
(2011) 12 DEL CK 0049
In the Delhi High Court
Case No : ST. Application 10 of 2010

Mauji Ram Vijay Kumar

APPELLANT

Vs

Commissioner of VAT

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Delhi Sales Tax (Second Amendment) Act, 2000 — Section 2, 23(7)
Delhi Sales Tax Act, 1975 — Section 48
Delhi Value Added Tax Act, 2004 — Section 81
Limitation Act, 1963 — Section 14

Citation : (2012) 47 VST 441

Hon'ble Judges : Sanjiv Khanna, J; R.V. Easwar, J

Bench : Division Bench

Advocate : R.C. Kathuria, Mr. Vasdev Lalwani and Mr. D.V. Kapoor, for the Appellant; Kailash K. Ahuja, for the Respondent

Judgement

Sanjiv Khanna, J.—The present appeal u/s 81 of the Delhi Value Added Tax, 2004 impugns order dated 19th August, 2010 passed by the Appellate Tribunal, Value Added Tax. By the impugned order the Tribunal has allowed the application u/s 48 of the Delhi Sales Tax Act, 1975 (Act, for short) filed by the revenue and has reversed their earlier order dated 4th July, 2008.

2. Having heard the counsel for the parties, the following substantial question of law is framed:-

Whether the Tribunal was justified in exercising power u/s 48 of the Delhi Sales Tax Act, 1975 and review their earlier order dated 4th July, 2008?

3. With the consent of counsels, the appeal is taken up for hearing and disposal.

4. The assessment year in question is 1984-85. After the original assessment order was framed on 17th March, 1989, there have been several rounds with the appellate authorities remanding the matter to the Assessing Officer. The last order of remand was passed by the Tribunal in Appeal no. 669/STT/99. We are

not referring to the date of the order passed by the Tribunal as there is dispute about the said date. This aspect has been examined below. Pursuant to the said remand order, the Assessing Officer passed an order dated 25th May, 2004. This order was challenged by the appellant before Deputy Commissioner, Sales Tax, New Delhi without success.

5. The appellant thereupon filed an appeal, which was allowed by the Tribunal vide order dated 4th July, 2008. The Tribunal, inter alia, held that the limitation period mentioned in the first proviso to Section 23(7) was applicable. The order passed by the Tribunal in Appeal no. 669/STT/99 was dated 12.11.2001 and the assessing authority had passed the order on remand on 25.5.2004, which was beyond the prescribed time of one year and nine months. Hence, the remand assessment was barred by limitation. The appeal was allowed and the remand assessment quashed.

6. It is apparent from the above, that there was dispute whether or not the first proviso to Section 23(7) which was inserted w.e.f. 27.8.2001 vide Section 2 of the Delhi Sales Tax Act (Amendment) Act, 2000 was applicable to the remand assessment. The Tribunal held that the said proviso was applicable.

7. The respondent-revenue thereafter filed an application for rectification u/s 48 of the Act. In the application it was stated that the order in Appeal no. 669/STT/99 was not dated 12.11.2001 but the same was issued after 31.5.2002 as the Judicial Member had signed the order on the said date. Further the dispatch vide endorsement no. SST/01/1054 was dated 6.6.2002. Thus and therefore the Tribunal had incorrectly taken the date of order passed by the Tribunal in Appeal no. 669/STT/99 as 12.11.2001 instead of 6.6.2002 or 31.5.2002. The contention of the revenue was that this was an error which was apparent and, therefore, amendable to rectification u/s 48 of the Act.

8. By the impugned order the Tribunal has accepted and held that the order passed by the Tribunal in Appeal no. 669/STT/99 was dated 31.5.2002. The Tribunal has further held that if the order of the Tribunal in Appeal no. 669/STT/99 is taken as dated 31.5.2002, then the assessment order passed on remand dated 25.5.2004 is within limitation.

9. Thus the Tribunal has accepted and held that the earlier order in Appeal no. 669/STT/99 is dated 31.5.2002 and the date 12.11.2001 mentioned in their order dated 4.7.2008 is a mistake or error apparent from the record.

10. We are in agreement with the Tribunal that the aforesaid rectification could have been carried out in exercise of power conferred u/s 48 of the Act and the Tribunal while making the said rectification did not accede to their jurisdiction. To reach the said conclusion we have examined the order passed by the Tribunal in Appeal no. 669/STT/99, photocopy of which has been placed on record. It shows that the said order was signed by Mr. A.P. Aggarwal, Member on 31.5.2002 and was dispatched on 6.6.2002.

11. However, the Tribunal thereafter in the order dated 19.8.2010 has examined and interpreted the proviso to Section 23(7) of the Act and has held that the said proviso would not be applicable and the period of limitation described for completion of assessment proceedings on remand was two years u/s 23(7). In the order dated 19.8.2010 it has been observed in paragraphs 14 and 15 as under:-

14. A careful perusal of Section 23(7) of the Local Act reproduced as above shows that this provision is in two parts. The first part is constituted by the words "No assessment under the provisions of sub-sections 1 to 5 shall be made after the expiry of two years, and no assessment under the provisions of sub-section (6) shall be made after the expiry of six years" and second part of this provision is constituted by the words "from the end of year in respect of which or part of which the tax is assessable". The first proviso to section 23(7) pertains to the first part of section 23(7) and the second proviso pertains to the second part of section 23(7) of the Local Act. So far as the explanation is concerned, this explanation refers to the revised limitation period and this revised limitation period is what has been laid down by first proviso.

15. Before proceeding further one contention of Id. Counsel for the appellant needs to be discussed. He submitted that in this case the remanded assessment was finalized in consequence of order of this Tribunal passed after 1999-2000 and so although the remanded assessment pertains to the Assessment Year 1984-85 still the period of limitation for finalizing the remanded assessment has to be taken as one year & nine months which was the limitation for the assessment year 1999-2000 as per proviso to sec. 23(7) of the Act. We have carefully considered this submission. In our considered view this submission is without merit because this submission amounts to reading something in the statute which is not there. Settled law is that a statutory enactment has to be construed according to the plain natural meaning of its language and no word can be added, altered or modified. Further in a taxing statute, one has to look merely at what is clearly said and there is no room for any intendment. Thus, when both the provisos to sec. 23(7) of the Act do not refer to or apply to the assessment year 1984-85 then whatever provision has been made in these provisos for other assessment years, cannot be held applicable to the assessment year 1984-85. For the same reasons various amendments and circulars, noted in the foregoing paragraphs, are also not applicable to the framing of the remanded assessment for the assessment year 1984-85.

12. Learned Counsel for the appellant has drawn our attention to the findings recorded by the Tribunal in the order dated 4.7.2008 on the same aspect in paragraph 8, which for the sake of convenience is reproduced below:-

We have given our anxious consideration to the rival contentions and have closely perused the provisions of Section 23(7) of the Act, particularly the specific provisions dealing with assessment made in consequence of, or to give effect to the orders of the Appellate authority. Evidently the explanation attached

to the sub-section is explicit in the sense that after the commencement of the "Act 2000" the limitation period of one year and nine months only is applicable in the instant case and the period of one year and nine months is to be reckoned from the date of the orders passed by the Tribunal pursuant to which the Ld. Assessing Authority had framed the Assessment. Admittedly in this case, the Tribunal's Order is dated 12.11.2001 and the impugned Orders passed by the Ld. Assessing Authority pursuant to the remand order passed by the Tribunal is dated 25.05.2004, which obviously is much beyond the prescribed period of one year and nine months. Hence by all means it becomes barred by limitation. This being so, we are left with no alternative but to accept the appeal and quash the impugned order.

13. In paragraph 8 of the order dated 4.7.2008, the Tribunal had examined Section 23(7) and the proviso thereto and interpreted the said provision. It was held that the Assessing Officer should have passed an order on remand within one year and nine months. This is a clear and categorical finding in the order dated 4.7.2008. The said finding may be erroneous or incorrect but is not a mistake that can be rectified in exercise of jurisdiction u/s 48 of the Act. It can be made subject matter challenge in an appeal and can be correct by the appellate forum only. The Tribunal in the impugned order dated 19.8.2010 has virtually re-examined the Section 23(7) and the proviso thereto and reinterpreted the same and held that their earlier decision was incorrect. This is not permissible and outside the scope and ambit of power u/s 48, which is limited to correction of mistake apparent from the record. Debatable issues on which two views are possible cannot be made subject matter of rectification. Section 48 is not an appellate power. Thus even if the order passed by the Tribunal in Appeal no. SST/01/1054 is taken as dated 31.5.2002 or 6.6.2002, the Tribunal could not have recalled the order dated 4.7.2008 in entirety and again interpreted Section 23(7) and the proviso. In their order dated 19.8.2010, the Tribunal has acted beyond their power u/s 48 of the Act.

14. The question of law is accordingly answered in favour of the appellant and against the revenue. It will be open to the Revenue to challenge the order dated 4.7.2008 in accordance with law and if necessary by moving an application u/s 14 of the Limitation Act, 1963. The appeal is disposed of. No costs.