(2009) 08 DEL CK 0145

In the Delhi High Court

Case No : S.T. Appeal No''s. 2, 3, 4 and 5 of 2009

Shiv Shakti Kirana Kendra APPELLANT

Vs

Commissioner, VAT RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Delhi Sales Tax Act, 1975 — Section 44, 45(1), 45(2)
Delhi Value Added Tax Act, 2004 — Section 106, 106(1), 106(2), 106(3), 74
English Interpretation Act, 1889 — Section 38
General Clauses Act, 1897 — Section 6
Punjab Value Added Tax Act, 2005 — Section 68, 92

Citation : (2010) 1 ILR Delhi 237

Hon'ble Judges : Valmiki J Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : S. Ganesh and Vineet Bhatia, for the Appellant; Rajesh Mahna, Ramanand Roy and Manu K. Giri, for the Respondent

Judgement

Valmiki J Mehta, J.—The Delhi Sales Tax Act, 1985 was repealed on the passing of the Delhi Value Added Tax Act, 2004 with effect from 01.04.2005. The issue in these batch of appeals is: with respect to appellate proceedings which were pending under the Delhi Sales Tax Act whether further appeal, after repeal of the Delhi Sales Tax Act, would lie under the provisions of Section 81 of the new Delhi VAT Act, 2004 or whether the appellants have to seek reference u/s 45(1) or 45(2) of the old Delhi Sales Tax Act.

2. The respondent contends that the present appeals are not maintainable under the Delhi VAT Act and the appellant contends that the appeals are maintainable.

3. At this stage, it is relevant to reproduce Section 106 of the Delhi VAT Act which reads as under:

106. Repeal and savings.-(1) The Delhi Sales Tax Act, 1975 (Act 43 of 1975), the Delhi Tax on Entry of Motor Vehicles into Local Areas Act, 1994 (Delhi Act 4 of 1995), the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999),

and the [Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002)] as in force in Delhi (referred to in this Section as the "said Acts"), are hereby repealed.

(2) Notwithstanding Sub-section (1) of this section, such repeal shall not affect the previous operation of the said Acts or any right, title, entitlement, obligation or liability already acquired, accrued or incurred thereunder.

(3) For the purposes of Sub-section (2) of this section, anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in the exercise of any powers conferred by or under the said Acts shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

4. The appellant has strongly relied upon the decision of the Punjab and Haryana High Court in the case of M.U.S. Marketing Pvt. Ltd. Vs. State of Punjab and Another, and also the decision of this Court in the case of International Metro Civil Contractors Vs. Commissioner of Sales Tax/VAT and Deputy Commissioner Sales Tax/VAT, Special Zone, . The respondent on the other hand has relied upon the recent decision of the Hon''ble Supreme Court in the case of Gammon India Ltd. Vs. Spl. Chief Secretary and Others, and the earlier decision of the Supreme Court in the case of Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh 4 STC 114 (SC).

5. Principally, the case advanced by the respondent, who has raised this preliminary objection as to non-maintainability of these appeals, is that by virtue of Sub-section (2) to Section 106 of the Delhi VAT Act, the repeal of the Delhi Sales Tax Act will not affect the previous operation of the said Act or any right, title, entitlement, obligation or liability already acquired, accrued or incurred thereunder. The contention is that the right of reference under the provisions of Section 45(1) and 45(2) of the Delhi Sales Tax Act is a vested right by virtue of Section 106(2) of the Delhi VAT Act and consequently, it is contended that such vested rights have been saved by the said Sub-section (2) of Section 106. It is contended that since the proceedings with respect to which the present appeals are filed, originated with respect to assessment years 1994-95 and 1995-96 and were initiated under the Delhi Sales Tax Act, consequently, the repeal of the Delhi Sales Tax Act would not affect the vested rights under Sub-section (1) and (2) of Section 45 of the Delhi Sales Tax Act. The appellant on the other hand has relied upon the Sub-section (3) of Section 106 of the Delhi Vat Act which specifies that for the purposes of Sub-section (2) anything done or any action taken including any appointment, notification, notice, order, rule in the exercise of any powers conferred by or under the Delhi Sales Tax Act shall be deemed to have been done or taken in exercise of the powers conferred by or under Delhi VAT Act as if this Act were in force on the date on which such thing was done or

action was taken. The appellant has relied upon the decision of the M.U.S. Marketing''s case (supra) wherein the Punjab and Haryana High Court with respect to similar provisions appearing in the Punjab VAT Act, 2005 held as under:

that Section 92 of the Punjab VAT Act, 2005 coming into force from April 1, 2005 repealed the remedy of filing reference which was available under the 1948 Act and instead conferred on a party right of filing appeal or revision to the High Court by operation of Section 68 of the Act on a substantial question of law. All these appeals which were decided by the Tribunal, after coming into force of the 2005 Act would, thus, be governed by the provisions of Section 68 of the VAT Act and in all such cases the appeal or revision would lie to the High Court on a substantial question of law.

6. A reading of the judgment in the case of Gammon India Ltd.''s case (supra) is very instructive. The Supreme Court has considered in detail various decisions on this aspect both of English Courts as well as of the Supreme Court itself in order to inter-alia trace the development of the law of repeals, savings of vested rights and retrospective operation of statutes. From a reading of this judgment we can cull out the following principles of law:

(i) Ordinarily the effect of repeal is that a statute is wiped out from the statute book for all intents and purposes.

(ii) However, a need was felt on certain occasions to protect certain vested rights and consequently in the repealing Act a provision came to be incorporated for saving of the vested rights accrued or liabilities arisen under the repealed Act.

(iii) Since this need to save vested rights was felt in many cases, instead of having a Savings provision in each Act, a general provision was made in Section 6 of the General Clause Act, 1897 and which is similar to Section 38 of the English Interpretation Act, 1889. By virtue of this Section all vested rights under a repealed Act continued to operate and liabilities incurred thereunder continued to be binding.

(iv) The Legislature can however vary this general rule of saving of vested rights by giving retrospective effect to a Statute and take away vested rights. This is clear from Section 6 itself which uses the expression "unless a different intention appears".

(v) A right of appeal is a vested right and ordinarily is not taken away by a repealing Statute.

7. In view of the aforesaid ratio of the Supreme Court in Gammon India Ltd. case, we would have to examine the effect of Section 106 Sub-sections (2) and (3).

8. Before, however, we proceed to do so, it would be relevant to refer to two other judgments of the Supreme Court, namely, Maria Cristina De Souza Sodder

and Others Vs. Amria Zurana Pereira Pinto and Others, and P. Mohammed Meera Lebbai Vs. Thirumalaya Gounder Ramaswamy Gounder and Others, . In Maria''s case (supra), the Supreme Court has laid down that though the right of appeal is a vested right/substantive right, however the forum with respect to exercise of such right of appeal is not a vested right. It was held in the said case that the forum of filing of an appeal is a procedural matter and the Savings Clause in a repealing statute and Section 6 of the General Clause Act has nothing to do with the forum where the remedy of appeal has to be pursued. The forum of appeal was thus held only to be a procedural matter and not a substantive or a vested rights issue. In the second case of P. Mohd. the appeal instead of being heard by the two Judges of the High Court was heard by a Single Judge and it was held that there is no vested right in getting the matter heard by two Judges. It was held that the hearing of an appeal, whether by one Judge or by two Judges is merely a matter of procedure.

9. In view of the above, when we examine the provision of appeal u/s 81 of the Delhi VAT Act and the provision of reference u/s 45(1) and 45(2) of the Delhi Sales Tax Act, it becomes clear that no vested right has been taken away by passing of the Delhi VAT Act and in fact only the forum has changed. Under the old Delhi Sales Tax Act, to approach the High Court, either an application had to be made before the Tribunal or before the High Court which would call for the question of law with the statement of case from the Tribunal. However under the new Delhi VAT Act, 2004, the only difference is that the procedure has changed and a party has been given a right to directly approach the High Court which will frame a question of law. In fact, the right of appeal has been further strengthened and the procedure has been simplified by passing of the Delhi VAT Act, 2004 and it is not as if any vested right of appeal has been taken away. As already stated above, and so held in Maria''s case, there is no vested right in a forum of appeal and which is only a procedural matter.

10. The decision of the Punjab and Haryana High Court without relying upon the decision of the Gammon India''s case has independently arrived at a decision that an appeal will lie under the new VAT Act. We, respectfully agree with this view as expressed in the said decision of the Punjab and Haryana High Court, also for additional reasons which we have indicated above.

11. Even if we look at the issue from the aspect of retrospectivity of a legislation, even then in such a case, we find that the legislature, qua the forum of appeal, has taken a conscious decision on retrospective operation of Delhi VAT Act as regards forum of a second appeal to the High Court by virtue of Section 106(3) and which provision makes it clear that all orders passed under the Delhi Sales Tax Act will be treated as if they have been passed under the Delhi VAT Act. Thus vide Section 106(3) the order passed by the Appellate Tribunal will be an order, not u/s 44 of the Delhi Sales Tax Act, but one u/s 74 of the Delhi VAT Act. The unambiguous language of Section 106(2) can lead to no other conclusion than that the appeal will now lie to the High Court u/s 81 of the Delhi VAT Act even if

the order which is passed by the Tribunal is in respect to proceedings which were initiated when the Delhi Sales Tax Act was in force.

12. We accordingly hold that the present appeals u/s 81 of the Delhi VAT Act are maintainable. The preliminary objection of the respondent is accordingly rejected.

Post the appeals for hearing on 3rd December, 2009.

