
(1973) 03 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7573 of 1972

Narain Vegetable Products

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 26-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) 32 STC 439

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : B.D. Madhyan, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution.

2. The petitioner is a limited company and is engaged in the business of manufacture and sale of vanaspati product at Sitapur. For the first quarter (April to June) of the assessment year 1972-73, the petitioner company submitted its return through registered post on 31st July, 1972, disclosing a turnover of Rs. 1,03,94,207.94 on which a tax of Rs. 7,78,228.90 was payable. The petitioner did not deposit the admitted tax before or at the time of filing of the return but sent an application along with the return praying for two months' time for depositing the tax. The second respondent, the Sales Tax Officer, Sitapur, by his letter dated 22nd August, 1972, allowed the petitioner to deposit the admitted tax by 30th August, 1972. The petitioner deposited in two installments a sum of Rs. 5,71,800.80 before 30th August, 1972. The balance of Rs. 2,06,428.10 was deposited by the petitioner in two installments on 22nd September, 1972 and 29th September, 1972. The Sales Tax Officer has levied upon the petitioner a penalty of Rs. 50,000 for not depositing the sum of Rs. 2,06,428.10 within the time allowed by his order dated 16th November, 1972. This order has been challenged in this petition.

3. The penalty has been imposed u/s 15-A(1)(a) of the U.P. Sales Tax Act. Under that provision, a penalty can be imposed "if the assessing authority is satisfied that any dealer has without any reasonable cause failed to furnish the return of his turnover which he was required to furnish u/s 7, 7-A or 18, or has, without reasonable cause, failed to furnish it within the time allowed and in the manner prescribed". Obviously, this provision applies where a dealer fails to file the return or fails to file it within the time allowed or in the manner prescribed. It is not the case of the department that either no return had been filed or that the return filed was not in the prescribed manner. The failure to deposit the admitted tax cannot be attributed to non-filing of return. The two requirements, one of filing the return and the other of depositing the admitted tax, are distinct and separate. We have already held in Sales Tax Reference No. 264 of 1971, Commissioner of Sales Tax Vs. Sheo Nath Rai Kanhaiya Lal, , decided on 16th March, 1973, that the failure to pay the admitted tax within the statutory period does not in any way affect the validity of the return nor does it render the return as not filed in a prescribed manner. Thus, Section 15-A(1)(a) has no application to the present case and has wrongly been pressed into aid by the Sales Tax Officer.

4. It was then argued by the learned standing counsel that Clause (c) of Section 15-A(1) would be applicable. The material portion of that provision reads :

15-A. (1) If the assessing authority is satisfied that any dealer-

(a)...

(b)...

(c) has without reasonable cause, failed to pay, within the time allowed the tax assessed on him, he may direct that such dealer shall pay, by way of penalty....

5. This provision, no doubt, contemplates levy of penalty for non payment of tax, but the tax, the non-payment of which would attract this provision is the tax assessed. Section 7 deals with the assessment of tax. Sub-section (2) provides that if the assessing authority, after such inquiry, as he considers necessary, is satisfied that any returns submitted under Sub-section (1) are correct and complete he shall assess the tax on the basis thereof. Likewise, Sub-section (3) provides that if no return is submitted by the dealer under Sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof. Thus the tax assessed is that tax which is determined payable by the assessing authority u/s 7(2) and 7(3). Admittedly, in the instant case, no assessment order has been passed and the petitioner has not committed a default of non-payment of tax assessed on him. He has committed a default, if any, in respect, of tax which he was required to pay voluntarily u/s 7(1-A) read with Rule 41(2), which requires a dealer to deposit tax on the basis of the

turnover shown in the return. Section 7(1-A) or Rule 41(2) do not involve any process of assessment. The tax payable under this provision is payment in advance against the tax which is ultimately assessed by the assessing authority under Rule 41(5). Such a tax cannot be said to be tax assessed. Non-payment of admitted tax may render him liable to provisional assessment under Rule 41(3) or to prosecution u/s 14(1)(e) (for acting in contravention of the provisions of the Act or the Rules framed thereunder), but no penalty can be imposed upon him under any of the Clauses of Section 15-A of the Act, which obviously makes no provision for levy of penalty for the kind of default committed by the petitioner. The impugned order is thus clearly unauthorised and without jurisdiction.

6. Accordingly, the petition is allowed. The order dated 16th November, 1972, passed by the Sales Tax Officer, Sitapur, levying a penalty of Rs. 50,000 on the petitioner is quashed. The petitioner is entitled to the costs of this petition.