
(2014) 05 AHC CK 0299
In the Allahabad High Court
Case No : Writ Tax No. 282 of 2014

Geeta Industries (Pvt.) Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Value Added Tax Act, 2008 — Section 21, 7

Citation : (2014) 76 VST 298

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : Harsh Vardhan Gupta, Advocate for the Appellant

Judgement

1. The petitioner has sought to question the legality of an order dated 21 March 2014 of the Additional Commissioner, Commercial Tax, Grade-I, Kanpur Zone-II, Kanpur by which reassessment proceedings have been initiated against the petitioner for Assessment Year 2007-08. The petitioner also seeks to question the consequential reassessment notice.

2. The petitioner is engaged in the manufacture and sale of plastic containers and was duly registered under the U.P. Trade Tax Act, 1948, which has since been repealed w.e.f. 1 January 2008. After the enforcement of the U.P. Value Added Tax Act, 2008, the petitioner has obtained registration as a manufacturer and seller of plastic containers. During the course of the Assessment Year 2007-08 and upto 31 December 2007, containers made of plastic were taxable @ 8% at the point of sale by a manufacturer or importer by virtue of a notification dated 5 February 2003.

3. Under the notification, Entry 64 read as follows:

4. For the Assessment Years 2004-05, 2005-06 and 2006-07, the petitioner was assessed to tax u/s 7 of the Repealed Act read with Rule 41(8) by assessment orders dated 13 March 2007, 1 October 2008 and 5 March 2009. In the

assessment orders, the Assessing Officer took due note of the fact that the business activities of the petitioner consisted of the manufacture or sale of plastic disposable containers. The petitioner was given the benefit of the notification dated 5 February 2003 noted above and was taxed on the sale of plastic disposable containers by applying the rate of tax at 8%. Similarly for the Assessment Year 2007-08(1.4.2007 to 31.12.2007) the petitioner was given the benefit of the aforesaid notification by the assessment order dated 5 October 2009.

5. The Additional Commissioner issued a notice to the petitioner on 2 July 2013 to show-cause as to why permission should not be granted for reassessing the petitioner for Assessment Year 2007-08(1.4.2007 to 31.12.2007) in the extended period of limitation. The notice was issued on the premise that the goods manufactured by the petitioner were not covered by the taxing entry and that the petitioner was liable to suffer tax under the said entry @ 10%. The petitioner submitted a reply to the notice objecting to the proposed reassessment. By an order dated 21 March 2014, the Additional Commissioner has granted permission to the Assessing Authority to reassess the petitioner for the Assessment Year 2007-08 in the extended period of limitation on the premise that the petitioner has manufactured disposable plastic containers and that the taxing entry is not in respect of disposable plastic containers but only in respect of those which are of non-disposable nature. The Assessing Authority has issued a notice on 20 March 2014 initiating assessment proceedings.

6. The submission which has been urged on behalf of the petitioner is that the Additional Commissioner had absolutely no basis or tangible material to reopen the assessment and though under the proviso to subsection (2) of Section 21, a power is conferred on the Commissioner to reopen the assessment, but there must be some tangible material for reopening the assessment.

7. In the present case, it has been submitted that the Assessing Authority was duly conscious of the fact that the petitioner manufactured disposable plastic containers as is evident from the orders of assessment. Hence, it has been submitted that the basis of the permission which has been granted by the Additional Commissioner, is contrary to law. By the plain terms of the notification, the rate of 8% is to be applied to other wares and containers made of plastic and the notification does not make any distinction between disposable and non-disposable plastic containers. The Assessing Authority had granted the benefit of the notification to the petitioner and there was no reason for the Additional Commissioner to initiate reassessment merely on the basis of an opinion which is not occasioned by any fresh or tangible material.

8. Learned counsel appearing on behalf of the revenue has filed a counter affidavit since we had indicated to the learned counsel by our previous order dated 5 May 2014 that the petition would be taken up for final hearing at this stage and has supported the order of the Additional Commissioner.

9. Under sub-section (1) of Section 21, a power of reassessment is conferred upon the Assessing Authority if it has reason to believe that the whole or any part of the turnover of the dealer, from any assessment year or part thereof, had escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than at which it is assessable or a deduction or exemption has been wrongly allowed. The foundational requirement of sub-section(1) is that there must be reason to believe. Under sub-section (2), no order of reassessment is permissible after expiration of two years from the end of such year or 31 March 1998, whichever is later. Under the proviso to sub-section (2), the Commissioner, either on his own or on the basis of the reasons recorded by the authority, is permitted to authorize the Assessing Authority to make a reassessment within the extended period of limitation notwithstanding that it may involve a change of opinion. However, the Commissioner has to be satisfied that it is just and expedient so to do. The power which is conferred on the Commissioner under the proviso to sub-section (2) operates, once it is exercised, to authorize the Assessing Officer to make a reassessment notwithstanding the expiration of the period of limitation prescribed in the substantive provision. This power has to be harmoniously construed, having due regard to the scheme of sub-sections (1) and (2) of Section 21. Otherwise, if the proviso to sub-section (2) were to be read as conferring an unfettered power to make a reassessment, the power could be exercised arbitrarily and without any rationale or foundation. It is true that under the proviso, the Commissioner is empowered to authorize the Assessing Officer to make a reassessment notwithstanding that it may involve a change of opinion. However, the section equally does not authorize reassessment proceedings on the basis of a mere change in opinion. There has to be some tangible material before the Commissioner on the basis of which he makes an authorization in terms of the proviso. The nature of tangible material must be such as would warrant an inference that the turnover of the dealer has escaped the assessment to tax or that it has been under assessed or has been assessed at a lower rate or that deductions or exemptions have been wrongly allowed.

10. In the present case, it is clear that the notification dated 5 February 2003 refers to plastic buckets, plastic basins, plastic soap case, plastic plates and "other wares and containers made of plastic", amongst other things. The notification does not qualify the expression "containers made of plastic" by the words "non disposable". Merely because the notification does not use the expression "disposable containers made of plastic" would not furnish any ground to the Additional Commissioner to permit a reopening of assessment. The Assessing Authority had duly applied its mind to the business activities of the petitioner and as the assessment order would indicate, the authority was conscious of the position that the petitioner manufactures disposable containers. In this view of the matter, there was absolutely no tangible material before the Assistant Commissioner to issue an authorization and the initiation of proceedings would have to be held as being contrary to law.

11. In this regard, we are in respectful agreement with the position of law as laid down in a judgment of a Division Bench of this Court in Vikrant Tyres Limited Now known as J.K. Industries Limited Vs. State of U.P. and Deputy Commissioner (Assessment) IV, Trade Tax,

14. Re-assessment on the same material by same authority, if permitted, for no valid reason, will open flood gate for arbitrary action exposing one to unending process, permitting uncertainty, re-opening of closed chapters without assigning good reason, depending upon whims of individuals and in the end precipitating anomalous situations.

15. It, therefore, naturally follows that there has to be some valid ground viz. some relevant document or material having escaped notice or there has been wrong calculation due to human error bona fide committed, or ignorance of correct and complete facts due to mistake or ignorance of fraud/misrepresentation (but not mere change of opinion on same material).

12. Tax administration must be based on the principles of certainty and stability. Certainty and stability ensure objective, fair and accountable decision making procedures which are fundamental requirements of equality before law under Article 14 of the Constitution. Uncertainty produces chaos and renders the decision making process whimsical and arbitrary. This negates the fundamental right under Article 14 which is a guarantee against non arbitrariness. The precepts of Article 14 can and should be used not only to test the validity of legislative or administrative action but also to enhance that interpretation of the law which will render its administration and implementation fair. The proviso to sub-section (2) of Section 21 lifts the bar of time. But it cannot be construed to confer an unguided or subjective power to the Commissioner to authorise reopening of concluded assessments. The interests of the revenue have to be protected, but the guiding principle is whether the requirements of sub-section (1) are attracted. For that to happen, there must be tangible material. Tangible material ensures that the power is not exercised arbitrarily but for valid reasons contemplated by the statute.

13. Accordingly, we allow the petition by setting aside the impugned order of the Additional Commissioner dated 21 March 2014 (Annexure-10) and the consequent reassessment notice issued by the Deputy Commissioner, Commercial Taxes, Division 29 Kanpur (Annexure-11).

14. There shall be no orders as to costs.