
(2004) 01 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 163 of 2003

Ratan Industries (Pvt.) Limited

APPELLANT

Vs

Additional Commissioner, Trade Tax and Another

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Income Tax Act, 1961 — Section 147

Penal Code, 1860 (IPC) — Section 26

Uttar Pradesh Sales Tax Act, 1948 — Section 21

Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(1), 21(2), 4

Citation : (2006) 148 STC 111

Hon'ble Judges : Poonam Srivastava, J; M. Katju, J

Bench : Division Bench

Advocate : Bharatji Agrawal, P.K. Misra, Anil Jaitly and Piyush Agrawal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed challenging the validity of reassessment proceedings initiated by notice dated January 16, 2003 (vide annexure 8 to the writ petition) u/s 21 of the U.P. Trade Tax Act, 1948 for the assessment years 1996-97 to 1999-2000 both under the U.P. Trade Tax Act, 1948 and Central Sales Tax Act, 1956.

2. Heard Sri Bharatji Agrawal and Sri Piyush Agrawal, learned Counsel for the petitioner and learned Standing Counsel for the respondents.

3. The petitioner is a company registered under the Indian Companies Act, 1956 carrying on the business of manufacture and sale of C.I. Castings, M.S. castings, parts and accessories of animal driven vehicles, vide paragraph 2 of the writ petition.

4. As alleged in paragraph 10 of the writ petition by Notification No. 7038 dated January 31, 1985 issued u/s 4 of the U.P. Trade Tax Act, 1948 the animal drawn

carts, their parts and accessories, attachment, etc., have been exempted from payment of tax, vide annexure 10 to the writ petition.

5. In the original assessment proceedings for the assessment year 1996-97 a show cause notice was issued on the basis of the report of the special investigation branch of the trade tax department that the "animal driven vehicle hubs" in respect of which exemption has been claimed by the petitioner are of the sizes of 340 mm (34 cm) and 160 mm (16 cm) and are very heavy in weight, which is about 20-21 kg. per piece, and hence they cannot be treated as the hub of the animal driven vehicle but these are "hubs of the truck and tractor trolley".

6. A detailed reply and the expert report of the chartered engineers and other evidence was submitted during the course of the assessment proceedings that these hubs of 20-21 kg. per piece, whose diameter is 340 mm (34 cm) and 160 mm (16 cm) are "animal driven vehicle hubs". Hence merely because the diameters of these hubs are 340 mm (34 cm) and 160 mm (16 cm) and the weight is 20-21 kg. per piece, they cannot be treated as hubs of the truck or tractor trolleys.

7. The assessing authority while passing the assessment order after considering the size and weight of each piece of such hub including the decision of the State Government dated February 17, 1992, which was mentioned in the circular dated February 27, 1992 (annexure 9 to the writ petition) has held that these hubs are normally used for "animal driven vehicles" and since the State Government, including the Commissioner, Sales Tax, has mentioned in its circular dated February 27, 1992 that even if it can be used in other vehicles also, the benefit of the exemption cannot be denied. A true copy of the original assessment order is annexure 1 to the petition.

8. Similarly, for the assessment years 1997-98, 1998-99 and 1999-2000 the assessment orders were passed in which the question regarding the taxability was duly considered in detail which was also got verified from the Central Excise Department, Agra.

9. A perusal of the assessment order for the assessment year 1998-99 dated March 12, 2001 (annexure 3, page 65 to the writ petition) clearly shows that in respect of exemption of "animal driven vehicle hubs", the order of the Deputy Commissioner (Appeal) dated March 16, 2000 in Appeal No. 533 of 1999 was relied upon.

10. The said assessment order dated March 12, 2001 (annexure 3 to the writ petition) clearly shows that the matter was referred to the Central Excise Department by the Trade Tax Department regarding verification of these hubs manufactured by the petitioner by letter No. 1380 dated January 18, 2001 and 1455 dated January 27, 2001 and the Central Excise Department vide their letter dated Ratan/III/Range-II/Agra/96/90 dated January 19, 2001 and 96/143 dated January 31, 2001 has verified the quality of production of these hubs manufactured by the petitioner.

11. In pursuance of the letters written by the Trade Tax Department on January 18, 2001 and January 27, 2001 verification was done by the Central Excise Department by letter dated January 19, 2001 and January 31, 2001 about the quality of the hubs manufactured by the petitioner. After considering these letters of the Central Excise Department and the details as mentioned by the Central Excise Department, Agra, assessment order was passed by the assessing authority on March 12, 2001 vide annexure 3 to the writ petition.

12. Despite this, notices u/s 21 for reassessment for the assessment years in question were issued to the petitioner allegedly on the grounds which had already been considered and adjudicated upon by the assessing authority as is clear from the original assessment orders.

13. The notices for reassessment u/s 21 of the U.P. Trade Tax Act dated January 16, 2003 issued by the assessing authority (annexure 8 to the writ petition) for the assessment years 1996-97 to 1999-2000 both under the U.P. as well as under Central Sales Tax Act show that they have been issued on the ground that the Central Excise Department has found that the diameter of the hubs are 312 mm to 320 mm while the heaviest hubs of ADV are of the diameter of 220 mm.

14. It has also been mentioned in the notices u/s 21 that the hubs manufactured by the petitioner were got inspected by the Central Excise Department from I.I.T., Kanpur, and on that basis the notice has been issued on the ground that the hubs manufactured by the petitioner are not the hubs of animal driven vehicle but are of tractor trolley being larger in diameter and of superior quality, and are hence liable to tax.

15. In the counter-affidavit it has been admitted in paragraph 3-B that the claim of the petitioner in respect of the exemption of the hubs manufactured by the petitioner was accepted under the Notification No. 7038 dated January 31, 1985, read with circular of the Commissioner, Trade Tax, dated February 26, 1992, copy of which has been filed as annexure 9 to the writ petition.

16. It has been mentioned in paragraph 3-C of the counter-affidavit that the Central Excise Department took two pieces of hubs as samples from the petitioner and sent the same to the I.I.T., Kanpur, vide letter dated January 17, 2001 for detailed examination/report regarding the suitability of hubs to animal driven vehicle, and on the basis of the said report, it was found that the hubs are substantially stronger than those needed for animal driven vehicle and the material used are superior and the diameter is larger than what is required in an animal driven vehicle.

17. It is on the basis of the said information regarding diameter and weight and quality of the hubs manufactured by the petitioner that the notice u/s 21 was issued on the ground that these hubs can be used for tractor trolleys.

18. In paragraph 4 of the rejoinder affidavit it has been pointed out that even according to paragraph 2 of the report of I.I.T., Kanpur, hub flange thickness is

approximately the same for animal driven vehicle also.

19. Paragraph 2 of the report of I.I.T., Kanpur, as mentioned in paragraph 3-C of the counter-affidavit, is reproduced below:

2. Hub flange thickness is approximately the same as recommended value for the heaviest axle of pneumatic-wheeled animal drawn vehicle.

20. From the report of the I.I.T., Kanpur, mentioned in paragraph 3-C of the counter-affidavit, it does not appear that the hubs manufactured by the petitioner cannot be used for animal driven vehicle.

21. The notices issued u/s 21 for the assessment years 1996-97 to 1999-2000 are absolutely identical and in all the notices the diameter of the hubs which has been manufactured by the petitioner is mentioned as 312 mm to 320 mm, while according to the department the diameter of ADV hub is 220 mm.

22. It is a well-settled principle of law that the question which has been examined in detail in the original assessment proceedings and thereafter the assessment order has passed, then the said assessment order cannot be reopened u/s 21 of the Act on mere change of opinion.

23. A perusal of the original assessment order dated March 30, 1999 for the assessment year 1996-97 clearly shows that in the assessment proceedings, the question of diameter of the hubs manufactured by the petitioner being 340 mm (340 mm for one side and 160 mm on the other side) as well as the weight of each hub being 20 to 21 kg. per piece was very much the subject-matter of investigation vide the original assessment order dated March 30, 1999 (annexure 1 to the petition).

24. However, the assessing authority after considering the STO (S.I.B.) report, as well as the circular of the Commissioner, Trade Tax, U.P., Lucknow, dated February 26, 1992 including the decision of the Government dated February 17, 1992 has held that these hubs are normally used in animal driven vehicle and even if it can be used in other vehicles, still it is entitled for examination under the Notification No. 7038 dated January 31, 1985, as clarified by the State Government itself.

25. Thus the initiation of reassessment proceedings u/s 21 on the ground of diameter of hubs being 312 mm to 320 mm on the basis of the 8:09 AM 12/13/20068:09 AM 12/13/2006I.T., Kanpur, is in our opinion illegal and invalid, as it is based on mere change of opinion, and not on the basis of any fresh and cogent material.

26. In paragraph 3 of the counter-affidavit it has been mentioned that the Central Excise Department took two pieces of hubs as sample from the petitioner and sent the same to I.I.T., Kanpur, vide letter dated January 17, 2001 and the report which has come from I.I.T., Kanpur, is for ISI specification.

27. Admittedly, the hubs manufactured by the petitioner do not have ISI mark or

specification. Hence in our opinion the said report is not very relevant.

28. Moreover, the letters of the Central Excise Department dated January 19, 2001 and January 31, 2001 regarding the quality of the hubs manufactured by the petitioner, which were referred to by the trade tax department vide its letter dated January 18, 2001, have been specifically referred and discussed by the assessing authority in the original assessment order dated March 12, 2001 for the assessment year 1998-1999 both under U.P. as well as under Central Sales Tax Act.

29. The report of the I.I.T., Kanpur, does not show that the hubs manufactured by the petitioner cannot be used in wheels by animal driven vehicle nor has it been said therein that it can be used only in a tractor trolley. Even the Central Excise Department has never said that ADV hubs manufactured by the petitioner are exclusively used in tractor trolley.

30. Even the two samples drawn by the Central Excise Department in January, 2001 which were sent for the test report on January 17, 2001 were only for ISI specification, but neither I.I.T., Kanpur, nor the Central Excise Department has ever said that these hubs manufactured by the petitioner are meant for use exclusively for tractor trolley.

31. It appears that these hubs are used in the wheels of animal driven vehicle. Hence in view of the circular dated February 26, 1992 of the Commissioner of Trade Tax the hubs which are used in the animal driven vehicle, even if they can be used in other vehicles also, are still entitled for exemption under the Notification No. 7038 dated January 31, 1985.

32. In Commissioner of Sales Tax v. Indra Industries [2001] 122 STC 100 (SC) : [2000] UPTC 472 it was held by the Supreme Court that the circular issued by the Commissioner is binding upon the department. The departmental authorities cannot be permitted to contend that the circular issued by the Commissioner is contrary to law. Recently the Supreme Court in Simplex Castings Ltd. Vs. Commr. of Cus., Vishakhapatnam, , has held that it is not open to the Customs Department to prefer an appeal before CEGAT contrary to what was laid down in the circular, dated July 12, 1989. The said decision has referred to an earlier decision in The Paper Products Ltd. Vs. Commissioner of Central Excise, in which it is observed:

This question is no more res integra in view of the various judgments of this Court. This Court in a catena of decisions has held that the circulars issued u/s 37-B of the said Act are binding on the department and the department cannot be permitted to take a stand contrary to the instructions issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the department is concerned, such right is not available. [See Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., In the case of M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, , this Court held that

the whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. The court also held that it does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. (emphasis supplied). Consistency and discipline are, according to this Court, of far greater importance than the winning or losing of court proceedings. In the case of Collector of Central Excise, Bombay Vs. Jayant Dalal Private Ltd., , this Court has held that it is not open to the Revenue to advance an argument or even file an appeal against the correctness of the binding nature of the circulars issued by the Board. Similar is the view taken by this Court in the case of Collector of Central Excise, Bombay Vs. Kores (India) Limited, Thane, .

33. The assessing authority while passing the original assessment order considered the diameter of hubs being 320 mm, the weight being 20 to 21 kg. per piece and also circular dated February 26, 1992 while accepting the claim of exemption of the petitioner in regard to these hubs manufactured by the petitioner. Hence in our opinion no reassessment proceedings could be legally initiated against the petitioner on mere change of opinion.

34. A division Bench of this Court in the case of Palco Lining Company and Another Vs. The Sales Tax Officer, has held in (Paras 5 and 6) ; (pages 256 and 257 of STC) as follows:

Para 5.-Section 21 of the U.P. Sales Tax Act enables the assessing authority to reassess a dealer to tax if it has reason to believe that the whole or any part of his turnover for any assessment year or part thereof has escaped assessment to tax or has been under-assessed or has been assessed at a rate lower than that at which it should have been assessed or where any deduction and exemption has been wrongly allowed in respect thereof. It does not permit reassessment of turnover which, after due consideration, had been found not exigible to tax merely because the assessing authority subsequently comes to take a different view of the matter.

Para 6.-A perusal of the order of assessment in those cases would show that the assessing authority had, after elaborately considering . the evidence before it, taken the view that what was being sold by the petitioners was nothing but cloth, cut in the shape of collar. Its turnover of sales was held exempt from the tax. Notification No. ST-4064/ X-960(4)-58, dated 25th November, 1958, provided for such exemption for "cotton fabric of all varieties" subject to some exceptions.

35. It was further held in para 16 (page 200 of STC) as follows:

Para 16. ... irrespective of the amplitude of the language used in Section 21 of the Act, reassessment proceedings are not permissible on mere charge of opinion by the taxing authority at a subsequent stage. The petitioners are right in their submission that issuance of a notice u/s 21 of the Act in the present cases was without authority of law.

36. In the case of Royal Trading Co. v. Trade Tax Officer [2000] UPTC 642, it has been held that no reassessment proceedings can be legally initiated unless there was cogent material before the assessing officer to have a reasonable belief that the turnover has escaped assessment or the exemption has been wrongly granted.

37. In the case of Royal Trading Co. [2000] UPTC 642, it has been held by a division Bench that no reassessment proceedings can be legally taken, even if an authorisation has been given u/s 21(2) by the Commissioner, Trade Tax, if no cogent material was there to form a reasonable belief as required u/s 21(1) itself.

38. It was held in paragraph 7 as follows:

Therefore, action u/s 21 of the Act cannot be taken on the whims of the assessing officer by resorting to conjecture of imagination. He has to have before him the facts which are germane to the issue and on the basis of which a rational man can have reason to believe that the whole or any part of the turnover has escaped assessment or has been under-assessed. In Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, the honourable Supreme Court while dealing with somewhat similar provision u/s 147 of the Income Tax Act, 1961 held that the existence of reason to believe on the part of the I.T.O., was a justifiable issue and it was for the court to be satisfied whether in fact the I.T.O. had reason to believe that income had escaped assessment. In Joti Parshad Vs. State of Haryana, the honourable Supreme Court while dealing with the meaning of expression "reason to believe" in Section 26 of the Indian Penal Code held that the reason to believe is not the same as suspicion and a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , the honourable Supreme Court held that the reasons for the formation of the belief contemplated by Section 147(a) of the Income Tax Act, 1961, for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief. The honourable Supreme Court further observed that though it is true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening the assessment, yet, at the same time, we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. This view was reiterated by the honourable Supreme Court while dealing with the provisions of Section 21 of the U.P. Trade Tax Act in Commissioner of Sales Tax, U.P. v. Bhagwan Industries (P.) Ltd. [1973] 31 STC 293 in which it was held that reasonable grounds necessarily postulate that they must be germane to the

formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under this section. If however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under this section.

39. The same view has been taken in the case of Samrat Trading Company v. State of U.P. [2003] UPTC 1269 in which following the judgment of the Constitution Bench of the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and a division Bench decision of this Court in Harbans Lal Malhotra v. Assistant Commissioner, Sales Tax, Ghaziabad [1997] 107 STC 98 : [1994] UPTC 1041 the proceedings u/s 21 on mere change of opinion was quashed.

40. In view of the above we are of the opinion that the impugned notice dated January 16, 2003 and initiation of reassessment proceedings for the assessment years 1996-1997 to 1999-2000 both under the U.P. Sales Tax Act and Central Sales Tax Act are illegal and they are hereby quashed.

41. Petition is allowed. No order as to costs.