
(1973) 12 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6434 of 1972 Writ No. 286 and 295 of 1973

Firm Parshuram Rameshwar Lal

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 29

Citation : (1974) 33 STC 540

Hon'ble Judges : R.L. Gulati, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.R. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This and the connected writ petitions raise a common question of law arising out of almost identical facts. Hence they are being disposed of by this common judgment. We shall set out briefly the facts in Writ Petition No. 6434 of 1972.

2. The petitioner is a partnership-firm and is a dealer in textile goods. It is registered under the U.P. Sales Tax Act (hereinafter referred to as the Act). The dispute relates to the assessment years 1956-57 and 1957-58. Under a notification issued u/s 3-A of the Act, the turnover of textile goods was taxable at single point at the rate of six pies per rupee. By notification dated 31st March, 1956, the rate of tax on textile goods was enhanced to one anna per rupee. The notification of 31st March, 1956, was held to be invalid by the High Court. The State Legislature passed the U.P. Sales Tax (Amendment) Act, 1957, validating the said notification. This Act was challenged and was declared invalid by a Full Bench of this Court in Firm Bangali Mal Satish Chandra Jain Vs. Sales Tax Officer, Agra, .The State Legislature again intervened and passed the U.P. Sales Tax

(Amendment and Validation) Act, 1958, with a view to validating the enhanced tax on textile goods at the rate of one anna per rupee. The validity of this Validating Act was also challenged but the same was ultimately upheld by the Supreme Court. In the meantime, the State had also preferred an appeal to the Supreme Court against the decision of this court. The appeal was allowed in view of the Validation Act. The result of this litigation was that the State became entitled to realise the sales tax at the rate of one anna per rupee on textile goods.

3. During the assessment year 1956-57, the petitioner had deposited tax in advance at the rate of one anna per rupee on the turnover of textile goods. Similarly, tax was deposited at the rate of one anna per rupee for the first three quarters of the assessment year 1957-58, but for the last quarter of that assessment year the petitioner did not pay any tax. The petitioner filed a writ petition on 30th January, 1958, in this court --being Writ No. 347 of 1958 --contending that it was liable to pay tax at the rate of six pies per rupee only and was entitled to the refund of tax deposited in advance at the rate of one anna per rupee. This petition was allowed, but the Supreme Court, on appeal reversed the decision of the High Court. By two assessment orders dated 22nd February, 1961, and 25th July, 1961, the Sales Tax Officer, Basti, assessed the petitioner to sales tax for the assessment years 1956-57 and 1957-58 at the rate of one anna per rupee. Against these assessment orders the petitioner appealed. By the time these appeals came up for hearing this court decided that the tax was chargeable only at the rate of six pies per rupee. The Assistant Commissioner (Judicial), Sales Tax, therefore, allowed the appeals on 14th January, 1965, and reduced the tax to one half. The State then applied in revision and the Additional Judge (Revisions), Sales Tax, by his order dated 21st November, 1969, allowed these revisions and enhanced the tax again to one anna per rupee, on the basis of the decision of the Supreme Court, which had since been rendered. According to the decision of the revising authority the petitioner was found liable to pay a further sum of Rs. 11.14 for the assessment year 1956-57 and Rs. 12,789.65 in respect of the assessment year 1957-58. It may be mentioned here that when the petitioner had filed Writ Petition No. 347 of 1958 on 30th January, 1958, this court by an order dated 31st January, 1958, had by an ad interim order stayed the realisation of the tax at the higher rate. The interim order was in the following terms:

Let an ad interim order issue directing the opposite party not to realise any sales tax in excess of the amount due to the rate prevailing before the notification dated 31st March, 1956, was issued.

5. This order was eventually confirmed on 20th February, 1958. When the revising authority allowed the State's revision enhancing the rate of tax from six pies to one anna per rupee, no notice of demand was issued or served on the petitioner in respect of the enhanced tax, but by a letter dated 22nd December, 1969, the Sales Tax Officer, Basti, required the petitioner to deposit the additional tax as determined by the revising authority together with interest at

the rate of 18 per cent. The petitioner was required to make the deposit within three days from the receipt of the letter.

6. The petitioner complied with this requirement and deposited the enhanced tax on 26th December, 1969, but did not pay any amount towards interest. It appears, however, that the Sales Tax Officer issued to the Collector, Basti, certificate for the recovery from the petitioner two sums of Rs. 11.82 and Rs. 13,621.35 as interest in respect of the two assessment years in question. The interest was calculated at the rate of 18 per cent from 1st February, 1964, to the date of payment. The petitioner protested against the recovery of interest but did not succeed. The petitioner has now challenged the recovery proceedings in this petition under Article 226 of the Constitution on the ground that having regard to the circumstances of the case the petitioner is not liable to pay any interest at all and the recovery certificates issued against it are wholly illegal and void. Thus, the short question that we have to determine is as to whether the petitioner is liable to pay interest.

7. Section 8 of the Act provides for the payment and recovery of tax. Under Sub-section (1) of Section 8, the tax assessed has to be paid within 30 days from the date of the service of notice of assessment and demand and in default the whole amount remaining due becomes recoverable as arrears of land revenue under Sub-section (8). Sub-section (1-A) was added to Section 8 by U.P. Act No. 3 of 1964. This provision is material for our purposes and is reproduced below:

(1-A) If the tax payable under Sub-section (1) remains unpaid for six months after the expiry of the time specified in the notice of assessment and demand, or the commencement of the Uttar Pradesh Bikri-Kar (Dwitiya Sanshodhan) Adhiniyam, 1963, whichever is later, then without prejudice to any other liability or penalty which the defaulter may, in consequence of such non-payment, incur under this Act, simple interest at the rate of eighteen per cent per annum shall run on the amount then remaining due from the date of expiry of the time specified in the said notice, or from the commencement of the said Adhiniyam, as the case may be, and shall be added to the amount of tax and be deemed for all purposes to be part of the tax:

Provided that where as a result of appeal, revision or reference or of any other order of a competent court or authority, the amount of tax is varied, the interest shall be recalculated accordingly:

Provided further that the interest on the excess amount of tax payable under an order of enhancement shall run from the date of such order if such excess remains unpaid for six months after the order.

8. It is under this provision that interest is being sought to be recovered from the petitioner.

9. The contention of the petitioner is that even though the Sales Tax Officer had levied tax at the rate of one anna per rupee in the year 1961, yet the tax was

reduced to six pies per rupee by the appellate authority, which the petitioner had already paid and, as such, he was not liable to any interest. The enhanced tax was levied by the revising authority by his order dated 21st November, 1969, and this enhanced amount was also paid by the petitioner within the time allowed by the Sales Tax Officer. There was thus no default on its part. Interest could be demanded from the petitioner only if the tax as enhanced by the revising authority had remained unpaid for a period of six months. That is not the case here. The learned standing counsel, on the other hand, contends that the petitioner was liable to pay tax at the rate of one anna per rupee as originally assessed by the Sales Tax Officer in the year 1961 and as the petitioner had not paid the full tax until 26th December, 1969, he became liable to interest at the rate of 18 per cent per annum after the expiry of six months from 1st February, 1964, when Sub-Section (1-A) was added to Section 8 of the Act. According to him, the order of the revising authority is not an order of enhancement and the petitioner's case is not covered by the second proviso to Sub-Section (1-A) of Section 8 of the Act. He goes on to argue that u/s 8(1) every assessee has to pay tax assessed on him within the time specified in the notice of demand issued by the Sales Tax Officer and any subsequent variation in the tax assessed as a result of appeal or revision does not bring into existence a fresh assessment order. This contention of the learned counsel is not correct. The expression "tax assessed" in Sub-section (1), no doubt, primarily refers to the tax assessed by the assessing authority, but it shall also include the tax assessed by the appellate or the revising authority, when the matter goes up in appeal or revision. The assessment order merges in the order of the appellate authority, which in turn merges in the order of the revising authority and the tax, which the assessee is required to pay is the tax as finally assessed after appeal and revision, as the case may be. It must not be forgotten that even though the liability to pay tax arises under the Sales Tax Act as soon as a transaction of sale takes place but the tax becomes payable only when a notice of demand is served upon the assessee. It follows, therefore, that whenever there is a variation in the amount of tax as a result of appeal or revision, it becomes necessary to serve a fresh notice of demand on the assessee and it is only when the assessee fails to comply with such a notice of demand that he becomes a defaulter and becomes liable to recovery proceedings and of penalty and interest, etc. This proposition is fully supported by the decision of the Supreme Court in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, . That was a case under the analogous provisions of the Income Tax Act. In that case, recovery proceedings were started against the assessee for the recovery of tax as assessed by the Income Tax Officer. Later, the tax was reduced by the Appellate Assistant Commissioner of Income Tax and as no fresh notice of demand was issued by the Income Tax Officer, the assessee challenged the recovery proceedings. The Supreme Court upheld this contention and held that where an appeal is preferred by an assessee against an order of assessment passed by the Income Tax Officer and in appeal the appellate authority reduces the assessment, then the original assessment is vacated and the notice of demand already served on the assessee u/s 29 of the

Income Tax Act falls to the ground. In other words, the Supreme Court held that when there is a variation in tax a fresh notice of demand becomes necessary. In several cases arising under the U.P. Sales Tax Act, the same view has been taken by this court: see *Durga Dutt Chunni Lal v. The State of U.P. and Ors.* [1069] 23 S.T.C. 432 All, where a Division Bench of this Court held that where an assessment order is modified or set aside in appeal, recovery proceedings taken in consequence of the original assessment are no longer sustainable and a fresh notice of demand should be issued and this principle applies also where recovery proceeding is taken on the basis of an appellate order and the tax liability as determined by the appellate order is subsequently reduced in revision. This position, however, has been modified to some extent, by Sub-section (9) of Section 8(1-A) of the Act, which was introduced by U.P. Act No. 3 of 1971. This provision reads:

(9) Notwithstanding anything contained in Sub-sections (1) and (1-A) and notwithstanding any judgment, decree or order of any court, tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act is served upon a dealer by an assessing authority and an appeal, revision or other proceeding is filed in respect of such tax or dues, then --

(a) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice only in respect of the amount by which such tax or other dues are enhanced, and any proceeding in relation to the amount specified in the notice already served upon him before the disposal of such appeal, revision or other proceeding may be continued from the stage at which it stood immediately before such disposal;

(b) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is reduced, --

(i) it shall not be necessary for the assessing authority to serve upon the dealer a fresh notice;

(ii) if any recovery proceedings are pending, the assessing authority shall give intimation of the fact of such reduction to the Collector who shall thereupon take steps for the recovery of only the reduced amount; and (iii) any proceedings initiated on the basis of the notice or notices served upon the dealer before the disposal of such appeal, revision or other proceeding, including any recovery proceedings may be continued in relation to the amount so reduced from the stage at which it stood immediately before such disposal;

(c) no fresh notice shall be necessary in any case where the amount of the tax or other dues is not varied as a result of such appeal, revision or other proceeding.

10. As a result of this amendment, it is no longer necessary for the department to issue a fresh notice of demand where tax assessed by the Sales Tax Officer is

not varied on appeal or revision or where it is reduced. But a fresh notice of demand is necessary only when the tax is enhanced. In a case of enhancement, therefore, a fresh notice of demand must be issued to the assessee in respect of the enhanced amount only and no interest shall be charged on such enhanced tax unless it remains unpaid for a period of six months. The next question that immediately arises is as to the scope of the word "enhancement". Does enhancement mean the enhancement of tax as assessed by the Sales Tax Officer or does it also include the enhancement of tax over and above the tax as determined by the appellate authority.

11. Turning now to the facts of the present case, the tax was assessed by the Sales Tax Officer at the rate of one anna per rupee but it was subsequently reduced by the appellate authority to one half. The revising authority restored the tax as assessed by the Sales Tax Officer. In other words, it enhanced the tax as determined by the appellate authority and, therefore, it would be covered by the second proviso to Sub-section (1-A) of Section 8 of the Act. It is true that the power of enhancement has been specifically conferred on the appellate authority u/s 9(3) of the Act which provides that in case of an assessment the appellate authority may confirm, reduce, enhance or annul the order of assessment. Here, obviously, the enhancement means the enhancement of tax over and above the tax assessed by the assessing authority. No such specific power of enhancement has been conferred upon the revising authority u/s 10, which only provides that the revising authority may pass such order as it deems fit. Clearly, the revising authority cannot enhance the tax over and above the tax as assessed by the Sales Tax Officer, which power has been conferred only upon the appellate authority but the word "enhancement" in the second proviso to Section 8(1-A) of the Act has not been used in that sense. The enhancement contemplated by that provision would also include the enhancement of tax as assessed by the appellate authority even though not beyond the tax as assessed by the assessing authority. Thus, where a tax is reduced by the appellate authority and the revising authority restores the order of the assessing authority that will amount to enhancement. This view finds support from clause (a) to Sub-section (9) quoted above, which provides that a fresh notice of demand shall be issued in respect of the amount by which the tax is enhanced as a result of appeal or revision. Now, if the revising authority does not possess the power of enhancement, clause (a), which talks of an enhancement, as a result of the revisional order, would be meaningless. It can have meaning only if we hold that where the appellate authority reduces the tax and the revising authority restores the order of the assessing authority, it amounts to an order of enhancement. This view is further fortified by what is provided in clause (b) of Sub-section (9). Under Sub-clause (ii) of that provision when the tax is reduced and any recovery proceedings are pending against the assessee, the assessing authority shall only give intimation to the Collector, who shall recover only the reduced amount. Thus where recovery proceedings are initiated against an assessee on the basis of the tax assessed by the Sales Tax Officer, the Sales Tax Officer can continue the

recovery proceedings by merely sending an intimation of reduction to the Collector, but there is no provision for sending such an intimation if the tax is again enhanced by the revising authority to the level of the tax originally assessed by the Sales Tax Officer. This clearly shows that, in such a case, recovery proceedings shall have to be started afresh in respect of the enhanced amount after serving upon the assessee a fresh notice of demand as required by the second proviso to Section 8(1-A) of the Act. We are thus clearly of the opinion that, in the instant case, when the revising authority restored the assessment made by the Sales Tax Officer, after it had been reduced by the appellate authority, it was a case of enhancement and interest could be levied only if the petitioner had failed to pay the enhanced tax within six months from the date of the order of enhancement passed by the revising authority as laid down in the second proviso to Section 8(1-A). Admittedly, this is not the case here.

12. We accordingly allow the writ petition and quash the recovery proceedings pending against the petitioner for the recovery of interest. The petitioner is entitled to its costs.