(2000) 08 DEL CK 0076

In the Delhi High Court

Case No : Civil Writ Petition No. 32 of 2000

M/s. Calcom Electronics Ltd. APPELLANT

Vs

The Sales Tax Officer and Others RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 57 DRJ 544

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. H.L. Taneja, for the Appellant; Mr. M.K. Arora, for the Respondent

Judgement

Arijit Pasayat, C.J.—Petitioner is a dealer registered under the Delhi Sales tax Act 1975 (in short the ''Act'') and the Central Sales tax Act, 1956 (in short the ''Central Act''). Penalty was levied on it for late filing of returns for the month of February 1996 under the aforesaid Acts. Such imposition was affirmed by Additional Commissioner of Sales tax III (Revision). Such levy is challenged in this petition.

2. Brief reference to the factual aspects would be necessary for adjudication of the issues involved.

An application was filed under Rule 48 of the Delhi Sales tax Rules, 1975 (for short the ''Rules'') before the Commissioner of Sales tax ,Delhi (in short the ''Commissioner'') praying for extension of time to pay the tax due for the month of February 1996. Prayer was made for grant of time till 31st March 1996. Commissioner granted extension of time for payment of tax by order dated 22nd March 1996 up to 25th March 1996. Order passed by the Commissioner reads as follows:

"They may pay February tax (Rs. 13.62 lacs) by 25th March 1996 and advance tax for March by 27th March."

In reality payment for February, 1996 was made on 30th March 1996. Sales tax Officer initiated proceedings for imposition of penalty on the ground that tax was not paid within the time permitted. Considering the quantum of tax involved i.e. Rs.1,47,853/ and Rs.12,15,130 under the State and the Central Acts respectively, penalties of Rs. 50,000/ and Rs. 4,00,000/ respectively were imposed. It is to be noted that in response to the notices issued petitioner took a stand that there was a small delay in making the payment and in fact before the expiry of the financial year the payments have been made. Petitioner also took the stand that on account of financial stringencies the payments could not be made by the time stipulated by the Commissioner. This Explanation did not find acceptance by the Sales tax Officer who passed orders holding that the Explanation was not satisfactory and levy of penalty was called for. Order as recorded in the order sheet reads as follows:

"In spite of the extension given by the learned Commissioner, Sales Tax to pay tax for the month of Feb., 96 by 25th March, 96, he failed to comply with the orders of Hon''ble Commissioner, Sales Tax and paid the tax on 30.3.96.

The dealer failed to deposit advance tax for the month of March, 96 by the stipulated time as ordered by the Hon''ble Commissioner, Sales Tax.

Since the tax has been paid late and return also filed late i.e. on 30.3.96, the interest for late payment of tax will be charged at the time of assessment but penalty for late filing of return is imposed after considering the reason in the reply. A penalty of Rs. 50,000/- (Rupees fifty thousand only) under local Act and Rs. 4,00,000/- (Rupees four lacs only) under the Central Act is imposed."

But orders communicated were in cyclostyled forms about which we shall deal later on. Revisions filed u/s 47 of the Act and u/s 9(2) of the Central Act did not bring any relief to the petitioner. Revisional Authority was of the view that since amounts have been collected from the parties, there was no scope for taking the stand that financial stringencies were there.

3. According to learned counsel for the petitioner, the Sales tax Officer did not consider the Explanation offered and merely stating that the Explanation was not satisfactory, levied penalty. He also took into account no deposit of advance tax as directed by Commissioner to be a factor to levy penalty. These according to him shows non application of mind, and/or consideration of irrelevant materials. It is additionally pleaded that the authorities have taken a very serious note because Commissioner''s direction to pay tax for the month of March 1996 was not complied with. O[H Revisional authority fell into errors by holding that tax having been collected from the customers there was no question of any grant of time. When statute provides a particular period during which payment can be made any insistence of payment for a period which has not fallen due cannot be a ground to draw adverse inference. Further, when statute itself provides for extension of time, view of revisional authority is irrational. Penalty levied is heavy and exorbitant when considered in the background of period of delay. The

order communicated in the cyclostyled from itself shows non application of mind, particularly when there was no mention of any order stated to be passed in the order sheet .

4. Learned counsel for the Revenue on the other hand submitted that the Explanations offered by the petitioner were considered in the proper perspective and even though the period of default may be very small, considering the quantum of tax involved, penalty does not appear to be unreasonable.

5. On consideration of the materials on record, we find that the petitioner was required to make payment of the admitted taxes for the month of March 1996. The delay also is not shown to be very long and in any event payments were made before the financial year ended. The delay in fact is only of four days. The Explanations offered by the petitioner do not appear to have been considered in its proper perspective, and the quantum of penalty levied is a pointer in that regard. Unless the conduct is contumacious and there is a deliberate defiance of statutory provisions, penalty in a given case may not be imposed even though statute provides for imposition of penalty.

6. Authorities have taken serious note of petitioner''s noncompliance of commissioner''s direction to deposit advance tax .That can not be a ground to treat petitioners'' delayed payment for February 1996 to be without reasonable excuse. Though passing cyclostyled orders do not per se make such orders vulnerable, yet when they contain clearly contradictory statements like "The Explanation furnished is/is not satisfactory" or "He was directed to appear in person or through an agent/representative on .....but he failed to appear on the stipulated date nor any Explanation has been filed".

"In response to notice Shri P.P. Singh appeared and explained that delay in filing returns/reasons for not filing return was due to financial crisis...........", as is the case at hand, shows non application of mind. Even if something is recorded in the order sheet ,it is of no consequence, unless it is communicated to the assessee.

7. We, Therefore, think it appropriate to remit the matter back to the Sales tax Officer to consider the Explanations offered by the petitioner, surrounding circumstances indicated and take a decision whether levy of any penalty is called for, and if it is called for the quantum thereof. The original orders imposing penalty Along with the revisional order confirming the same are quashed.

8. Petition is allowed to the extent indicated.

