
(2015) 09 GUJ CK 0029
In the Gujarat High Court
Case No : Tax Appeal No. 514 of 2015

PSL Limited

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 40, 45(6), 47(4A)(b), 52, 54
Gujarat Value Added Tax Act, 2003 — Section 78

Citation : (2015) 86 VST 152

Hon'ble Judges : Harsha Devani and Abdullah Gulamahmed Uraizee, JJ.

Bench : Division Bench

Advocate : P.C. Joshi and Manish K. Kaji, Advocates, for the Appellant

Judgement

Harsha Devani, J.—This appeal under section 78 of the Gujarat Value Added Tax Act, 2003 is directed against the order dated 16.4.2015 passed by the Gujarat Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") in Second Appeal No. 972 of 2014 by proposing the following questions stated to be substantial questions of law:--

"(A) Whether on the facts and under the circumstances of the case and the true and correct interpretation of the section 47(4A)(b) of the Sales Tax Act, the Tribunal was justified in confirming the levy of interest.

(B) Whether on the facts and under the circumstances of the case, the Tribunal was justified in not considering the heavy amount of refund, due for the previous period, available for adjustment against the dues for the succeeding year, leading to no case for levying interest as confirmed by the Tribunal.

(C) Whether on a true and correct interpretation of section 52 of the Sales Tax Act, the Tribunal was justified in not appreciating that the adjustment of the refund against the tax in respect of other period was an option statutorily available to the petitioners and therefore have erred in not giving effect to the said provision in favour of the petitioners.

(D) Whether on the facts and under the circumstances of the case and true or correct interpretation of section 54 of the Sales Tax Act, the Tribunal was justified in not granting the due interest to the petitioners on the refund amount that arose because of excess payment in the earlier year.

(E) Whether the Tribunal was justified in not passing a just and proper order as contemplated under section 60(6) of the Sales Tax Act."

2. The facts stated briefly are that the appellant was assessed for the year 2000-2001 on 31.3.2005. Against the assessment framed by the Assessing Officer, the appellant preferred an appeal before the Joint Commissioner of Commercial Tax, Appeals-3, which came to be dismissed by an order dated 11.8.2005. The appellant carried the matter in second appeal before the Tribunal being S.A. No. 705 of 2008. The Tribunal remanded the matter to the first appellate authority to decide the matter in the light of the discussion made in the judgment which was regarding the issue of works contract in which the material transferred was less than 15% of the inter-State works contract. While deciding the first appeal on remand, the first appellate authority considered the said issue and reduced the tax demand. However, the penalty in proportion to the tax demand came to be retained and the interest was re-calculated and was levied for a period of 36 months on the amount of tax dues. The appellant had raised a contention with regard to levy of interest and penalty; however, the same came to be rejected. Being aggrieved, the appellant carried the matter in appeal before the Tribunal. By the impugned order, the Tribunal has partly allowed the appeal by holding that the appellant is liable to pay interest under section 47(4A)(b) of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act"), however, the penalty levied under section 45(6) of the said Act came to be deleted.

3. Mr. P.C. Joshi, learned advocate for the appellant assailed the impugned order by inviting the attention of the court to the provisions of section 52 of the Act, which provide for refund of excess payment. It was submitted that by virtue of the provisions of section 52, the Commissioner is required to refund to a person the amount of tax and penalty (if any) paid by such person in excess of the amount due from him. The refund may be either by cash payment or, at the option of the person by deduction of such excess from the amount of tax and penalty due in respect of any other period. It was submitted that in the facts of the present case, refund was due to the appellant in respect of the year 1999-2000 and that the appellant had exercised the option under section 52 of the Act and asked the Assessing Officer to adjust the same against the amount due in respect of the tax demand for the year 2000-2001. It was submitted that the department had ultimately accepted the claim of refund and had also adjusted the amount of refund against the tax demand for the year 2000-2001 and that the money which was recovered from the appellant for the year 1999-2000 was lying with the Government exchequer much before the liability arose in respect of the year 2000-2001. It was submitted that the appellant had already called upon the concerned officer to adjust the amount of refund towards

the tax liability in respect of the year 2000-2001 and hence, no interest could have been levied on the demand of tax for the year 2000-2001. In support of his submission the learned counsel placed reliance upon the decision of the Supreme Court in the case of Union of India (UOI) Through Director of Income Tax Vs. Tata Chemicals Ltd., , for the proposition that the refund becomes due when tax deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. The learned counsel also placed on record a statement indicating the correct manner of computing the tax dues as per appeal order, to point out that if the tax dues are computed in terms thereof, no case for levy of interest would arise. It was submitted that the appeal, therefore, does give rise to substantial questions of law, as proposed or as may be formulated by this court.

4. This court has considered the submissions advanced by the learned counsel for the appellant and has perused the impugned order passed by the Tribunal as well as the orders passed by the lower authorities.

5. The facts as emerging from the record reveal that the appellant claimed that it was entitled to refund for the year 1999-2000 and called upon the Assessing Officer to adjust the amount of such refund towards the tax demand for the year 2000-2001. It may be noted that at the relevant time when the appellant claimed adjustment of refund towards the tax liability in respect of the year 2000-2001, there was no assessed or adjudicated amount of refund and the amount of refund as claimed by the appellant had not yet been determined. Nonetheless, it was the case of the appellant that it was entitled to certain refund and that such amount should be adjusted in respect of the demand for the year 2000-2001. Before the Tribunal on behalf of the revenue, it was submitted that though the appellant had a right under section 52 of the Act to opt for adjustment, it could exercise that option only when the question of grant of refund actually arises. In the present case, the question of granting refund in relation to the year 1999-2000 had for the first time arisen by virtue of the order passed in the first appeal on 8.11.2004 and hence, it was not permissible for the appellant on his own to adjust the anticipated refund against the tax payable for the year 2000-2001 at the time of filing the return. That the refund for the year 1999-2000 had become due only when the authority (in the present case the first appellate authority) had accepted the submission and granted refund. It was argued that in no case the dealer has a right to decide the refund and adjust the same against any tax liability. The Tribunal after considering the submissions advanced by the learned counsel for the respective parties found that it is an admitted fact that the appellant was granted refund for the year 1999-2000. The said refund was actually quantified when the department accepted the claim that certain transactions were not transactions of sales and did not attract tax. The Tribunal was of the opinion that refund of a different tax period cannot be

claimed in the return. The Tribunal also was of the opinion that there was no such column either in the return or in the revised return and, therefore, the appellant was not entitled to claim refund in the revised return. The Tribunal also was of the opinion that the so-called revised return was time barred, inasmuch as, in terms of sub-section (3) of section 40 of the Act, such revised return was required to be filed within the last three months from the date prescribed for filing the original return. Lastly, the Tribunal was of the view that the alleged refund could not be said to have become due until it was decided by the competent authority. That a dealer concerned cannot himself calculate the refund and claim the same in the return and that in the present case, the refund had become due for the period 1999-2000 only on 8.11.2004, in the proceedings of the first appeal. In the light of the aforesaid findings recorded by it, the Tribunal held that the appellant was liable to pay interest under section 47(4A)(b) of the Act.

6. This court is in complete agreement with the view adopted by the Tribunal. As noted earlier, the appellant was anticipating getting a refund in relation to the year 1999-2000. It is an admitted position that such refund had not crystallized, inasmuch as, the claim to the appellant was yet to be adjudicated. However, the appellant proceeded on a presumption that it was entitled to a refund and accordingly called upon the assessing authority to adjust the refund that may become due and payable in relation to the year 1999-2000 against the tax dues of the year 2000-2001. For this purpose the appellant placed reliance upon the provisions of section 52 of the Act, which provides that the Commissioner shall refund to a person the amount of tax and penalty (if any) paid by such person in excess of the amount due from him. The refund may be either by cash payment or at the option by a person by deduction of such excess from the amount of tax and penalty due in respect of another period. Thus, by virtue of the provisions of section 52 of the Act, a person is entitled to refund of the amount paid by him in excess of the amount due from him. However, for the purpose of being entitled to such refund, the precondition would be that there should be a determination by an authority under the Act, that the person has paid amount in excess of the amount due from him. It is only after such determination, that the question of exercising option for deduction of such amount from the tax and penalty due in respect of any other period would arise. Accordingly, had the amount of refund for the year 1999-2000 been already determined, the appellant would have been justified in asking for adjustment of refund against the tax dues of the subsequent year. However, in the present case, on the date when the appellant exercised the option under section 52 of the Act for adjustment of refund for the year 1999-2000 against the tax dues of the year 2000-2001, his entitlement to refund for the year 1999-2000 was not yet adjudicated, therefore, there was no question of exercising option under section 52 of the Act at that stage. The appellant ultimately succeeded in its appeal before the first appellate authority on 8.11.2004, whereupon the appellant became entitled to the refund. Therefore, amount due by way of refund under an order dated 8.11.2004 could

not have been adjusted against the tax liability of the year 2000-2001. It may be that for the period the Department retained the moneys of the appellant, it may be entitled to interest thereon from the date on which such amount had been paid, however, the claim for adjustment of such amount towards the tax dues of the year 2000-2001 at the relevant time was wholly without any basis. Under the circumstances, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, so as to warrant interference.

7. The appeal, therefore, fails and is, accordingly, dismissed.