

(2005) 04 AHC CK 0070

In the Allahabad High Court

Case No : Trade Tax Revision No"s. 40 and 172 of 1997

Malleable Pipe Fitting Industries

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 21, 21(1), 21(2), 21(4)

Citation : (2005) 04 AHC CK 0070

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 4th January, 1997 relating to the assessment year, 1991-92, both under the U.P. Trade Tax Act and Central Sales Tax Act.

2. Short question involved in both the revisions is that whether the assessment order passed on 08.12.1995 by the assessing authority in pursuance of the order of the first appellate authority dated 26.04.1994 were within the limitation or barred by limitation.

3. Brief facts of the case are that for the above assessment year, both under the U.P. Trade Tax Act and Central Sales Tax Act, two assessment orders have been passed on 28.02.1994. Against Commissioner (Judicial), Meerut. Both the appeals were allowed and the matter were remanded back to the assessing authority vide order dated 26.04.1994. Said order was received by the assessing authority on 07.05.1994. Against the order of Assistant Commissioner (Judicial) dated 26.04.1994 Commissioner of Trade Tax filed appeals before the Tribunal. Tribunal by the order dated 26.05.1995 dismissed both the appeals. Order of the Tribunal has been admittedly served upon the assessing authority on

28.06.1995. During the pendency of the appeals before the Tribunal, on application by the Commissioner of Trade Tax, on 22.02.1995 stay orders were passed and proceedings were stayed. The stay orders continued upto 26.05.1995, the date of passing the orders in appeals.

4. Herd learned counsel for the parties.

5. Learned counsel for the applicant submitted that the order dated 08.12.1995 is barred by limitation, in as much as u/s 21 (4) of the Act, limitation to pass the order in pursuance of the appellate order was one year from the date of receipt of order, and even if the period during which the stay order existed are excluded, the limitation to pass order was upto 22.09.1995 while the assessment orders were passed on 08.12.1995. He further submitted that the proviso to Section 21 (6) of the Act, which has been added by U.P. Act No. 3 of 1995 w.e.f. 28.09.1994 is not applicable to present case and the law as it stood on the date of passing, the appellate order on 26.04.1994 be made applicable, when the proviso to Section 21 (6) of the Act was not available. Learned Standing Counsel submitted that in view of the proviso to Section 21 (6) of the Act, the orders were passed within the limitation. He submitted that in view of proviso to Section 21 (6) of the Act, limitation was six months from 28.06.1995 the of receipt of order of the Tribunal and, therefore, the orders passed on 08.05.1995 were within time. He submitted that the proviso to Section 21 (6) of the Act was added w.e.f. 28.09.1994 by U.P. Act No. 31 of 1995 much before expiry of period of limitation of one year and, therefore, it was applicable to the case of the applicant. In support of his contention he relied upon the decision of the Apex Court in the case of Additional Commissioner (Legal) v. Jyoti Traders, reported in 1999 NTN (14), 12.

6. Having heard learned counsel for the parties, I have perused the order of Tribunal.

7. I do not find any force in the argument of learned counsel for the applicant. The relevant dates referred to above are not in dispute. Section 21 (4) and 21 (6) of the Act reads as follows:

"(4) If an order of assessment is set aside and the case is remanded for re-assessment by any authority under the provisions of this Act or by a competent Court, the order of re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order remanding the case, or by December 31, 1982, whichever is later.

(6) Where the proceedings for assessment or re-assessment for any assessment year remains stayed under the orders of any Court or authority, the period commencing on the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating the stay, shall be excluded in computing the period of limitation provided in this section:

Provided that if in so computing, the period of limitation comes to less than six

months, such assessment or re-assessment may be made within six months from the date of receipt by the assessing authority of the order vacating the stay."

8. As per the proviso to Section 21 (6) of the Act limitation for passing the order was six months from 28.06.1995 when the order of Tribunal was served upon the assessing authority and, therefore, the assessment orders passed on 08.12.1995 were within time. The argument of learned counsel for the applicant that the proviso to Section 21 (6) of the Act, which was introduced by U.P. Act No. 31 of 1995 w.e.f. 28.09.1994 is not applicable in the present case and the law as it stood on the date of passing of the appellate order on 26.04.1994 when the order passed by the Assistant commissioner (Judicial) can not be accepted. Admittedly, as per the law existed prior to introduction of proviso to Section 21 (6) of the Act by U.P. Act No. 31 of 1995. Thus, on the date of the introduction of proviso by U.P. Act No. 31 of 1995, limitation was not expired and, therefore, the amended provision was applicable. The Apex court in the case of Additional commissioner (Legal) v. Jyoti Traders, reported in 1999 NTN (14), 12 held that even in the case where the period of Limitation expired before the amendment, the amendment applies. Apex Court held as follows:

"Under Sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this Section no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to Sub-section (2) under which Commissioner of Sales Tax authorizes the assessing authority to make assessment or reassessment after the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a charge of opinion. The proviso came into force w.e.f. February 19, 1991. We do not think that Sub-section (2) and the proviso added to it leave, anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorize making assessment or reassessment after the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under Sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment u/s 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be re-opened up to March 31, 1994. Authorisation by the commissioner of Sales Tax and completion of Assessment or reassessment under Sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorization by the commissioner of Sales tax, its service on the Assessee is not a condition precedent to re-open the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the

respondents, the proviso added to Sub-section (2) of Section 21 of the Act becomes redundant. Commencement of Act can be different then the operation of the Act though sometimes both may be the same. Proviso now added to Sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sale Tax not to reopen the assessment if period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21 (2) of the Act does not control its retrospective operation. Earlier the assessment/re-assessment could have been completed without four years of that particular assessment year and now by the amendment adding provisos to Section 21 (2) of the Act it is eight years. The only safeguard being that it is after satisfaction of the Commissioner of Sales Tax. The proviso is operative from February 19, 1991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to previous eight assessment years. We need not refer to the provisions of Income Tax Act to interpret provisos to Section 21 (2) language of which is clear and unambiguous and so is the intention of Legislature. We are, thus, of the view that High Court was not right in quashing the sanction given by the Commissioner of Sales Tax and notices issued by the Assessing Authority in pursuance thereto."

9. For the reasons stated above, both the revisions have no merit.

10. In the result, both the revisions fail and are accordingly dismissed.