(2014) 08 AHC CK 0164

In the Allahabad High Court

Case No : Sales/Trade Tax Revision Defective Nos. 264, 956, 977, 983, 994, 1004 and 1015 of 2009

Hughes Communications India Ltd. APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15A(1)(a)

Citation : (2014) 10 ADJ 31 : (2014) 76 VST 323

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : D.K. Gandhi and Rishi Raj Kapoor, Advocate for the Appellant; B.K. Pandey, Advocate for the Respondent

Judgement

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Surya Prakash Kesarwani, J.—Heard Sri Rishi Raj Kapoor, learned counsel for the applicant and Sri B.K. Pandey, learned counsel for the respondents. The controversy involved in all these revisions relates to levy of penalty under section 15A(1)(a) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") for delayed deposit of trade tax/Central sales tax in the month of May, 2003, August, 2003 and February, 2004.

2. These revisions are admitted on the following question of law:

"Whether, on the facts of the case, the Tribunal is legally justified in confirming the penalty under section 15A(1)(a) of the Act?"

3. With the consent of learned counsel for the parties, these revisions are being heard finally.

4. It is submitted by Sri Kapoor that the cheque/pay order/bank draft was deposited by the applicant along with the challan form for the relevant month well in time in the State Bank of India ("the SBI", for short) and it was merely

because of time taken in collection of the amount by the SBI that the alleged delay was caused which is not, in fact, the delay as the payment collected will relate back to the date of receipt of cheque as held by the honourable Supreme Court in the case of The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, . He further submits that the Tribunal and the authorities below have committed manifest error of law and facts to hold the penalty to be levied upon the applicant and submits that the delay was only for two or three days which was merely because of the period exhausted by the bank in collecting the amount and in some months it was because of holidays in the intervening period. He submits that firstly there was no delay at all and secondly even if it is assumed for a moment that there was delay of one or two days, the same was sufficiently explained and, therefore, the penalty under section 15A(1)(a) of the Act should not have been levied in view of the law laid down by this court in the Case of Western India Match Co. Ltd. Vs. Commissioner of Sales Tax, , Eastern India Transformer & Switch Gear Pvt. Ltd. v. Commissioner of Sales Tax [1993] UPTC 212, Triveni Sheets Glass Works v. Commissioner of Trade Tax [1999] NTN 42 and Premier Vinyl Flooring Ltd. Vs. Commissioner of Sales Tax, .

5. Sri Kapoor further submits that in view of the undisputed facts and the law laid down by this court in the aforementioned cases, the impugned order of the Tribunal is manifestly unjust and therefore deserves to be set aside.

6. Sri B.K. Pandey, learned standing counsel, submits that the delay in deposit of tax attracts penalty under section 15A(1)(a) of the Act. Under the circumstances the levy of penalty is fully justified. There is no error in the impugned order of the Tribunal. The finding recorded by the Tribunal are findings of fact and as such the revisions deserve to be dismissed.

7. I have carefully considered the submissions of the counsel for the parties.

8. I find that specific grounds were taken by the applicant with complete disclosure of facts before the appellate authority that the bank draft/pay order for the tax amount was deposited well within time in the SBI which was collected by the SBI after two or three days which allegedly caused delay of two or three days as evident from the facts mentioned in the grounds of appeal as well as in the written submission filed before the first appellate authority and before the Tribunal.

9. Rule 48 of the U.P. Trade Tax Rules, 1948 provides for manner of payment as under:

"48. Manner of payment.--Unless expressly provided, otherwise, any amount payable under the Act or the Rules as tax, fee, penalty, interest, composition fee or any money for any other purpose may be deposited in any of the following manners:

(a) in cash with challan in quadruplicate in a treasury or sub-treasury or any branch of the State Bank of India authorised to accept deposits under the Act, or

(b) by cheque issued by the assessee himself or bank draft, along with challan in quadruplicate, submitted to the officer or authority concerned on or before the due date of payment; or

(c) by book transfer, in case of Government Departments, if so desired.

Explanation.--Payment of more than rupees five hundred shall be made by cheque or bank draft only."

10. From the aforesaid rule it is crystal clear that the payment of cheque is a recognised mode of payment of sales tax dues. Now question arises that what is the date of payment, when the cheque was given to the Department or the date on which it was encashed. This controversy has been set at rest by the judgment of the honourable Supreme Court in the case of COMMISSIONER OF Income Tax, BOMBAY SOUTH, BOMBAY Vs. OGALE GLASS WORKS LTD., , in which it was held that payment by cheque realised subsequently on the cheque being honoured and encashed relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque.

11. Again this question arose with reference to payment of rent by tenant to landlord through cheque in Damadilal and Others Vs. Parashram and Others, . It was held as follows:

"... the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted..."

12. In K. Saraswathy alias K. Kalpana (Dead) by Lrs. Vs. P.S.S. Somasundaram Chettiar, , the honourable Supreme Court held as under:

"Payment by cheque is an ordinary incident of present day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash payment by cheque should be taken to be due payment if the cheque is subsequently encashed in the ordinary course. In this case there was nothing to show that if the cheque was presented for encashment on the date it was delivered the cheque would not have been encashed, or that the bank had at anytime declined to honour it for want of funds in the ordinary course, or that under the arrangements made for payment of the cheque, even if it had been put for encashment on the date it was delivered the cheque would not have been encashed. Therefore, the submission that there was no money on the date of delivery of the cheque to support payment of it and that it was subsequently when arrangements were made that the cheque was realised, cannot be sustained."

13. This view was reiterated by the Supreme Court in the case of Mahendra Raghunathdas Gupta Vs. Vishwanath Bhikaji Mogul and others, .

14. The Andhra Pradesh High Court in the case of K. VENKATA REDDY Vs. Commissioner of Income Tax and Another, has held with reference to Kar Vivad Samadhan Scheme, 1998 in pursuance of the Finance Act No. 2 of 1998 that payment of any amount by cheque would be deemed to have been made on the date of presentation of the cheque, if it is not dishonoured.

15. From the above authorities coupled with rule 48 of the U.P. Trade Tax Rules it is clear that the date of payment through cheque is the date when the cheque was presented provided it is encashed. To put it differently the payment shall relate back to the date of presentation of the cheque to the Department.

16. A perusal of the aforesaid rules makes it clear that all dealer may deposit tax, penalty, interest, compensation fees or any other money in cash or by cheque or by bank draft along with challan in quadruplicate by submitting it to the officer or authority concerned on or before the last date of payment. The facts of these present cases reveals that the applicants have clearly mentioned the date of respective bank draft/pay order/cheque and the date of deposit thereof along with challan form in the SBI which facts have not been disputed or denied by the assessing authority. In the case of COMMISSIONER OF Income Tax, BOMBAY SOUTH, BOMBAY Vs. OGALE GLASS WORKS LTD., , the honourable Supreme Court has laid down the law that payment of cheque realised subsequently on the cheque being honoured and encashed relates back to the date of receipt of the cheque and in law the date of payment is the date of delivery of cheque. The applicants have submitted their returns well within time and also deposited tax of the relevant months by bank draft/pay order along with challan form in the specified bank, i.e., SBI. Thus there was no delay in deposit. However, the bank draft/pay orders were collected after three or four days. The tax for the month of February was deposited by bank draft on 20th of March which was Saturday. The next date was Sunday. The amount could be collected by the SBI on 24th of March. Thus even for this month also, it cannot be said that there was any delay. Even according to the respondents, there was delay of only two or three days. The same was properly explained by the applicant. There was no occasion before the assessing authority to levy penalty for alleged delay in deposit of tax for the relevant months.

17. In the case of Premier Vinyl Flooring Ltd. Vs. Commissioner of Sales Tax, , this court while considering similar circumstances held in para 16 as under (page 373 in 137 STC):

"16. Rule 41 of the U.P. Sales Tax Rules provides filing of the monthly returns and deposit of tax due thereon on the basis of the monthly returns. Except as provided in the proviso to rule 41 the return for the month of February all other monthly returns have to be filed before the expiry of the next succeeding month. In pursuance of the proviso to rule 41, the return of the month of February shall be submitted to the Sales Tax Officer on or before 20th day of March. The return for the month of February 1992 was the applicant''s first return as for earlier period the tax holiday under section 4A was in operation. It has also come in the order of the Tribunal that the applicant has deposited Rs. 1 lakh as advance for the month of March, 1992, in the month of March, 1992 itself. It was argued before the Tribunal that it should be taken as a mitigating circumstance and the order of penalty should be knocked off in its entirety. The Tribunal has accepted it partially by reducing the penalty amount. This court in the case of Bahadur Motors v. Commissioner of Trade Tax [1999] 15 NTN 614 has held that it is a settled principle that the law does not take into account trifles. The delay of one day in that case was considered not to be a fit case for imposition of the penalty. In the case in hand there was Sunday intervening in-between March 20, 1992 and March 24, 1992. Therefore the delay is practically of 2-3 days and the default was very trivial."

18. Penalty under section 15A(1)(a) is not mandatory. It has been repeatedly held by this court that for such trifle no penalty can be levied. This is also the ratio of decision in the case of Western India Match Co. Ltd. Vs. Commissioner of Sales Tax, , Eastern India Transformer & Switch Gear Pvt. Ltd. v. Commissioner of Sales Tax [1993] UPTC 212 and Premier Vinyl Flooring Ltd. Vs. Commissioner of Sales Tax, .

19. Power to levy penalty is a discretionary power and therefore it should be exercised in a reasonable manner. It should not be imposed in each and every case when there is a default. Mechanical imposition of penalty under section 15A(1)(a) of the Act cannot be approved. The Departmental authorities are supposed to exercise the discretion in a reasonable manner so as to advance the sense of justice. Taking into consideration overall facts and circumstances of the case the levy of penalty in the present case cannot be approved by this court.

20. In the result all the seven revisions are allowed. Penalty orders under section 15A(1)(a) of the Act both under U.P. and Central Acts for the months of May, 2003, August, 2003 and February, 2004 are set aside. Consequently, the impugned common order of the Tribunal dated September 29, 2008 relating to the months of May, 2003, August, 2003 and February, 2004 are hereby set aside. The question of law is answered in favour of the assessee and against the respondents. In result all the revisions succeeds and are hereby allowed with cost.