
(1995) 08 AHC CK 0047
In the Allahabad High Court
Case No : Trade Tax Revision No. 466 of 1995

Nath Enterprises

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 11(8), 12A, 21(4), 3A

Citation : (1996) AWC 244 Supp

Hon'ble Judges : K.L. Sharma, J

Bench : Single Bench

Advocate : Piyush Agarwal, for the Appellant;

Judgement

K.L. Sharma, J.—I have heard Sri Piyush Agarwal learned Counsel for the applicant as well as Sri R. D. Gupta learned standing counsel for the opposite party.

2. After hearing the submissions of the learned Counsel for the parties, I dispose of this revision finally at the admission stage.

3. The applicant has approached the High Court second time in the revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as the Act which means the U.P. Sales Tax Act also) against the judgment and order dated 30.6.95 passed by the Trade Tax Tribunal. Bareilly Bench-II, Bareilly in second appeal No. 148 of 1991, (1974-75) whereby the Tribunal has partly allowed the appeal, maintained the tax liability, but exempted the applicant from payment of the interest on the amount of the tax.

4. The applicant was a registered dealer under the Act and was carrying on business of purchase and sales of empty tins. For the assessment year 1974-75, the Sales Tax Officer imposed the tax liability on him by his order dated 7.3.1979 by rejecting the claim of the applicant that he had made purchases of the empty tins from different places like Kashipur, Ram Nagar, Haldwani, etc., within the State of Uttar Pradesh. His first appeal was dismissed but the second appeal was

allowed by the Tribunal on 2.1.1987 and the tax liability on the purchases made from outside the State was set aside and the tax deposited by the applicant was ordered to be refunded. However, the Commissioner of Sales Tax U.P. filed revision No. 337 of 1987 in this Court which was allowed on 3.8.88 and the case was remanded to the assessing authority for reconsideration of the case on merits by giving an opportunity to the applicant to prove the purchases made from inside the State and by making necessary inquiry from the petty dealers of Uttar Pradesh from whom the purchases were made by the Assessee. Consequent upon this order of remand by this High Court, the learned Tribunal passed necessary directions u/s 11(8) of the Act on 9.5.1989 which was received by the assessing authority on 30.6.89. The assessing authority consequently called upon the claimant to provide full address and particulars of the petty dealers from whom he had made purchases. The notices were issued by the assessing authority by registered post as well as by messenger on the addresses given by the Assessee but the registered notices were received back as undelivered and the messenger reported that the persons at the given addresses were not traceable. The assessing authority thereafter proceeded to pass the assessment order on 8.6.90 imposing tax liability of Rs. 83,014.00 and also levied interest on the Assessee. The first appeal against this order was, however, dismissed by the Assistant Commissioner (Judicial). The learned Tribunal partly allowed the appeal confirming the levy of tax, but deleting the levy of interest. The Tribunal also rejected the plea of limitation urged by the Assessee.

5. In this revision, the learned Counsel for the applicant has firstly contended that the assessment order passed in pursuance of the remand order is barred by limitation of one year u/s 21(4) of the Act. The Tribunal has also gone into this question. It has been found on facts that the remand order was passed by the High Court in S.T.R. No. 337 of 1987-88. The Tribunal passed the consequential order u/s 11(8) of the Act on 9.5.89. The order " passed by the Tribunal was served on the assessing authority on 30.6.89. The assessing authority passed a fresh order of assessment on 8.6.1990. in view of these facts, the fresh order of assessment on remand was passed within one year of the date of the receipt of a certified copy of the remand order passed by the Tribunal u/s 11(8) of the Act. In this way, the assessing authority has complied with the order of remand within one year of the date of the receipt of the orders and as such the impugned order of imposition of tax is valid and is not barred by limitation of one year as laid down by Sub-section (4) of Section 21 of the Act. I confirm the finding recorded by the Tribunal on this point.

6. Learned Counsel for the applicant has secondly contended that the assessing authority has committed Illegality by Imposing the tax on the turnover of the purchases of empty tins made from Inside the State of Uttar Pradesh. I have perused the Impugned judgments and I find that the assessing authority had issued the notices at the addresses of the petty dealers whose addresses had been provided by the Assessee, not only by registered post but also through messengers. These notices were not served on the petty dealers. The registered

notices were returned undelivered and the process server reported that the persons were not traceable at the given addresses and on local queries made from the Inhabitants of the place, it was reported that no such person was doing any business at the place. In these circumstances, the assessing authority was not able to make proper Inquiries from the petty dealers from whom the Assessee had made purchases during the assessment year 1974-75. The Assessee had not furnished any other material before the assessing authority to prove the fact that the purchases were made by him from the petty dealers inside the State of Uttar Pradesh. The assessing authority, therefore, disbelieved the Assessee and rejected his claim of purchases within the State and presumed that the purchases were made from outside U.P. and were liable to tax. He accordingly passed the impugned order of assessment.

7. The learned standing counsel has invited attention to the provisions of Section 12A of the Act whereby the burden of proof has been laid on the Assessee to prove facts within his special knowledge and to prove such circumstances in which he claims exemption from tax.

8. Section 12A of the Act provides as follows:

12A. Burden of proof.--(1) In any assessment proceedings, when any fact is specially within the knowledge of the Assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of circumstances bringing the case within any of the exceptions, exemptions or relief mentioned in Section 3A, Section 3D, Section 4, Section 4A or Section 4B or Section 7D shall lie upon him and the assessing authority shall presume the absence of such circumstances.

(2) Where any dealer claims that he is not liable to tax u/s 3D in respect of any transaction of purchases:

(a) any declaration made or certificate issued by him admitting to be the first purchaser and accepting the liability to pay (trade tax on purchase of goods) shall be conclusive evidence of his liability to pay the (trade tax on purchase of goods) in respect of the transaction specified in such declaration or certificate;

(b) the burden of proving the existence of facts and circumstances on the basis of which he claims such exemption from liability shall lie upon him and, in particular, the dealer shall also be liable to disclose full particulars of the person from whom he has purchased the goods in such transaction of purchase; and

(c) no such claim shall be accepted unless reasonable opportunity of being heard has been given to the person whose particulars are disclosed by such dealer.

A reading of the provision reveals that a rule of evidence has been laid down by the Legislature providing in the first place, that a fact which is specially within the knowledge of the dealer has to be established by him. Thereafter, it contemplates that apart from the general provision, in cases which have been enumerated therein, the burden of proving the existence of circumstances

bringing the case within one of the provisions (mentioned in Section 12A) shall be upon the dealer and further that a statutory presumption shall be raised by the assessing authority about the absence of those circumstances. In other words, the assessing authority is under an obligation statutorily to presume the absence of circumstances bringing the case of a dealer within Section 3A unless that presumption is displaced by the dealer by establishing those circumstances which bring his case within that provision.

9. This question of burden of proof came up for consideration before a Division Bench of this Court in the case of Lajja Ram Mahesh Dutt, Agra v. Commissioner of Sales Tax, U.P., Lucknow 1974 UPTC 472. In the cited case, the fact to be determined was whether the match boxes sold by the Assessee which were admittedly manufactured outside the State of U.P., were imported by the Assessee. This fact was within the special knowledge of the Assessee who claimed exemption from tax, but the Assessee did not produce either the purchase vouchers or indicate the addresses of the selling dealers from whom he purchased the match boxes. It was held that he had failed to discharge the burden which lay upon him.

10. The learned standing counsel referred to a second case decided by this Court regarding Kashmiri Lal Kanti Prasad, Moradabad v. Commissioner of Sales Tax 1984 UPTC 77, in which the Assessee who was a commission agent in foodgrains and Tilhan and Sheera had failed to prove that he was either manufacturer or importer of Sheera and his explanation was disbelieved by the assessing authority. It was held that the Assessee who had special knowledge of the facts in question was legally liable to prove those facts u/s 12A of the Act and in the absence of proof, the assessing authority was legally justified to raise a presumption that the turnover was liable to tax.

11. The learned standing counsel cited another case of Bhola Nath Kesarwani v. Commissioner of Sales Tax, U.P. 1987 UPTC 1251. In this case, the Assessee filed a list of goods purchased but the purchases were not verifiable. The assessing authority raised a presumption that the purchases have been made from outside the U.P. This Court confirmed the findings considering the legal position that if the Assessee fails to discharge the legal burden of proof as enjoined by Section 12A of the Act, the assessing authority can raise a legal presumption to the contrary and pass the order of assessment imposing tax liability.

12. Considering the legal position regarding the burden of proof, I am also of the opinion that the Assessee had failed to provide correct and complete particulars of addresses of the petty sellers from whom he is alleged to have made purchases of empty tins and as such the assessing authority despite his efforts to make necessary inquiry for verifying the facts failed to do so. The Assessee could not substantiate his claim for exemption of tax. The assessing authority was legally justified u/s 12A of the Act to presume that these purchases were not made from inside U.P. and attracted the tax liability. There is no error of law in this determination by the assessing authority. The learned Tribunal has rightly

confirmed the imposition of tax and this finding does not call for any interference.

13. As regards the liability to pay interest, I agree with the learned Tribunal that the levy of interest is not justified in view of the facts and circumstances of this case. In the first Instance, the tax was imposed and the Assessee had deposited the entire tax but on reversal of the decision by the Tribunal, this tax was refunded to the Assessee. It was only later on that the revision was filed in the High Court and it was allowed and as a result of remand proceedings, the assessing authority has again imposed tax on the Assessee. The Assessee cannot be made liable to pay interest on this fresh imposition of tax. Therefore, no interest shall be recovered from the Assessee.

14. Piyush Agarwal learned Counsel for the revisionist has submitted that in view of the peculiar facts and circumstances of this case and after the expiry of about 19 years, it may not be possible for the Assessee to pay the entire amount of tax in lump sum and he, therefore, prays that the Assessee should be allowed the facility of making payment of the tax in monthly instalments. I consider this request quite reasonable. Therefore, the Assessee can be directed to pay amount of tax in equal monthly instalments of Rs. 8,000 beginning with 1st September, 1995 till the whole amount of tax is deposited. However, in case the Assessee fails to deposit a particular instalment on the due date, an interest will be charged in respect of that amount of instalment only from the due date till it is paid.

15. Consequently, this revision is hereby disposed of with the direction that the Assessee shall deposit only amount of tax in monthly instalments of Rs. 8,000/- each beginning with 1-9-95 till the whole amount of tax is deposited and if the Assessee fails to deposit any monthly instalment on the due date, an interest at the rate of 18 per cent shall be charged only in respect of the amount of that instalment from the due date till it is paid but no interest shall be charged on the amount of tax being paid in monthly instalments. The amount, if any, deposited earlier towards the tax for the assessment year 1974-75 shall be adjusted in the last instalments without payment of any interest.