January 1, 2008 to March 31, 2008 he was liable to be assessed under the VAT and not under the U.P. Trade Tax Act. He, therefore, submits that the provisions of section 18 are not attracted in the facts of the case and the order of the Tribunal determining his annual turnover with reference to the provisions of section 18 is totally uncalled for in the facts of the case. He lastly submitted that the annual turnover for the entire year should have been considered instead of working out the aggregate turnover with reference to section 18 of the Trade Tax Act.

3. I have heard learned counsel for the parties and have examined the records of the present revision.

4. From the order of the Tribunal, the following facts are apparent: The assessee had a turnover of Rs. 40 lacs and odds for the period between April 1, 2007 to December 31, 2007 for which tax liability had been admitted under the Trade Tax Act and tax demanded was paid. Over and above the tax liability determined, the assessee was also called upon to pay development tax at the rate of one per cent after it was found that the turnover of the assessee for the period of nine months under the Trade Tax Act had exceeded Rs. 37.5 lacs. For the purpose reference was made to section 3(2) read with section 18 of the Trade Tax Act.

5. For the purposes of appreciating the contention raised on behalf of the petitioner it is worthwhile to reproduce section 3H as was inserted by U.P. Act No. 9 of 2005. Section 3H reads as follows:

3H. State development tax.--(1) There shall be levied a State development tax at the rate not exceeding one per cent of the taxable turnover as the State Government may by notification specify on the dealers whose aggregate turnover as referred to in sub-section (2) of section 3, exceeds fifty lakh rupees. The State development tax shall be realised in addition to the tax payable under any other provision of this Act. This tax shall cease to be levied after a period of five years from the date of publication of the notification issued by the State Government under this section.

(2) The facility of composition of tax in relation to compoundable goods u/s 7D shall also be available in respect of State development tax.

(3) The State development tax shall be adjustable in the monetary limit specified in the eligibility certificate issued u/s 4A.

(4) No State development tax shall be leviable on,--

(a) the newspapers and other goods or the dealers specified or notified u/s 4;

(b) declared goods u/s 14 of the Central Sales Tax Act, 1956;

(c) the goods liable for the payment of additional excise duty;

(d) such goods as may be specified by notification by the State Government.

6. The section refers to the aggregate turnover to be determined with reference

to section 3(2) of the Trade Tax Act. Section 3(2) reads as follows:

3(2). No dealer shall, except as otherwise provided in section 18, be liable to tax under sub-section (1), if, during the assessment year, the aggregate of his turnover of--

(a) purchases of goods notified u/s 3D;

(b) purchases liable to tax under any other provisions of this Act;

(c) sale of goods notified u/s 3D where such goods have not been purchased within the State;

(d) sales of all goods (except those notified u/s 3D), whether such sale is made by the dealer directly or through his branch, depot or agent inside the State in the course of inter-State trade or commerce or outside the State,

is less than two lakh rupees in the case of manufacturers and three lakh rupees in the case of other dealers, or such larger amount as the State Government may, by notification in the Gazette, specify in that behalf either in respect of all dealers in any goods or in respect of a particular class of such dealers.

7. From a simple reading of section 3(2) it is apparently clear that the section 3(2) is subject to the provisions of section 18, inasmuch as it opens with the words "no dealer shall, except as otherwise provided in section 18, be liable to tax under sub-section (1)" of the said section.

8. Section 18 provides for situations, whereof business by a dealer is discontinued in the midst of the year and provides for the method for completion of the aggregate turnover for the purposes of levy of tax in such cases.

9. This court may refer to section 18(1) read with Explanation, which is relevant for our purposes, is being quoted hereinbelow:

18. (1) Every dealer discontinuing business during the course of an assessment year whose average monthly turnover for the portion of the year ending with the discontinuance of the business is not less than one twelfth of rupees one lakh in case of manufacturer or one lakh fifty thousand rupees in the case of other dealers or such larger amount as may be notified under sub-section (2) of section 3 or whose turnover during such period is liable to tax under sub-section (3) of section 3 shall, within thirty days from the date of such discontinuance, give notice of the fact to the assessing authority and shall also submit a statement of his turnover in such form and verified in such manner as may be prescribed.

Explanation.--For the purpose of this section the turnover shall be deemed to be the aggregate of the turnover referred to in sub-section (2) of section 3.

10. It is not in dispute that the assessee had carried on his business under the Trade Tax Act for a period of 9 months only, i.e., between April 1, 2007 to December 31, 2007. On December 31, 2007 the Trade Tax Act itself ceased to be

applicable in view of enforcement of the VAT with effect from January 1, 2008.

11. In my opinion the business by the assessee therefore stood discontinued under the U.P. Trade Tax Act after expiry of 9 months of the assessment year by operation of law. Therefore, provisions of section 18 stood attracted in the facts of the case for the purposes of determination of the average turnover. Applying the principle as enumerated u/s 18, tax authorities have found that the aggregate determined turnover of the assessee was more than Rs. 37.50 lacs for a period of nine months and have accordingly raised the demand of development tax at the rate of one per cent u/s 3H of the Trade Tax Act.

12. It is no doubt true that the assessee has not discontinued his business. It is also true that because of the Trade Tax Act itself having been rescinded, the business carried on within the ambit of the said Act therefore came to an end on December 31, 2007. The discontinuation of the business under the Trade Tax Act after December 31, 2007 was by operation of law. It is also not in dispute that for the period January 1, 2008 to March 31, 2008 the assessee has been assessed under the value added tax and his liability for payment of tax has been determined under the said Act itself. The provision of the U.P. Trade Tax Act had not been applied in respect of the said period commencing from January 1, 2008.

13. In view of the aforesaid, this court finds no illegality in the order of the Tribunal, whereby the aggregate turnover of the assessee has been determined with reference to the provisions of section 3(2) read with section 18 of the Trade Tax Act for the period of 9 months during which he had done his business under the provisions of the U.P. Trade Tax Act. No interference is warranted. Revision is dismissed. Interim order, if any, stands discharged.