
(1961) 09 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2188 of 1959

Gupta and Company

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 27-09-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1962) 13 STC 591

Hon'ble Judges : Brijlal Gupta, J

Bench : Single Bench

Advocate : R.S. Pathak, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Brijlal Gupta, J.—This is a writ petition under Article 226 of the Constitution. The petition has been filed challenging an order of penalty dated 25th July, 1959, u/s 15-A of the U. P. Sales Tax Act. The provision in that section is:

15-A. (1) If the Assessing Authority is satisfied that any dealer-

(a) has, without reasonable cause, failed to furnish the return of his turnover which he was required to furnish u/s 7, (7-A or 18) or has, without reasonable cause failed to furnish it within the time allowed and in the manner prescribed ; or

(b) has concealed the particulars of his turnover or deliberately furnished inaccurate particulars of such turnover ;

(c) ...he may direct that such dealer shall pay, byway of penalty, in the cases referred to in Clauses (a) and (c), in addition to the amount of tax payable by him, a sum not exceeding 25 per cent, of the tax due if the tax is upto Rs. 10,000 and not exceeding 50 per cent, of the tax due if the tax is above Rs. 10,000 and in the cases referred to in Clause (b), in addition to any tax payable

by him, a sum not exceeding one and one-half times the amount of tax, which would have been avoided, if the turnover, as returned by such dealer, had been accepted as the correct turnover :

Provided that no penalty shall be imposed under the foregoing clause-

(i) except after notice to the dealer, and

(ii) in a case falling under Clause (a), until a period of 60 days has expired after the date on which the return is required to be furnished u/s 7.

2. The reasons given in the penalty order, which is annexure "D" to the petitioner's affidavit, for imposing penalty, are that as the dealer failed to furnish the return under Sub-section (a) of Section 15-A, it must also be considered to have concealed the particulars of the turnover under Sub-section (b). From the portion of Section 15-A quoted above, it appears to me quite apparent, that so far as the question of any concealment under Sub-section (b) is concerned, the Sales Tax Officer is clearly in error. How, merely by reason of the fact, that a return had not been filed, could it possibly be concluded that particulars of turnover had been concealed.

3. Therefore, the only matter, which has to be considered is, whether there was any failure by the dealer, to comply with the provisions of Sub-section (a) of Section 15-A of the U. P. Sales Tax Act.

4. Mr. Pathak, learned counsel for the petitioner, has argued, that Section 7, prior to its amendment in 1954, made it optional for the dealer to get himself assessed, either on the basis of the previous year, or on the basis of the assessment year. In order to give effect to the provisions of Section 7, as it then stood, a set of rules was framed. The relevant rules, to which Mr. Pathak invited my attention, are Rules 39, 40 and 41. The material portions of these rules are as follows :-

Rule 39. (1) Any dealer may elect to submit returns of his turnover of the assessment year in lieu of the returns of the turnover of the previous year, and shall signify such election in the return filed by him in Form IV:

Provided that a dealer who did not carry on business during the whole of the previous year shall elect to submit his returns of the assessment year.

(2) A dealer who has once signified his election under Sub-rule (1) shall not again exercise his option so as to vary the basis of assessment:

Provided that the Sales Tax Commissioner may, for reasons to be recorded in writing and on such conditions as he deems fit, permit a dealer to exercise a fresh option.

Rule 40. Every dealer who elects to submit return of his previous year shall, within sixty days of the commencement of the assessment year, submit to the Sales Tax Officer a return in Form IV showing his turnover for the previous year

Provided that no dealer whose turnover in the previous year was less than Rs. 15,000 shall be required to furnish such returns".

Rule 41. (1) Every dealer whose estimated turnover during the assessment year is not less than Rs. 15,000 and who elects to submit returns of such year shall before the last day of July, October, January, and April submit to the Sales Tax Officer a return of his gross turnover for the quarters ending June 30, September 30, December 31 and March 31, respectively in Form IV :

Provided that every dealer or firm to whom the provisions of Sub-section (3) of Section 18 are applicable shall submit such returns within seven days of the expiry of each month during the year in which the business is commenced.

5. From a perusal of these rules, it is apparent that these rules were framed to give effect to the option, which, under the statute, the dealer had, in the matter of filing returns according as the dealer had elected the previous year or the assessment year as the basis of his assessment.

6. Mr. Pathak has invited my attention to a passage in the Full Bench decision of this Court reported in *Adarsh Bhandar Vs. Sales Tax Officer*, The Full Bench in that passage, at page 674 of the report, observed as follows:

that after the coming into force of U.P. Act VIII of 1954, the making of a return of his turnover in respect of a portion of the assessment year ceased to be at the option of the dealer but was at the discretion of the State Government, and that Sub-rules (1) to (3) of Rule 41 became useless. A new Sub-rule (1) of Rule 41 was accordingly substituted for the existing Sub-rule (1). Under this substituted sub-rule a dealer was required to submit a quarterly return on certain prescribed dates, but the substitution of the new sub-rule for the old was not effected until the 29th September, 1956. Between the coming into force of U.P. Act VIII of 1954 and the 29th September, 1956, it appears that there was no rule which authorised the assessing officer to make a provisional assessment. It has not been argued that the assessing authority could make a provisional assessment u/s 7-A read with Section 7 of the U.P. Sales Tax Act, as then in force, nor have we been referred to any order of the State Government requiring dealers to submit quarterly returns, or prescribing the necessary forms.

7. Mr. Pathak has argued that the only meaning and effect of these observations is, that the rules, as they existed, prior to 1st April, 1954. were no longer workable, or relevant to the situation, which arose under the provisions of the amended Section 7. Mr. Pathak, therefore, urged that until 29th September, 1956, when the new rules were framed and enforced, it could not be said, that any period, during which a return had to be filed, was prescribed under the amended Section 7. Mr. Pathak goes on to argue that if no period was prescribed there could be no failure by the dealer in terms of Section 15-A(i)(a) to file a return.

8. Mr. Pathak has further relied upon the language of the proviso in Section 15-

A(i), and has also referred me to Rule 5 of the rules framed under the U.P. Sales Tax Act. Rule 5 is as follows :-

Annual notice.-(i) (a) The Commissioner may, as early as possible after the 1st day of April each year, publish a notice in the Press or otherwise, calling upon all dealers liable to pay tax under the Act to furnish within the period specified in Section 7 the prescribed returns to the Sales Tax Officer.

(b) The Sales Tax Officer may, if he considers necessary, serve a notice in Form I individually on any dealer within his jurisdiction.

(2) A dealer shall not be absolved of the responsibility to submit the returns within the period specified in Section 7 on the ground that a notice has not been published or served as required under Sub-rule (1).

9. By reference to these provisions also, he has argued that as there was no longer any period specified under the amended Section 7, there could be no failure by a dealer to file a return within a certain period. The breach, if any, of the old rules, which continued to exist, but which were no longer relevant, could not bring the petitioner within the terms of the penal provisions in Section 15-A(i) (a). I see force in this submission.

10. Even if there was some room for debate, in the interpretation put by Mr. Pathak on the various statutory provisions, we must not forget, that we are concerned with the interpretation of a penal provision, in a taxing statute. To my mind, the Sales Tax Officer was plainly in error, in disregarding the observations placed before him, from the Full Bench decision of this Court, quoted above and in holding, that there was a failure on the part of the petitioner, to file a return required by the amended Section 7 for the reason, that at the material time, there was no period specified within which a return had to be filed.

11. There is one other aspect of the matter. A penalty can be imposed u/s 15-A only if the failure to file a return is "without reasonable cause." In view of what has been stated above, and particularly in view of the fact, that the state of the law was extremely uncertain, the failure to file a return was, to my mind, not without reasonable cause. It may be noted that the language of Section 15-A(i) (a) is not, that where in the opinion of the Sales Tax Officer, there has been a failure to file a return, the dealer shall be liable to penalty. The matter is not left to the subjective discretion of the Sales Tax Officer.

12. Learned counsel for the State has urged nothing before me in reply to the submissions made by Mr. Pathak. He has only argued, that because there was an alternative remedy, available to the petitioner, in this matter, I should not interfere with the penalty order passed by the Sales Tax Officer. The existence of an alternative remedy is merely one of the factors, which has to be taken into consideration in granting or refusing relief. I think that in this particular case, the error committed by the Sales Tax Officer is so obvious and unjustified, that it would not be right to refuse relief under Article 226 of the Constitution.

13. I, therefore, allow this writ petition. A writ of certiorari shall issue quashing the penalty order, dated 25th July, 1959. The petitioner shall be entitled to his costs.