(1974) 04 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6348 of 1973

Hukam Chand and Another — APPELLANT

Vs

The State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 16-04-1974

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 8(1A)

Citation : (1983) 54 STC 43

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.—For the assessment year 1969-70, the Sales Tax Officer, Roorkee, passed an assessment order dated 30th May, 1970. It appears that it was served on the assessee on 27th June, 1970. Consequently the assessee applied for rectification u/s 22 of the Act. This application was allowed and by an order dated 9th November, 1971, the original order of assessment was rectified and the turnover of the assessee was reduced to Rs. 8,21,452.24 and the quantum of tax to Rs. 82.145.30. It may be mentioned here that the original tax demand was in the sum of Rs. 1,08,500.00. In the order of rectification the Sales Tax Officer mentioned that the assessee had already paid Rs. 14 and therefore, he should deposit the balance tax amounting to Rs. 82,131.30 within 30 days of the receipt of this order and that the original notice of demand shall be deemed to have been modified accordingly. The rectification order was served on the assessee on 26th November, 1971.

2. The assessee challenged this assessment order by way of a writ petition which was admitted on 19th August, 1970. This Court issued an order of stay. The writ petition was dismissed by this Court on 4th April, 1972. The assessee took the dispute to the Supreme Court where also he obtained a stay order on his furnishing bank guarantee for the amount of the tax demanded. The Supreme Court dismissed the appeal on 22nd December, 1972. Thereafter on 14th March,

1973, the assessee requested the Sales Tax Officer to realise the tax demand by encashment of the bank guarantee.

3. On 30th July, 1973, the Sales Tax Officer issued a recovery certificate for the realisation of Rs. 35,687.56 as penal interest due from 27th July, 1970, to 27th July, 1973. The present writ petition challenges the validity of this demand.

4. A Full Bench of this Court in Sri Ram Chandra Ram v. State of Uttar Pradesh 1974 UPTC 15 (FB) has held that the running of penal interest is not interrupted by the passing of stay order. Consequently the penal interest which started running u/s 8(1-A) of the U.P. Sales Tax Act did not cease to run by virtue of the stay orders passed either by this Court or by the Supreme Court.

5. The rectification order dated 9th November, 1971, specifically granted 30 days'' time from the date of its service for payment of the outstanding amount. This order was served on the assessee on 26th November, 1971. Thus the assessee had time till 26th December, 1971, to pay the tax demanded. u/s 8(1-A) penal interest starts running from the expiry of the time specified in the notice of demand. In the present case, the date of the expiry of the specified time was 26th December, 1971. The penal interest could hence run only from 26th December, 1971, onwards.

6. Admittedly, the tax demand was paid up on or about 14th March, 1973, by the encashment of the bank guarantee. The penal interest could not hence run after that date. In the counter-affidavit it has been stated that in spite of the encashment of the bank guarantee a sum of Rs. 10 remained still due. Even if it is accepted, penal interest could be payable only on the balance sum of Rs. 10 after 14th March, 1973. The respondents were in error in realising penal interest on the entire tax demand for the period 14th March, 1973, to 27th July, 1973. The recovery certificate for Rs. 25,978.62 was clearly illegal. The petitioner was liable to pay penal interest from 26th December, 1971, to 14th March, 1973, on the amount of tax demanded, that is, on Rs. 82,131.30 and on the balance of Rs. 10 from 14th March, 1973, till the date of payment.

7. In the result the writ petition succeeds and is allowed. The demand notice dated 30th July, 1973, demanding a sum of 35,687.56 is quashed. It will be open to the respondents to issue a fresh notice of demand after calculating the interest payable in accordance with law and in the light of the observations made above. The petitioner will be entitled to costs.