

(2004) 11 AHC CK 0051

In the Allahabad High Court

Case No : Trade Tax Revision No's. 479, 480, 481 and 482 of 1995

Hindustan Bone Mills Private Ltd.

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 17(2), 17(3), 17(8), 22

Citation : (2006) 144 STC 117

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These four revisions u/s 11 of U. P. Trade Tax Act (hereinafter referred to as Act) are directed against the orders of Tribunal dated 30.6.1995 relating to the assessment years 1979-80, 80-81, 81-82 and 1982-83 respectively.

2. The brief facts of the case are that the applicant was carrying on the business of manufacturing of crushed bone from raw-Bones. The bone was liable to tax at the point of sale to consumer. Applicant had purchased raw-bone from unregistered dealer and therefore, Assessing Authority levied tax on the purchase turnover of raw-bone u/s 3-AAAA in all the aforesaid years. In the appeal, tax levied u/s 3-AAAA was confirmed. In the Second Appeal, Tribunal deleted the tax levied u/s 3- AAAA and allowed the appeal vide order 14.11.1991 and 16.5.1991 on the ground that the provision of Section 3- AAAA was declared ultra vires by the Division Bench of this Court in the case of Pioneer Tanneries and Glue Works, Kanpur and Anr. v. State of U.P. reported in 1991 UPTC. Subsequently, by Act No. 8 of 1992 provisions of Section 3-AAAA has been reintroduced with effect from 1.4.1974. In the matter of Hotel Balaji and Ors. v. State of Andhra Pradesh and Ors. reported in 1993 UPTC page 318, the decision in the case of Pioneer Tanneries and (Hue Works, Kanpur and Anr. v. State of U.P.

has been over ruled and the provisions of Section 3-AAAA before the amendment and after amendment have been held valid. In view of decision of Apex Court in the case of Hotel Balaji and Ors. v. State of Andhra Pradesh and Ors. and in view of reintroduction of Section 3-AAAA by Act No. 8 of 1992 with effect from 1.4.1974, applications u/s 22 of the Act were moved before the Tribunal on 20.8.1993. The said applications u/s 22 of the Act were rejected by the Tribunal vide order dated 25.10.1994 on the ground that as per Section 17 (8) of validation clause of Act No. 8 of 1972, application should be filed by 30.9.1992 for review of assessment order and since in the present case, applications were filed on 20.8.1992 after eleven months from 30.9.1992, applications have been rejected as barred by limitation. Commissioner of Trade Tax further moved application u/s 22 for rectification of the order dated 25.9.1994, by which, applications u/s 22 were rejected. Applications were mainly moved on the ground that Section 17 (2) of Act No. 8 of 1972 was subject to Section 17 (3) and in view of limitation contemplated u/s 17 (3) of Act No. 8 of 1992, and u/s 22 of the Act applications were not barred by time, thus, rejecting the application as barred by limitation was patent error and required rectification. Prayer was also made that the applications moved on 20.8.1993 were not beyond time and they were moved before the time contemplated u/s 22 and therefore, application dated 20.8.1993 be allowed and the tax on the raw-hide should be restored. Tribunal vide impugned order dated 30.6.1995, allowed the applications. Tribunal held that in the order dated 25.10.1994, limitation contemplated u/s 17 (3) of Act No. 8 of 1992 and limitation contemplated u/s 22 have not been considered by the Tribunal and the Tribunal has committed error in rejecting the application as barred by time. Tribunal restored the levy of tax u/s 3-AAAA which was reintroduced by Act No. 8 of 1992 with effect from 1.4.1994 and in view of decision of Apex Court in the case of Hotel Balaji and Ors. v. State of Andhra Pradesh and Ors. (supra), in which, Section 3-AAAA prior to amendment and after the amendment have been held valid.

3. Heard Counsel for the parties.

4. Learned Counsel for the applicant submitted that the Tribunal has erred in allowing the application u/s 22 of the Act while there was no mistake apparent on the face of record. He submitted that u/s 22, only mistake apparent on the face of record, can be rectified and not the error of the judgment. He submitted that the application u/s 22, of the Act was moved for rectification of the order dated 25.10.1994 mainly on the ground that Section 17 (2) was subject to Section 17 (3) and the application was within limitation contemplated u/s 17 (3). He further submitted that even if, Section 17 (3) is to be considered, order u/s 22 had to be passed within three years from the date of order or from one year from the date of amendment. He submitted that the orders sought to be rectified were dated 14.11.1991 for the assessment year 1979-80 and 1981-82 and 16.5.1991 for the assessment year 1981-82 and the order was rectified and such order can only be rectified within three years u/s 17 (3) and therefore, rectification of the said order by the Tribunal vide impugned order dated

30.6.1995 is erroneous and without jurisdiction.

5. Learned Standing Counsel submitted that the order passed by the Tribunal is absolutely correct and in accordance to law. He submitted that the applications filed u/s 22 of the Act dated 20.8.1993 should be disposed of under the provisions of Section 22 of the Act and not u/s 17 (3) of the Act No. 8 of 1992. He submitted that the Tribunal has rejected the application dated 20.8.1993 moved u/s 22 of the Act treating them as a review applications and rejecting the same as time barred being filed on 30.9 1992, limitation contemplated u/s 17 (2), was patent error. He submitted that when the applications were moved on 20.8.1993, limitation for three years was available for rectifying the order u/s 17 (3). He further submitted that in the present case, it was not necessary to consider the application u/s 22 dated 20.8.1993 for rectification of the order of Tribunal u/s 17 (3) of Act No. 8 of 1992 Application should be considered only under the provision of Section 22 of the Act. He submitted that u/s 22 limitation for moving application was three years and in case application was filed within three years, there was no further limitation for passing any order. He submitted that the application-dated 20.8.1993 was within three years and therefore, it was within time.

6. Having heard Counsel for the parties. I have perused the order of Tribunal and authorities below. Section 22 of the Act, Section 17 (2) and Section 17 (3) which are a validation provision of the Act No. 8 of 1992 and Section 3-AAAA reads as follows:-

Section 22 Rectification of mistakes

(1) (Any officer or authority or the Tribunal or the High Court) may on its own motion or on the application of the dealer or any other interested person rectify any mistake (in any order passed by him or it under this Act) apparent on the record within three years from the date of the order sought to be rectified:

Provided that where an application under this sub section has been made within such period of three years, it may be disposed off even beyond such period:

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement).

(2) Where such rectification has the effect of enhancing the assessment, (the assessing authority concerned) shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the Rules framed thereunder shall apply as if such notice had been served in the first instance."

Section 17 (2) of Act No. 8 of 1992

"Where before the commencement of this Section any authority or court has, in

any proceeding made, any assessment, levy or collection of any tax passed or an order imposing any penalty or making any other demand under the principal Act, or passed any order modifying, setting aside or quashing (wholly or in part), such assessment, levy, collection, penalty or demand and such assessment or order becomes inconsistent with the provisions of the principal Act as amended by this Act, then, subject to the provisions of Sub-section (3) of any party to the proceeding or the Commissioner of Sales Tax may by September 30, 1992, make an application to such authority or court for review of the assessment or order and thereupon, such authority or court may review the proceeding and make such order, varying or revising the order previously made, as may be necessary to give effect to the provisions of the principal Act as amended by this Act."

Section 17 (3) of Act No. 8 of 1992

The Assessing, Appellate or Revising Authority, as the case may be, may within a period of one year from the commencement of this section or within the period specified in Section 22 of the principal Act, whichever expires later, make any rectification in any order passed by it where such rectification becomes necessary in consequence of the amendment of the principal Act;

Provided that no rectification which has the effect of enhancing the assessment, penalty or other dues, shall be made unless the authority concerned has given notice to the dealer or person concerned of his intention to do so and has allowed him a reasonable opportunity of being heard."

Section 3-AAAA

Liability to tax on purchase of goods in certain circumstances- Subject to the provisions of Section 3, every dealer who purchases any goods liable to tax at the point of sale to customer-

(a) from any registered dealer in circumstances in which no tax is payable by such registered dealer, shall be liable to pay tax on the purchase price of such goods at the same time at which, but for such circumstances, tax would have been payable on the sale of such goods;

(b) from any person other than a registered dealer whether or not tax is payable by such person, shall be liable to pay tax on the purchase price of such goods at the same rate at which tax is payable on the sale of such goods;

Provided that no tax shall be leviable on the purchase price of such goods in the circumstances mentioned in Clauses (a) and (b, if-

(i) such goods purchased from a registered dealer have already been subjected to tax or may be subjected to tax u/s 3AAA;

(ii) tax has already been paid in respect of such goods purchased from any person other than a registered dealer;

(iii) the purchasing dealer resells such goods within the State or in the course of

inter-State trade or commerce or exports out of the territory of India, in the same form and condition in which he had purchased them;

(iv) such goods are liable to be exempted u/s 4-A of the Act.

Explanation:- For the purpose of this Section, and of Section 3-AAA the sale of-

(i) ginned cotton after ginning raw cotton purchased as aforesaid, or

(ii) dressed hides and skins or tanned leather after dressing or tanning raw hides and skins purchased as aforesaid, or

(iii) rice during the period commencing on September 2, 1976 and ending with April 30, 1977 after bulking paddy purchased as aforesaid;

shall be deemed to be in the same form and condition.

7. In the present case, there is no much dispute about the applicability of Section 3-AAAA. Admittedly, applicant had purchased raw-bone, and manufactured crushed bone, raw-bone was purchased from unregistered parties, bone was liable to tax at the point of sale to consumer. Since, raw-bone purchased was not sold in the same form and condition, therefore, Section 3-AAAA of the Act was applicable. Tribunal has deleted levy of tax u/s 3-AAAA only on the ground that the provisions of Section 3-AAAA was declared ultra-vires by the Division Bench of this Court in the case of Pioneer Tanneries and Glue Works, Kanpur and Anr. v. State of U.P. (supra). Thereafter Section 3-AAAA has been introduced by Act No. 8 of 1992 w. e. f. 1.4.1974 and the decision of Division Bench in the case of Pioneer Tanneries has been overruled and provision of Section 3-AAAA before amendment and after amendment have been held valid by the Apex Court in the case of Hotel Balaji and Ors. v. State of A.P. and Ors. reported in 1993 UPTC 318. It is settled principle of law that if any decision is given placing reliance on the decision which has been overruled or if the declared ultravires provision is subsequently reintroduced by the amendment with retrospective effect, provision of Section 22 applies and that order can be rectified on the basis of decisions of Apex Court and on the basis of amended provisions (see Karam Chand Thappar and Brothers v. State of U.P. and Anr. reported in 1976 UPTC 671 and in the case of Commissioner of Sales Tax v. S/S Prakash Chandra Narendra Kumar, Meerut reported in 2003 UPTC 843, therefore, order of Tribunal dated 14.11.1991 and 16.5.1991 could be rectified u/s 22 of the Act.

8. Now the question is whether once the Tribunal vide order dated 25.10.1994 rejected the applications u/s 22 as barred by limitation, the said orders could be rectified u/s 22 on the grounds taken in the applications u/s 22 and if it is held that there was a mistake in the order dated 25.10.1994 rejecting the applications u/s 22 whether the rectification of the orders dated 14.11.1991 and 16.5.1991 by the Tribunal can be said to be within limitation in reviewing the levy of tax u/s 3-AAAA. According to learned Counsel for the applicant, mistake of error in the judgment can not be rectified u/s 22 of the Act and only mistake apparent on the face of record, could be rectified. According to him, there was no mistake

apparent on the face of record. I do not agree with the submission of learned Counsel for the applicant. Applications dated 20.8.1993 filed u/s 22 of the Act were for rectification of the order dated 14.11.1991 and 16.5.1991 and these applications were not filed u/s 17 (2) and 17 (3) of the Act No. 8 of 1992. Limitation contemplated u/s 17 (2) relates to the review application and not to the application u/s 22. Limitation u/s 17(3) is applicable to the cases where the authorities suo-moto proposes to rectify its own order. According to my opinion. Section 17 (3) has no application to a case where the party moved applications u/s 22. If applications were moved u/s 22 of the Act, they have to be considered and decided within the ambit of the said provisions. Admittedly, applications were moved within three years from the date of order, the limitation, contemplated u/s 22 and therefore, they were within time and should be decided accordingly. Since the Tribunal has wrongly treated the applications as review applications and rejected the same as barred by limitation, there was a patent error in the order of Tribunal and deserves to be rectified. Tribunal has rightly rectified the order dated 25.10.1994 and held that the application u/s 22 were within time.

9. I do not agree with the submissions of learned Counsel for the applicant that the order could be rectified within three years from the date of order in view of limitation contemplated u/s 17 (3) of the Act No. 8 of 1992 while the order has been rectified beyond three years. As held earlier, Section 17 (3) was not applicable in the present case. In the present case, only Section 22 of the Act was applicable under which application were moved, in which limitation to file application was three years and in case, application was filed within three years, there was no limitation for passing the order and therefore, rectification of the order dated 14.11.1991 and 16.5.1991 u/s 22 can not be said to be barred by limitation.

10. For the reasons stated above, I do not find any merit in all the revisions.

11. In the result, all the four revisions fails and are dismissed.