(1986) 08 AHC CK 0043

In the Allahabad High Court

Case No : Sales Tax Revision No. 272 of 1986

Mahadeo Traders APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1987) 65 STC 124

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Misra, J.—The present revision has been preferred against the order dated 14th May, 1986 passed by the Sales Tax Tribunal, U.P., Allahabad Bench I, Allahabad u/s 11 of the U.P. Sales Tax Act.

2. The facts, in brief, of the case are that the applicant is a partnership firm known as M/s. Mahadeo Traders (hereinafter referred to as the applicant-firm) and is carrying on the business admittedly from 2nd September, 1985. The applicant-firm consists of seven persons and it deals in kerana, etc. The applicant applied for registration under the U.P. Sales Tax Act and it did not file any application for registration under the Central Sales Tax Act. The applicant also declared that the applicant-firm shall be dealing in the goods within U.P. The applicant also filed a return for the month of September on 29th October, 1985 and according to that return no tax liability is created on the applicant-firm.

3. The question involved for adjudication in this case is as to whether the demand of security on the facts and the circumstances of the case u/s 8-C(3) of the U.P. Sales Tax Act from the applicant-firm is justified or not.

4. Heard learned counsel for the parties. The argument advanced on behalf of the learned counsel for the applicant is that since the applicant-firm is dealing in

goods within U.P. and it has also made clear in its reply to the show cause notice that the applicant-firm do not require either form C or form 31. Therefore, the demand of security under the aforesaid section from the applicant-firm is unjustified. He pointed out that on 30th September, 1985, the assessing authority came to the conclusion that on account of large scale evasion made by the firm M/s. Ramesh & Company (hereinafter referred to as the old firm), the demand of security to the extent of Rs. 1 lac as bank guarantee under the aforesaid section should be made from the applicant-firm.

5. Aggrieved by the order of the assessing authority dated 30th September, 1985, the applicant preferred an appeal before the Assistant Commissioner (Judicial), Sales Tax, Allahabad Range, Allahabad, who by his order dated 18th January, 1986, allowed the appeal of the applicant in part and reduced the amount of security demanded from the applicant-firm to the extent of Rs. 50,000. The applicant being further aggrieved filed a second appeal before the Sales Tax Tribunal, Allahabad Bench, Allahabad, u/s 10 of the U.P. Sales Tax Act, which was dismissed by the Tribunal by its order dated 14th May, 1986. It is revealed from the order of the Tribunal aforesaid that there was a firm, namely, M/s. Ramesh & Company, which consisted of six partners and that the applicant-firm M/s. Mahadeo Traders, consists of seven partners and out of these seven partners of the applicant-firm six belong to the old firm. Admittedly, the applicant-firm was constituted on 2nd September, 1985, while the old firm, was dissolved on 13th September, 1985, that is subsequent to the constitution of the applicant-firm. The Tribunal while upholding the order of demand of security of the court below has taken into consideration the past history of the six partners of the applicant-firm, who were also partners in the old firm. It has also taken into consideration the quantum of business done by the applicant-firm within a short span of time. The Tribunal held that there is no reason for interfering with the order passed by the learned Assistant Commissioner (Judicial), Sales Tax, Allahabad Range, Allahabad and accordingly it upheld the finding recorded by him.

6. Learned counsel for the applicant Sri Bharatji Agarwal, argued that the demand of security could not be made by the authorities concerned on the basis of the past history of an old firm, which is legally a separate entity and that there is nothing on record to show that the applicant-firm has any concern with the old firm. He further argued that before demanding the security from the applicant-firm the authorities concerned should have taken into consideration the provisions of Section 8-C(3) of the U.P. Sales Tax Act, where a guidance has been given on the basis of which the security can be demanded from a firm.

7. Learned counsel for the applicant further urged that there was no material on the basis of which the said security could be demanded from the applicant-firm, except the material of the past history of the old firm, which is legally a separate entity and that the assessing authority has not given any basis of the estimate on the basis of which the said security could be demanded from the applicant-

firm, and, therefore, he urged that the order of the Tribunal demanding security from the applicant-firm is liable to be set aside. In this connection it is relevant to quote Section 8-C(3) of the U.P. Sales Tax Act and the same is quoted as below :

8-C(3). No dealer or the person concerned shall be required to furnish any security or additional security under Sub-section (2) by the assessing authority unless he has been given an opportunity of being heard and the amount of such security or additional security shall in no case exceed the tax payable, in accordance with the estimate of the assessing authority, on the turnover of the dealer for the assessment year in which such security is required to be furnished.

8. Under Sub-section (3) of Section 8-C of the said Act two conditions are laid down. First, the assessing authority has to give an opportunity to the dealer and secondly, such security and additional security shall in no case exceed the amount of tax payable, in accordance with the estimate of the assessing authority, on the turnover of the dealer for the assessment year, in which such security is required to be furnished.

9. It was urged on behalf of the assessee that in the present case, admittedly the applicant-firm was dealing in goods only within U.P. and the appellate authority has also recorded a finding that as per return filed by the assessee-applicant, no tax is payable as the assessee-applicant was dealing in goods only within U.P. and, therefore, no security could be demanded on the basis of the return filed by the assessee. On the other hand, argument has been made on behalf of the department that the security, which is demanded, is not on the basis of the taxability of the return filed by the assessee or the dealer but it is demanded on the basis of turnover of the assessee. It has been also urged that the purpose of Section 8-C(3) is to secure the interest of the Revenue. It has been further urged that one of the considerations could be the quantum of the turnover on the basis of which possible security could be demanded from the applicant-firm under the provision of Section 8-C(3). It appears that the court below, in fact, did not consider any of the basis on which the said security could be demanded from the present firm. The only possible basis which has been spelled out in the orders of the court below demanding the security from the applicant-firm is the past history of the firm M/s. Ramesh & Company. It seems that in the old firm large scale evasion of tax was found and since six out of seven partners of the applicant-firm were also partners of the old firm the authorities concerned taking into consideration the said fact fixed the security against the applicant-firm. Learned counsel for the applicant vehemently urged that these two firms being separate entities, the past history of the firm M/s. Ramesh & Company, could not be taken into account for the purposes of fixing the quantum of security against the applicant-firm, M/s. Mahadeo Traders. In this connection he relied upon a decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal-III v. Pigot Chapman & Company [1982] 135 ITR 621. This is a case under the Indian Income Tax Act. In this case it was held that where the

succeeding partners take over the assets and liabilities of the old firm and carry on the same business, there such a cases would be the cases of succession to the old business within the meaning of Section 25(4) of the Indian Income Tax Act and the succeeding firm shall be liable for the old firm on account of that. But where there is no such agreement of taking over the assets and liabilities of the old dissolved firm and when there is reconstitution of the firm under the Partnership Act, the new firm will have a separate legal entity. In the present case even this is not disputed that the applicant-firm came into existence on 2nd September, 1985, when the earlier firm M/s. Ramesh & Company was not even dissolved. Thus there could be no question of the new firm M/s. Mahadeo Traders succeeding to the earlier firm. In this case, for certain period both the firms, namely, M/s. Ramesh & Company and M/s. Mahadeo Traders, continued on the record as separate registered firms simultaneously. Therefore, on the facts and the circumstances of this case, the past history of the firm M/s. Ramesh & Company could not be taken into account against the applicant-firm for the purpose of fixing the said security u/s 8-C(3) of the U.P. Sales Tax Act. The authorities below have wrongly taken into consideration the past history of the firm M/s. Ramesh & Company, which was a separate entity, while fixing the security against the applicant-firm under the provisions of the aforesaid section of the said Act.

10. Learned counsel for the assessee further submitted that the applicant-firm in its written reply to the notice dated 25th October, 1985, has specifically stated that the applicant-firm has come into existence with effect from 2nd September, 1985 and further declared that the applicant-firm shall be dealing in goods only within U.P. and so the applicant-firm do not require either form C or form 31. The applicant, therefore, urged that in view of the aforesaid facts, no security could be demanded from the applicant-firm as there was no tax liability on the applicant-firm on the basis of the return filed by the applicant. This argument is without any force.

11. Learned counsel for the department, on the other hand, rightly pointed out that in the appellate order it has been shown that even the earlier firm M/s. Ramesh & Company also made declaration that they shall be dealing in goods only in U.P. but they made evasion of large scale inspite of such declaration. Therefore, mere making declaration to the above effect could not be sufficient. In the present case I have already expressed my view that the reference of the past history of the firm M/s. Ramesh & Company could not be made by the court below for the purposes of imposing security u/s 8-C(3) on the applicant-firm. While imposing security on the applicant-firm u/s 8-C(3) the court below should have taken into consideration the various ingredients mentioned in the said section. However, there seems some force in the submission made on behalf of the department that in fixing the security it is not only the return filed by the dealer that there is no liability of tax on the dealer that should be taken into consideration for the said purpose. In the present case, I find that the appellate authority did not take into consideration the various ingredients mentioned in the

aforesaid section. I am, therefore, of the opinion that the order passed by the Tribunal could not be sustained.

12. In the result the revision is allowed. The order dated 14th May, 1986, passed by the Sales Tax Tribunal, U.P., Allahabad Bench I, Allahabad, is hereby set aside and the case is remanded before the Sales Tax Tribunal, U.P., Allahabad Bench I, Allahabad, for deciding the question of imposition of security against the applicant-firm (M/s. Mahadeo Traders), after taking into consideration all the ingredients mentioned in Section 8-C(3) of the U.P. Sales Tax Act, afresh. Costs on the parties.