
(2010) 04 AHC CK 0076
In the Allahabad High Court
Case No : Writ Tax No. 427 of 2010

Maheshwari Agencies

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 10B, 13A(6), 15A, 42, 48(7)

Uttar Pradesh Trade Tax Act, 1948 — Section 15A(1)(1)

Uttar Pradesh Value Added Tax Act, 2008 — Section 54, 81, 81(6)

Citation : (2010) 35 VST 80

Hon'ble Judges : Rajes Kumar, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri N. C. Gupta, learned Counsel for the Petitioner and Sri S. P. Kesarwani, learned Additional Chief Standing Counsel for the Respondents.

2. The Petitioner has moved an application for amendment seeking to add certain facts and grounds in support of the grounds already taken in the writ petition for assailing the order impugned. The amendment sought is basically of legal nature and, as such, the same is allowed and the Petitioner is permitted to also argue the additional grounds taken therein.

3. By means of the present writ petition the Petitioner has challenged the order dated February 5, 2010 passed by the Deputy Commissioner, Commercial Tax, Ghaziabad imposing penalty u/s 15A(1)(1) of the U. P. Trade Tax Act (annexure 9 to the writ petition).

4. It has been contended by Sri Gupta that the impugned order is without jurisdiction, inasmuch as the U. P. Trade Tax Act has been repealed and has ceased to be in existence.

5. Sri S. P. Kesarwani, learned Additional Chief Standing Counsel in reply has submitted that the aforesaid Act has been replaced by the U.P. Value Added Tax

Act and Section 81(6) of the U.P. Value Added Tax Act read with Section 6 of the U.P. General Clauses Act saves the liabilities/penalties incurred in the repealed enactment.

6. No doubt the U. P. Trade Tax Act has been repealed with effect from January 1, 2008 but the said repeal is not a repeal simplicitor having the effect of obliterating completely from the record the said Act, as if it has never been passed. Ordinarily a repeal of an enactment means as if it has never come into existence. However, the situation is different where the repeal takes place with a saving clause simultaneously with re-enactment of a similar statute. In the aforesaid situation, it has to be examined as to what provisions or rights of the parties under the repealed enactment have been saved and further in what manner they have been re-enacted and brought about in the new Act.

7. The object of a saving clause is to ensure that the repeal of any provision or enactment may not result in creating a vacuum as it may cause serious difficulties as on one hand the pre-existing enactment may disappear while on the other hand the new enactment may not be in force or if in force may not contain sufficient provisions to deal with the rights, privileges, obligations, liabilities/penalties and remedies of the parties which may have accrued to them under the previous enactment. So the purpose of using the saving clause is to preserve certain existing rights, privileges, obligations, liabilities/penalties and remedies which may have accrued to any party under the repealed Act, from destruction.

8. It is only with the above intendment, a practice was developed to insert a saving clause while repealing an existing statute but when the said practice was not found to be very handy, instead of providing for a saving clause every time, a provision of general implication providing for a saving clause was made in the General Clauses Act. Section 6 of the U. P. General Clauses Act is on the same lines and in pari materia with the above provision of the General Clauses Act.

Section 81 of the U. P. Value Added Tax Act while providing for the repeal of the U. P. Trade Tax Act not only saves its applicability to certain extent in a given situation but also provides that notwithstanding the repeal the application of Section 6 of the U. P. General Clauses Act would not stand affected.

9. The aforesaid provisions of Section 81 of the U. P. Value Added Tax Act and Section 6 of the U. P. General Clauses Act reads as follows:

81. Repeal and saving- (1) The Uttar Pradesh Trade Tax Act, 1948 (U. P. Act No. XV of 1948) (hereinafter in this section referred to as the repealed enactment) is hereby repealed.

(2) Notwithstanding such repeal,-

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any action taken under the

repealed enactment, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made granted, done or taken under the corresponding provisions of this Act.

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, shall not be affected and manufacturing units enjoying benefit of exemption from payment of tax u/s 4A of the repealed Act or the units enjoying facility of moratorium for payment of tax u/s 8(2A) of the said Act shall be entitled to claim moratorium for payment of tax in accordance with provisions of Section 42.

(3) Any officer, authorised by the Commissioner under the repealed enactment, to exercise powers u/s 10B and Sub-section (6) of Section 13A thereof, shall be deemed to have been authorised by the Commissioner to exercise such powers u/s 56 and Sub-section (7) of Section 48 respectively.

(4) Any order made or direction issued by the State Government or by the Commissioner under the repealed Act, for carrying out purposes thereof, to the extent the same are not inconsistent with the provisions of this Act, shall be deemed to have been issued under the provisions of this Act.

(5) Any security or additional security, furnished under the provisions of the repealed Act, shall be deemed valid for the purposes under this Act only upon furnishing an undertaking from the surety to this effect in the prescribed form and manner within thirty days from the date of the commencement of this Act:

Provided that, in appropriate cases, the assessing authority may extend the time for furnishing undertaking from sureties.

(6) The mention of particular matters in this section shall not be held to prejudice or affect general application of Section 6 of the Uttar Pradesh General Clauses Act, 1904, with regard to the effect of repeals."

6. Effect of repeal.-Where any (Uttar Pradesh) Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any remedy, or any investigation or legal proceeding commenced

before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.

10. A plain reading of the aforesaid provisions clearly demonstrates that even though the U. P. Trade Tax Act as a whole has been repealed but the right, privilege, obligation, liability/penalty accrued or incurred to any party under the repealed enactment stands unaffected and such right, privilege, obligation, liability/penalty accrued or incurred to any party continues to be enforced as if the repealing Act has not been implemented. It is manifest that by virtue of Section 6 of the U. P. General Clauses Act, the right, privilege, obligation, liability/penalty accrued or incurred to any party under the repealed enactment stands protected unless a contrary intention is expressed or implied in the later enactment to obliterate the earlier state of law.

11. In the instant case, no contrary intention is shown to have been expressed, rather Section 54 of the U. P. Value Added Tax Act in the same manner, as provided in the repealed Act for imposition of penalty and, as such, the power to impose penalty envisaged u/s 15A of the repealed Act is traceable even under the new Act and is exercisable in the same manner. In effect the repeal of the U. P. Trade Tax Act in so far as the imposition of penalty is concerned is a misnomer in view of simultaneous re-enactment of the U. P. Value Added Tax Act which also contains the similar power of imposing penalty thus rendering the repeal insignificant.

12. In an identical controversy in relation to A. P. General Sales Tax Act, 1957 which came up for consideration before the apex court in Gammon India Ltd. Vs. Spl. Chief Secretary and Others, on its being repealed by the A. P. Value Added Tax Act, 2005, which also contained virtually an identical provision regarding repeal and saving as in the U. P. Value Added Tax Act, a three-judge Bench after consideration in depth of the entire case law on the subject held that whenever there is a repeal of an enactment followed by a fresh legislation on the same subject the consequences laid down in Section 6 of the General Clauses Act will follow unless a different intention is expressed in the repealing statute. It was thus further held that the simultaneous repeal of the A. P. General Sales Tax Act and the enactment of the Value Added Tax Act clearly saved the earlier provisions and consequently the rights and liabilities accrued or incurred under the repealed Act which would continue even after the repeal.

13. Sri Gupta has placed reliance upon Udai Singh Dagar and Others Vs. Union of India (UOI) and Others, but we fail to understand how the said authority is of any help to him as it only reiterates and follows the principle of law laid down in Gammon India Ltd. Vs. Spl. Chief Secretary and Others, and different interpretation on its basis can be culled out.

14. In so far as the validity of the penalty order is concerned, we do not consider it necessary to go into the merits of the same as undisputedly the Petitioner has a statutory remedy of assailing the same in appeal.

15. In view of aforesaid facts and circumstances, we are of the considered opinion that no case for interference with the impugned order of penalty dated February 5, 2010 is made out, inasmuch as the U. P. Value Added Tax Act while repealing the U. P. Trade Tax Act keeps alive the old rights, liabilities, privileges, obligations, liability/penalty and the remedies under the repealed enactment. However, the Petitioner is at liberty to assail the impugned order in an appropriate statutory forum on the merit.

16. The writ petition as such has no substance and is dismissed.