
(1974) 09 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 472 of 1974

Rashtriya Metal Manufacturing Works and Another	APPELLANT
Vs	
The District Magistrate/Collector and Others	RESPONDENT

Date of Decision : 03-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) 35 STC 203

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bhartji Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, J.—This petition under Article 226 of the Constitution challenges the validity of recovery proceedings launched by the sales tax authorities to recover from the petitioner a sum of Rs. 57,910.11 plus penal interest plus process fee charges. The writ petition gives a split up of the amount sought to be recovered for the assessment years as follows :

For the assessment year 1967-68 ... Rs. 35,950.01 " " " " 1968-69 ... Rs. 10,071.65 (Central) " " " " 1968-69 ... Rs. 11,888.45 (U.P.)

2. The figures arise in this way. For the assessment year 1967-68 the petitioner was assessed to sales tax to the tune of Rs. 62,204.11. The amount of tax was reduced in appeal to Rs. 33,703.11. Out of this reduced amount the petitioner deposited Rs. 26,254. The department went, up in revision where by an order dated 29th September, 1973, the appellate order was set aside and the assessment made by the Sales Tax Officer was restored, with the result that the tax liability came to Rs. 62,204.11. Thus the excess amount of tax to which the assessee became liable as a result of the revisional order was Rs. 35,950.01.

3. Similarly for the assessment year 1968-69 the assessee became liable to pay an additional amount of Rs. 10,071.65 in regard to the assessment under the

Central Sales Tax Act because of the enhancement made by the revisional order dated 29th September, 1973. The same situation obtains with regard to the liability of Rs. 11,888.45 which also accrued as a result of the enhancement made by the revisional order of the same date. In each of these cases the revisional order restored the assessment made by the Sales Tax Officer which restoration made the assessee liable to the excess amount in comparison to the amount assessed in appeal.

4. It is not disputed that no fresh notice of demand in respect of the excess tax which became due and payable as a result of the revisional order was ever served upon the assessee. Clause (a) of Sub-section (9) of Section 8 of the U. P. Sales Tax Act requires the service of a fresh notice of demand in case the amount of tax is enhanced as a result of an appeal or revision. In *Parshuram Rameshwar Lal v. State of U.P.* 1974 U.P.T.C. 65, it was held that in case of enhancement a fresh notice of demand must be issued to the assessee in respect of the enhanced amount. Such a notice prescribes a period of 30 days to enable the assessee to pay the amount demanded. Since no such notice was served upon the assessee it could not be said that he was in default. Unless such a notice of demand was served and the prescribed period mentioned in it has elapsed the assessing authorities have no jurisdiction to initiate proceedings for recovery of the enhanced amount.

5. The proceeding for recovery of penal interest appears to be premature. Under Sub-section (1-A) of Section 8 penal interest could be recovered only if a period of six months from the date of the order of enhancement has expired and the excess amount has remained unpaid-see the second proviso thereof. In the present case the enhancement was made by the order dated 29th September, 1973. The specified period of six months had not expired till 20th-November, 1973, when the impugned notice was issued ; such proceedings could not be conducted prior to 29th March, 1974.

6. Another grievance of the petitioner is that the Sales Tax Officer has issued a notice requiring the petitioner to show cause why penalty should not be imposed under Clause (c) of Section 15-A(1) of the U. P. Sales Tax Act. This clause speaks of failure to pay tax within the time allowed without reasonable cause. As already seen, the prescribed period of 30 days from the date of service of fresh notice as contemplated by Sub-section (9) of Section 8 had not even begun to run because no such notice had been served upon the assessee. It could not therefore be said that the assessee failed to pay the tax assessed on him within the time allowed by the statute. The notice to impose penalty was equally premature.

7. In the result the petition succeeds and is allowed. The impugned order dated 20th November, 1973, as well as the notice for imposing penalty for not depositing the tax within time are quashed. As no one has appeared to oppose the petition there will be no order as to costs.