(1974) 11 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 535 of 1973

Haji Ramzan Ali and Sons APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 04-11-1974

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1975) 36 STC 570

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J;K.B. Asthana, J

Bench : Full Bench

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

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution.

2. The petitioner is a general merchant at Allahabad. Among other articles of merchandise he purchased and sold tooth-paste and toothbrushes. One of the questions, which arose before the sales tax authorities, was whether tooth-paste and toothbrushes were toilet goods taxable at single point at 7 per cent or they were unclassified goods taxable at 2 per cent. In the assessment year 1962-63, the Sales Tax Officer treated them as toilet goods and levied tax at 7 per cent, but, on appeal, it was held that these items were unclassified items and were taxable at 2 per cent. The petitioner has stated that thereafter he started realising sales tax at 2 percent only and continued to do so until 15th March, 1969, when for the first time the Additional Revising Authority, Allahabad, by his judgment allowed the revision filed by the State for the assessment year 1962-63 and held that the appropriate rate was 7 per cent. Thereafter, for subsequent assessment years a rate of 7 per cent was charged in respect of the transaction of tooth-paste and toothbrushes. The petitioner filed appeals and for the payment of tax he obtained a stay order from the revising authority. For the assessment year 1967-68, the assessment order was passed by the Sales Tax Officer on 29th August, 1968. It was served upon the petitioner on 28th

September, 1970, and the notice of demand was Issued on 28th October, 1970. An appeal against this assessment order was filed on 22nd October, 1970. - The petitioner made an application to the State Government on 16th December, 1970, for staying the realisation of tax till the disposal of the appeal. The Government granted this request and directed the Commissioner of Sales Tax for necessary action. The Commissioner of Sales Tax stayed the realisation of tax and sent necessary direction to the Sales Tax Officer. The stay order was later on revoked by an order dated 18th September, 1971, by the U. P. Government. This order was, however, modified by another order of the U. P. Government dated 27th September, 1971, whereby the stay order was extended for another 3 months. The Commissioner of Sales Tax in turn issued the necessary directions to the Sales Tax Officer staying the recovery of the tax. Similarly, for the assessment year 1968-69 also, the petitioner filed an appeal against the assessment and made a representation to the State Government for the stay of realisation of tax. This request was granted and the Commissioner directed the Sales Tax Officer to stay the recovery. In due course the petitioner paid up the taxes for all the assessment years and there is no arrear of tax due against him. However, the department is seeking to realise interest from the petitioner in respect of the demand which remained unpaid for six months and more in spite of the stay order having been granted by the appropriate authorities. The only question that arises in this petition is whether the petitioner was liable to pay interest in respect of the period during which the stay orders remained in force.

3. Interest is charged on the arrears of sales tax u/s 8(1-A) of the U. P. Sales Tax Act, which reads :

8. (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 Utter 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.

4. The Division Bench before which this matter came up for decision noticed that in Ajai Kumar Ashok Kumar v. Sales Tax Officer 1972 U.P.T.C. 581 a Division

Bench of this Court had held that the assessee in that case was not liable to pay penal interest for the period during which the realisation of tax remained stayed under the orders of the Commissioner. The reasonings upon which the Bench based its decision is contained in paragraphs 6 and 7 of the judgment, which are reproduced below :

6. Now, penal interest is payable under Clause (1-A) of Section 8 of the U. P. Sales Tax -Act at the rate of 18 per cent on the sales tax arrears with effect from 1st February, 1984. A perusal of Clause (1-A) of Section 8 shows very clearly that penal interest at the rate of 18 per cent is chargeable from a defaulter, if the tax mentioned in the notice of demand issued under Sub-section (1) of Section 8 remains unpaid for six months after the expiry of time specified in the notice of demand. If an assessee is not a defaulter, no penal interest can be charged from him.

7. Under Sub-section (4) of Section 8, the assessing authority may, at any time or from time to time, amend or revoke any notice of demand or extend the time for making the payment in pursuance of the notice. The Sales Tax Officer is an assessing authority. Thus, if the Sales Tax Officer extends the time for payment, the assessee cannot be said to be in default for purposes of levy of penal interest until the expiry of six months from the extended time. Under Rule 80 of the U. P. Sales Tax Rules, the Commissioner of Sales Tax exercises all the powers of a Sales Tax Officer. It follows, therefore, that the Commissioner of Sales Tax may also, under Sub-section (4) of Section 8, extend the time for making the payment of tax. There is no other provision authorising the Commissioner to stay the recovery of tax.

5. The Bench then noticed the decision of the Supreme Court in the case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, There the Supreme Court held that:

there is nothing in the language of Section 8(1-A) of the Act which prevents the running of interest because of the operation of any stay order. Indeed, the liability to pay interest is created by the statute and the Sales Tax Officer has no discretion to grant any exemption from the payment of interest.

6. Subsequently, a similar matter came up before this court in the case of Ram Chandra Ram v. State of U.P. 1974 U.P.T.C. 15. In that case, an assessment order was challenged by means of a writ petition and this court had by an interim order stayed the recovery of tax. The petition was eventually dismissed and the question arose as to whether the petitioner was liable to pay interest u/s 8(1-A) of the U. P. Sales Tax Act for the period during which the stay order granted by this court remained in operation. The court relying upon the decision of the Supreme Court in the case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, held that the petitioner was liable for payment of interest notwithstanding the stay order granted by the High Court. As it was felt that there was no discussion of the aspect considered by the Division

Bench in the case of Ajai Kumar Ashok Kumar 1972 U.P.T.C. 581 either in the decision of the Supreme Court in the case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, or in the decision of this court in the case of Ram Chandra Ram 1974 U.P.T.C. 15 the matter, in the opinion of the Bench concerned, required consideration by a Full Bench. That is how the following two questions have been referred to us :

(1) Whether an order staying recovery proceedings passed by an assessing authority, or the Commissioner of Sales Tax, or the State Government in law amounts to extending the time for making payment in pursuance of the notice or amending the notice within the meaning of Section 8(4) of the Act ?

(2) Whether the period during which such an order of stay is In operation is liable to be excluded for purposes of computing penal interest u/s 8(1-A) of the Act ?

7. The view taken by this court in the case of Ajai Kumar Ashok Kumar 1972 U.P.T.C. 581 is supported by two earlier decisions of this court in the cases of Civil Misc. Writ No. 1063 of 1970 (decided on 2nd August, 1971) and Civil Misc. Writ No. 2776 of 1970 (decided on 1st December, 1971). In all these three cases the view taken is that whenever a Sales Tax Officer or the Commissioner of Sales Tax extends time for payment of the tax it amounts to modification or amendment of the notice of demand so far as the time fixed for the payment of tax is concerned and, as such, the assessee does not become defaulter liable to pay interest u/s 8(1-A) until six months from the extended time. There is no discussion in the case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, as to whether the extension of time granted by a sales tax authority amounts to modification or amendment of the notice of demand with regard to the time for payment of tax. It is argued that the decision of the Supreme Court on this point is only in the nature of an obiter dicta and does not amount to declaration of law. However, the observations of the Supreme Court are so general and comprehensive in nature that it is not open to any subordinate court to entertain such a plea. This is what the Supreme Court observed in the case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, :

Argument has also been advanced by Mr. Sen that the interest on arrears of sales tax could not be realised for the period during which the recovery of sales tax was stayed. We find it difficult to accede to this contention because there is nothing in the language of Section 8(1-A) of the Act which prevents the running of interest because of the operation of any stay order. Indeed, the liability to pay interest is created by the statute and the Sales Tax Officer has no discretion to grant any exemption from the payment of interest.

8. In view of these observations this court in the case of Ram Chandra Ram 1974 U.P.T.C. 15 held that the law laid down by the Supreme Court was to the effect that the stay order even if granted by the High Court would not prevent the

running of the interest which, in the opinion of the Supreme Court, was automatic. Incidentally this is a decision of a Full Bench but it appears that the Bench which made this reference erroneously considered it to be a decision of the Division Bench, otherwise it was not necessary to make a reference again to a Full Bench.

9. It has been brought to our notice that there have been material amendments in the relevant provisions of the U. P. Sales Tax Act. Previously, Sub-section (4) of Section 8 was in the following words :

The assessing authority may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

10. By an amendment the words "or extend the time for making any payment in pursuance of the notice" have been omitted by the U. P. Sales Tax (Amendment) Act, 1970. Similarly, Section 8(1) permitted the Sales Tax Officer to fix any time for payment of tax not being less than 15 days. By the same amendment, Section 8(1) has been recast as follows :

The tax assessed under this Act shall be paid within thirty days from the date of service of the notice of assessment and demand and in such manner as may be specified in the notice. In default of such payment, the whole of the amount then remaining due shall be recoverable in accordance with Sub-section (8).

11. It was argued that as a result of the amendments the Sales Tax Officer as also the Commissioner of Sales Tax have lost the power to extend the time for payment of tax, as specified in the notice of demand and similarly the time for payment of tax is no longer left to the discretion of the Sales Tax Officer but a fixed period of 30 days has been allowed so that the Sales Tax Officer can only allow a period of 30 days and no more for payment of tax. The contention is that after these amendments the Sales Tax Officer or the Commissioner have been divested of their jurisdiction to extend time and, as such, the question as to whether such extension amounts to amendment of the notice of demand within the meaning of Section 8(4), as it stood before its amendment, does not survive.

12. The contention of the learned counsel for the petitioner is that notwithstanding these amendments the Sales Tax Officer and by virtue of Rule 80, the Commissioner of Sales Tax, both retain power to extend time for payment of tax, because Section 8(4) still gives them the jurisdiction to amend or revoke the notice of demand from time to time. The amendment of the notice of demand may include an amendment of the time for payment of tax. It was next contended that these amendments are not retrospective In nature and would not govern the notices of demand that were issued prior to the amendment and the two notices of demand, which are in question in the present writ petition, were both issued prior to the amendments came into force. The learned counsel went on to argue that in this view of the matter the question will have to be decided with reference to the unamended law. These are no doubt

important and difficult questions but we do not propose to express any opinion on them because it is not necessary to do so in view of the pronouncement of the Supreme Court in the case of Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others, . Assuming that the time for payment can still be extended by the Sales Tax Officer or the Commissioner of Sales Tax and the amendments are not retrospective in nature, the fact remains that no stay order granted either by a sales tax authority or even by this court, as held by the Full Bench in the case of Ram Chandra Ram 1974 U.P.T.C. 15 will stop the running of the interest.

13. In view of the above discussion question No. (1), in our opinion, does not call for any answer, because even if a stay order granted by a sales tax authority or the State Government amounts to the extension of time for payment or the amendment of the notice of demand within the meaning of Section 8(4) of the Act, interest keeps on running. We answer question No. (2) in the negative by saying that the period during which an order of stay remains in operation is not liable to be excluded for purposes of computing penal interest u/s 8(1-A) of the Act, because, according to the Supreme Court, the interest runs automatically and does not stop running by virtue of any stay order.

14. In the circumstances of the case, we make no order as to costs.

