(2018) 09 UK CK 0091

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No.1459 of 2018, 1240 of 2016, 1241 of 2016

Rohit Gupta & Others — APPELLANT

Vs

State of Uttarakhand & others — RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Uttarakhand (The Uttaranchal Value Added Tax Act, 2005) — Section 42, 42(B), 51, 51(4), 51(4A), 52, 53

Citation : (2018) 09 UK CK 0091

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : A.K. Bansal, Jitendra Chaudhary, Yogesh Pandey

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.

1. In WPMS No.1459 of 2018, the petitioner is a proprietor of a firm, namely, M/s Maruti Enterprises Kangri- Shampur, District Haridwar and the

petitioners in WPMS Nos.1240 of 2016 and 1241 of 2016 are the lawyers who mainly practice the cases of indirect taxation in the State of

Uttarakhand.

2. In all these three writ petitions, the petitioners have challenged the introduction of sub-section (4A) after sub-section (4) in Section 51 of the

Uttarakhand (The Uttaranchal Value Added Tax Act, 2005) (in short â??the Actâ??). Un-amended Section 51 of the Act reads as under:-

â??Section 51: First Appeal-

Any dealer or other person aggrieved by an order made by the Assessing Authority or by an officer in charge of tax audit or any order passed under sub-section (3) or sub-section (4) of section 42(B) other than,

(i) an order mentioned in section 56, or

(ii) an order passed under sub-section (8) of section 43, or

(iii) an order passed under sub-section (7) of section 43(A), or

(iv) an order passed under or sub-section (10) of Section 48; or

(v) an order of seizure passed under sub-section (5) of section 48(A); or

(vi) an order passed under sub-section (6) or sub-section (7) of section 48(A) may; within sixty days from the date of the service of the copy of the

order, appeal to such authority as may be prescribed, and shall also serve a copy of the Memorandum of Appeal on the assessing Authority.

(2)(a) Notwithstanding anything contained in sub-section (1), where the disputed amount of tax, fee or penalty in an appeal does not exceed one

thousand rupees, the appellant may, at his option, request the Appellate Authority in writing for summary disposal of his appeal, whereupon the

Appellate Authority may decide the appeal accordingly.

(b) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.

(c) No appeal or revision shall lie against an order passed in appeal which has been disposed of summarily.

(3) Where an appeal under this section has been filed by any dealer or any person against an order referred to in sub-section (1) and where due to

filing of such appeal the Commissioner can not revise such order passed by the Assessing Authority on the point of legality or propriety of such order

under Section 52, the Commissioner may move an application to the Appellate Authority to examine the legality and propriety of such order on such

point or points as may be mentioned in the application. A copy of such application shall be served on the dealer or such other person, as the case may

be:

Provided that-

(a) No application under this sub-section shall be entertained after the expiration of four years from the date of the order in question.

(b) No application for examination of legality and propriety under this sub-section shall be entertained after the disposal of appeal filed by the dealer or

other person, as the case may be,

(c) Where the Commissioner has filed an application under this section and the dealer or other person withdraws the appeal filed by him or any other

application for disposal of appeal summarily under sub-section (2), it shall be deemed for the purpose of Section 52, as if no appeal has been filed, and

in such a case the period commencing from the date of filing application by the Commissioner and the date of the Appellate Authorityâ??s order on

the application of the dealer, shall be excluded in computing the period of limitation provided in Section 52, and

(d) If after computing, the period of limitation comes to less than six months, the revision under Section 52 may be made within six months from the

date of receipt by the Commissioner of the relevant order of the Appellate Authority.

Explanation.- For the purpose of this sub-section, the Commissioner shall include an officer authorized to file an appeal on behalf of the Commissioner

before the Tribunal under Section 53 of this Act.

(4) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of

the amount of tax or fee due under this Act on the turnover of sales or purchase or both, as the case may be admitted by the appellant in the returns

filed by him or at any stage in any proceeding under this Act, whichever is greater.â??

3. The aforesaid provision was for an appeal against the assessment order passed by the Assessing Authority.

4. Now, vide the impugned notification dated 31.03.2016, sub-Section (4A) has been added after sub-section (4) to Section 51 of the Act which reads

as under:

â??(4A) Notwithstanding anything contained in this section,

(i) no appeal against an ex-parte order shall be entertained unless the appellant has furnished satisfactory proof of the payment of sum equal to five

percent of the amount of disputed tax or penalty or Rupees One Lakh whichever is less;

(ii) no appeal against any other order, besides ex-parte assessment order or penalty shall be entertained unless the appellant has furnished satisfactory

proof of the payment of sum equal to twenty percent of the amount of disputed tax, penalty or any other amount or Rupees Five Lakh whichever is less;-

(iii) no appeal, against any declaration form or certificate of turnover or concession or rebate, which is being rejected by the Assessing Authority or

which are not being produced before the Assessing Authority, shall be entertained unless the appellant has furnished satisfactory proof of the payment

of a sum equal to ten percent of the amount at general rate of tax payable under this Act, on the amount of the turnover of such declaration form or

certificate, rejected or not produced.

Explanation: The above mentioned amount shall be in addition to the condition of the stay given under sub-section (6).â??

5. The case of the petitioners is that initially under sub-section (4) of Section 51 of the Act, they had to deposit only the â??admitted taxâ?, before

filing the appeal. Now with the introduction of sub-section (4A) after sub-section (4), they are required not only to deposit the admitted liability but in

addition to that they have also to deposit a sum equal to five per cent of the disputed tax or penalty or Rupees One Lakh, whichever is less, in the case

of an ex-parte assessment order and in case of appeal against any other order, except the ex-parte assessment order, they are now required to deposit

a sum equal to twenty per cent of the disputed amount of tax, penalty or any other amount or rupees five lakhs, whichever is less, in addition to the

admitted liability.

6. Learned counsels for the petitioners submit that an inherent contradiction or at least a lack of clarity has emerged with the introduction of sub-

section (4A) as the assessee is still in a fix as to whether he is liable to deposit only the admitted liability or in addition to that, the liability as is given

under sub-section (4A) of the Act.

7. After perusal of the averments made in the writ petitions and the counter affidavit, this Court has been apprised that sub-section (4A) has been

introduced not only in the State of Uttarakhand but in various other States as well. The reason for doing so was that the Assessing Authority was

constrained to pass an ex-parte order in many cases, because in spite of a notice assesse failed to turn up, as they had an easy remedy to file an

appeal against the said order by depositing only the admitted liability and the matter used to be linger on for a long period. In order to arrest this trend,

sub-section (4A) has been introduced. Sub-section (4A) distinguishes between two types of appeals i.e. (a) Appeal which is filed against the ex-parte

order where in addition to the admitted liability, the assessee also has to deposit an amount which is equal to 5% of the disputed tax or penalty or

Rupees One Lakh, whichever is less. (b) In the case of appeal against an order other than the ex-parte order, an assessee has to deposit apart from

the admitted liability, 20% of the disputed tax or penalty or any other amount or an amount of Rupees Five Lakhs, whichever is less.

8. There seems to be neither any discrepancy nor any anomaly, nor is it contrary to the purpose of the Statute. Sub-section (4A) starts with a non-

obstante clause which would also mean that the provisions contained in sub-section (4) of Section 51 notwithstanding the amount as given in sub-

section (4A) of the Act has to be deposited before filing of appeal. In other words, the plain reading of the section would show that before assessee

has to file an appeal against an ex-parte order, he has to deposit the admitted liability and over and above the admitted liability, he is also required to

deposit 5% or Rupees One Lakh or 20% or Rupees Five Lakhs of the disputed tax, whichever is less and in case of appeal against an order which is

not an ex-parte order then apart from the admitted liability, the assessee has to deposit 20% of the disputed tax or penalty or any other amount or

Rupees Five Lakhs, whichever is less. There seems to be no ambiguity on this as is being alleged.

9. In view of the above observations, the writ petitions fails and are hereby dismissed. Interim order, if any, stands vacated.

