

(2012) 04 UK CK 0077

In the Uttarakhand High Court

Case No : Commercial Tax Revision No. 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96 of 2011

Karya Palak Engineer, Central Public Works Department

APPELLANT

Vs

The Commissioner, Commercial Taxes, Uttarakhand and another. etc. etc.

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Uttarakhand Value Added Tax Act, 2005 — Section 35

Citation : (2013) 57 VST 226

Hon'ble Judges : Barin Ghosh, C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : B.R. Garg with Mr. A.K. Bishnoi, for the Appellant; K.P. Upadhyay, Addl. Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—The Uttarakhand VAT Act, 2005, came into force w.e.f. first day of October 2005, prior thereto the Uttaranchal Trade Tax Act held the fort. Both the Acts obliged every person responsible for making payment to a contractor for discharge of any liability on account of valuable consideration payable for transfer of property in goods in pursuance with work contract to deduct four per cent of such payment at the time to making such payment and to deposit the same with the Government Treasury before the expiry of the month following the date of deduction. This obligation was imposed by Section 8-D of the Uttaranchal Trade Tax Act and by Section 35 of the Uttarakhand VAT Act, 2005. Both the said Acts provided for imposition of penalty not exceeding twice the amount deductible in case there is failure to deduct and in case there is failure to deposit after deduction. Both the Acts, namely Uttaranchal Trade Tax Act as well as the Uttarakhand VAT Act made it obligatory to pay interest, in the event, tax so deducted is deposited beyond the time specified in the Acts. In the instant case, the revisionists in these revision applications, deducted tax and also deposited the same, but beyond the time specified by the Acts, and, accordingly,

deposited interest also. The assessing authority finding that tax deducted were deposited beyond the time specified, imposed penalty to the extent of twice the amount of the tax deducted. The appellate authority for some reasons recorded, reduced the penalty to the tune of ten per cent of the deducted tax. The Revenue as well as the revisionists approached the Tribunal. The appeals preferred by the revisionists have been rejected, whereas appeals preferred by the Revenue have been allowed. The Tribunal while allowing the appeals of the Revenue recorded identical finding, one of which is as follows:

The contractee department in year 2005-06 for the period from 01.04.2005 to 30.09.2005 has deposited the amount of TDS against the consideration paid to the contractors for the months from April, 2005 to September, 2005 with delay of 7 days, 3 months 26 days, 2 months 26 days, 1 month 26 days, 7 months 19 days and 6 months 19 days respectively, in respect of which no proper reason has been given with the appropriate evidence. Despite clear provisions of section 8-D and Rule 48 of the Trade Tax Act, this work of the contractee department comes within the purview of negligent default. Hence, keeping in view the fact that the contractee department is a government department and that there was the amount of TDS was deposited regularly with delay after the prescribed period in every month, it is proper to impose penalty u/s 8-D(6) for the concerned month in the following manner:

In view of the above, appeals filed by the department (except Appeal No. 145/10) are liable to be partly allowed and the appeals filed by the contractee department are liable to be dismissed.

In the present revision applications, the revisionists have raised principally three questions, namely that, in terms of the provisions contained in Section 8-D of the Uttaranchal Trade Tax Act and Section 35 of the Uttarakhand VAT Act, penalty is leviable in two circumstances, namely that when no tax is deducted or when tax is deducted and not deposited. It is being contended that a look at the Law made by the Legislators would amply make it clear that, if deduction is made and the same is deposited, no penalty is leviable inasmuch as, there is a separate provision for deposit of interest. It was next contended that, assuming penalty is leviable in case where deducted tax has been deposited beyond the due date, the crime thus committed cannot be equated with that of the crime of not deducting tax or with the crime of deducting tax and not depositing the same. It was contended that, in case when deduction is made and the same is deposited, if a penalty is leviable thereon, the quantum thereof may have nexus with the quantum of delay and not for repeated default. We feel that, these aspects of the matter, were not dealt with by the Tribunal. In any event, the Tribunal has not given any reason in its order as to why for the first default the penalty would be of ten per cent of the tax deducted and, why such penalty will increase by five per cent for every subsequent default committed in every subsequent months.

2. Furthermore, there is no pronouncement as to whether penalty is at all leviable in respect of deduction made, but deposited beyond the time specified.

In the circumstances, we interfere with the judgments and orders of the Tribunal under revisions and set aside the same and, remit back the matter to the Tribunal for consideration whether penalty is at all leviable in case where deductions made have been deposited, but belatedly and, if so, whether penalty imposable for such a crime can be equated with the crime of not deducting or with not depositing after deduction; as well as what should be the rational penalty to be imposed for delay in depositing deducted tax with reasons in support thereof.