
(2015) 02 AHC CK 0109

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) No. 480 of 2014

SKI Carbon Black (India) Private Limited

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 29, 29(2), 29(3)

Citation : (2015) 3 ADJ 6 : (2015) 83 VST 552

Hon'ble Judges : Tarun Agarwala, J; Satish Chandra, J

Bench : Division Bench

Advocate : Nishant Mishra and S.D. Singh, for the Appellant

Judgement

Tarun Agarwala, J.

1. M/s. Hi-Tech Carbon Co. was engaged in the manufacture and sale of "Carbon Black". This Company was sold/transferred to the petitioner as a going concern by way of a slump sale. The assets and liabilities of the erstwhile Company became the assets and liabilities of the petitioner Company. Pursuant to the enactment of U.P. Tax on Entry on Goods Act, 2000 as well as U.P. Tax on Entry of Goods into Local Areas Act, 2007 (hereinafter referred to as the "Acts"), the assessing authority served notices dated 25.4.2008 proposing to impose Entry Tax on Carbon Black Feed Stock (hereinafter referred to as "CBFS") for the period 2004-05, 2006-07 and 2007-08. Since the petitioner disputed the imposition of any tax liability on the entry of CBFS in the local area, on the ground, that it was not a notified goods under the Acts, the petitioner filed Writ Petition No. 1153 of 2008 challenging the validity of the Entry Tax Act, 2007 and praying for a declaration in the nature of mandamus or prohibition restraining the assessing authority from imposing Entry Tax for the Assessment Years 2004-05, 2005-06, 2006-07 and 2007-08. Interim orders were passed by the Writ Court, dated 15.5.2008, directing the petitioner to furnish security other than cash or bank guarantee to the satisfaction of the authority for the amount of Entry Tax due for that period. According to the petitioner, the following

security was furnished:

2. Thereafter assessment orders dated 30.6.2010 and 12.8.2010 for the period 2006-07 and 2007-08 were passed wherein Entry Tax was assessed on CBFS and a demand of Rs. 12,01,10,541/- and Rs. 8,71,36,090/- was created, but, the said demand was not enforced in view of the interim order passed by the Writ Court. The writ petition was, eventually, dismissed by the High Court alongwith the bunch of writ petitions in the leading case of ITC Limited v. State of U.P. and others, 2012 NTN (48) 1, wherein the validity of the Entry Tax Act 2007 was upheld. The judgment of this Court was challenged by the petitioner by filing a Special Leave Petition wherein an interim order dated 10.1.2012 was passed staying the operation of the judgment subject to deposit 50% of the accrued tax liability/arrears and furnishing bank guarantee of the balance amount. Subsequently, the interim order was modified by the Supreme Court by another order dated 31.1.2012 to the following effect:

"If for any reasons the appellants in these appeals want to seek statutory remedies provided under the Act against the assessment orders, best judgment assessment orders, provisional assessment orders, appeals or revisions before appropriate forum, they are at liberty to do so and if such appeals or revisions are filed, we direct the statutory authorities to consider the same in accordance with law."

3. Based on the interim orders, the petitioner deposited a sum of Rs. 6,00,55,272/- and Rs. 5,65,01,326/- for the assessment years 2006-07 and 2007-08 and also furnished bank guarantee of an equal amount. Based on the order of the Supreme Court dated 13.1.2012, the petitioner filed an appeal before the appellate authority against the assessment orders dated 30.6.2010 and 12.8.2010, which was dismissed by the appellate authority by an order dated 31.1.2013. The petitioner thereafter preferred a Second Appeal before the Commercial Tax Tribunal which was allowed by an order dated 21.9.2013. The Tribunal held that CBFS was not liable to tax under the Entry Tax Act and also directed the authority to refund the Entry Tax paid by the petitioner. The revenue, being aggrieved by the order of the Tribunal, filed Trade Tax Revision Nos. 998 of 2013 and 999 of 2013, Commissioner of Commercial Tax v. M/s. Hi-Tech Carbon, before the High Court. The High Court by a judgment dated 21.9.2013 dismissed the revision and affirmed the order of the Tribunal. The Department has accepted the decision of the High Court and has not filed any further appeal till date before the Supreme Court of India.

4. In the light of the decision of the Tribunal, as affirmed by the High Court, the petitioner was not liable to pay any Entry Tax on CBFS and the amount deposited by the petitioner was liable to be refunded as per the Tribunal's order. In spite of the said judgment becoming final and binding between the parties, the assessing authority failed to refund the amount deposited by the petitioner. The petitioner, accordingly, submitted an application dated 5.5.2014 praying for refund of the excess deposited amount of Rs. 11,68,56,591/- alongwith interest? 18% per

annum. It transpires that the Deputy Commissioner, respondent No. 5, vide letter dated 7.5.2014 requested respondent Nos. 2 and 3, namely, the Commissioner of Commercial Tax, Lucknow and the Additional Commissioner, Grade-I, Varanasi, for allocation of budget, so that appropriate amount could be refunded to the petitioner. Subsequently, on the instructions issued from respondent No. 3, the Deputy Commissioner rejected the application by an order dated 16.7.2014 holding that the petitioner was not entitled for refund of the amount, on the ground, that the amount of Entry Tax deposited by the petitioner was an admitted tax and the same could not be refunded in view of Section 29(3) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as the "Act of 1948"). The petitioner, being aggrieved by the action of the respondents in rejecting the application of the petitioner for refund, has filed the present writ petition for the quashing of the order dated 16.7.2014 and for a writ of mandamus commanding the respondents to grant refund of Rs. 11,68,56,591/- alongwith interest @ 18% per annum.

5. We have heard Sri S.D. Singh, the learned senior counsel alongwith Sri Nishant Mishra for the petitioner and Sri C.B. Tripathi, the learned counsel for the State.

The learned senior counsel contended that there is a specific order of the Tribunal directing refund of the amount deposited by the petitioner and, consequently, as per the provision of Section 29 of the U.P. Trade Tax Act, the amount was liable to be refunded alongwith interest. The learned senior counsel contended that the action of the respondents in rejecting the application, on the ground, that the tax deposited by the petitioner was admitted in its returns, was patently erroneous and against the evidence on record. The learned senior counsel contended that this issue as to whether the petitioner had admitted the liability of Entry Tax was also dealt with by the Tribunal and a categorical finding was given to the effect that the petitioner had not admitted its liability to pay Entry Tax in its returns. The learned senior counsel also pointed out the interim order of the Supreme Court dated 10.1.2012 wherein the Supreme Court while directing the petitioner to deposit 50% of the accrued tax liability/arrears and furnish the bank guarantee for the balance amount also directed that in case the State of U.P. loses the matter, it shall refund to the petitioner the amount deposited with interest at the rate which may be fixed by the Court.

6. In response, the learned counsel for the State reiterated the order of the assessing authority contending that the tax deposited by the petitioner was admitted in the returns and, therefore, was not liable for refund under Section 29(3) of the Act. The learned counsel also raised a further ground that the matter is pending before the Supreme Court and since the amount was deposited by the petitioner pursuant to the interim order, consequently, no amount was refundable at this stage till the matter was not finally decided by the Supreme Court.

7. Having heard the learned counsel for the parties and before proceeding in the

matter it would be appropriate to refer to the provisions of Section 29 of the Act of 1948, which is extracted hereunder:

"29. Refund.--(1) The assessing authority shall, in the manner prescribed, refund to a dealer any amount of tax, fees or other dues paid in excess of the amount due from him under this Act:

Provided that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956 (Act 74 of 1956), and only the balance, if any, shall be refunded.

(2) If the amount found to be refundable in accordance with sub-section (1) is not refunded as aforesaid within three months from the date of order of refund passed by the Assessing authority or, as the case may be, from the date of receipt by him of the order of refund, if such order is passed by any other competent authority or Court, the dealer shall be entitled to simple interest on such amount at the rate of (twelve percent) per annum from the date of such order or, as the case may be, the date of receipt of such order of refund by the assessing authority to the date of refund:

Provided that for calculation of interest in respect of any period after the 26th day of May, 1975, the sub-section shall have effect as if for the words six months the words three months were substituted and for the words six percent the words twelve percent were substituted.

(3) Notwithstanding any judgment, decree or order of any Court or authority, no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceedings under this Act.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where the tax has been paid by a dealer on purchase of certain goods and the value of goods manufactured out of such goods is inclusive of such tax and the State Government remits the tax liability on such purchases retrospectively, the dealer shall not be entitled to refund of tax paid on purchases of such goods unless he proves to the satisfaction of the Assessing Authority that he has not passed on the liability of such tax to any party as a result of any sale or otherwise.

Explanation I.--The date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in manner prescribed.

Explanation II.--The expression "refund" includes any adjustment under the proviso to sub-Section (1)."

8. A perusal of the aforesaid provision indicates that the assessing authority shall refund to dealer any amount of tax, which is paid in excess of the amount due from him under the Act, alongwith interest @ 12% per annum after adjusting

towards the tax or any amount outstanding against the dealer under the Act or under the Central Sales Tax Act. Sub-clause (3) of Section 29 of the Act further stipulates that no amount would be refunded where the dealer admits the liability to pay tax in its return.

9. In the light of the aforesaid provision there is a specific direction of the Tribunal to refund the amount deposited by the petitioner as no amount of Entry Tax was payable on CBFS as it was not a notified item. The order of the Tribunal has been affirmed by the High Court and, consequently, the respondents were duty bound to refund the amount under Section 29 of the Act. The Tribunal also found that the petitioner had not admitted its liability to pay the tax and had deposited the same under protest in terms of the interim order passed by the High Court. This finding of the Tribunal has also become final and, consequently, it was no longer open to the respondents to reject the petitioner's application on the same ground, which has been dealt and decided by the Tribunal and which has been affirmed by the High Court.

10. The contention of the counsel for the State, that the matter is pending before the Supreme Court and that the amount was deposited in terms of the interim order passed by the Supreme Court and, consequently, no amount is payable till the matter is finally decided by the Supreme Court, is patently erroneous.

11. No doubt the petitioner has filed a Special Leave Petition questioning the validity of the Act. An interim order dated 10.1.2012 was passed directing the petitioner to deposit 50% of the tax liability and furnish bank guarantee for the balance amount. The Supreme Court further indicated in the said order that, in the event, the State of Uttar Pradesh loses the matter, it shall refund the amount to the petitioner alongwith interest. The Supreme Court, thereafter modified its order by its order dated 13.1.2012 permitting the petitioner and other appellants to question the validity of the assessment orders before the appellate authority and other forums. Based on the said direction, the appeal was filed by the petitioner, which was dismissed and, eventually, the second appeal was allowed by the Tribunal holding that the petitioner is not liable to pay Entry Tax on CBFS. This finding has become final inter-se between the parties and, consequently, the respondents have become bound to refund the amount. The validity of the Entry Tax before the Supreme Court becomes an academic exercise in so far as the petitioner is concerned. The stand taken by the State, that the amount is not refundable till the disposal of the Special Leave Petition by the Supreme Court, is patently erroneous.

12. In the light of the aforesaid, the impugned order passed by the assessing authority dated 16.7.2014 cannot be sustained and is quashed. The writ petition is allowed and the petitioner is entitled for a writ of mandamus.

13. Accordingly, a writ of mandamus is issued commanding the assessing authority to refund the amount deposited towards Carbon Black Fee Stock (CBFS) for the assessment years 2006-07 and 2007-08, upto 31st December,

2007. Interest payable under Section 29(2) of the Act of 1948 would also be calculated from the date of service of the order of the Tribunal @ 12 % per annum till actual refund is made. The said amount shall be paid within six weeks from the date of the production of a certified copy of this order.