(2013) 10 AHC CK 0128

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 767 of 2013

Sooraj Kirana Company — APPELLANT

Vs

Commissioner — RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 70 VST 443

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard Sri Parv Agarwal, learned counsel for the assessee-revisionist. The assessee revisionist is carrying business of sale and purchase of foodgrains, spices and dry-fruits.

2. There is no dispute that during the periods April 1, 2007 to December 31, 2007 of the assessment year 2007-08, the turnover of the assessee-revisionist was to the tune of Rs. 41,77,811 and of an unspecified amount for the period January 1, 2008 to March 31, 2008 which has not clearly been spelled out in any of the orders or by the assessee-revisionist but is enough to make the actual turnover over the complete assessment year more than 50 lacs.

3. The dispute in this revision is with regard to State development tax levied u/s 3H of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") for the assessment year 2007-08.

4. The question for consideration is whether the assessee-revisionist whose actual turnover for the periods April 1, 2007 to December 31, 2007 of the assessment year 2007-08 had remained below 50 lacs rupees, is liable for payment of State development tax as in the remainder period of assessment U.P. Value Added Tax Act, 2008 was made applicable with effect from January 1, 2008.

5. The submission of learned counsel for the assessee-revisionist is that with the

enforcement of the VAT Act with effect from January 1, 2008, the turnover during the period January 1, 2008 to March 31, 2008 stand excluded in calculating the aggregate turnover of the assessee-revisionist for the purposes of levy of State development tax.

6. Section 3H of the Act provides for the levy of State development tax in addition to the tax payable under the said Act at the rate not exceeding one per cent, of the taxable turnover on the dealers whose aggregate turnover as referred to in sub-section (2) of section 3 exceeds 50 lacs rupees. In other words, State development tax is leviable upon the dealers whose turnover as per section 3(2) of the Act exceeds 50 lacs rupees.

7. Section 3(2) of the Act provides that no dealer shall be liable to tax under sub-section (1) of section 3 if during the assessment year, the aggregate of turnover in the contingencies mentioned therein is less than two lacs in case of manufacturer and three lacs in case of other dealers or such larger amount as the State Government may be notification in the gazette specify.

8. The words "during the assessment year" used in section 3(2) of the Act are of great importance.

9. It uses the word during the assessment year for the purposes of calculating the aggregate of the turnover of the dealer, therefore, the aggregate turnover of the complete assessment year is relevant and material rather than any part of it.

10. It therefore, means that the aggregate turnover as referred to in section 3H of the Act has to be in context with the complete assessment year. Thus, the aggregate turnover for the assessment year 2007-08 in the present case has to be taken into account for the purposes of levy of State development tax and not of part of it.

11. No doubt the turnover of the assessee-revisionist during the continuance of the Act, i.e., for the periods April 1, 2007 to December 31, 2007 happens to be Rs. 46,91,790 which is less than 50 lacs but for the purposes of levy of State development tax the aggregate turnover for the complete assessment year is to be taken into account irrespective of whether the turnover of the assessee revisionist is under the Act or under the VAT Act as no different modes have been provided for calculating the same under the two Acts.

12. The levy of State development tax is dependent upon the aggregate turnover which is referable to the assessment year in view of section 3(2) of the Act. Thus, the aggregate turnover of the petitioner as referred to in section 3H of the Act would be the turnover for the period April 1, 2007 to December 31, 2007 plus turnover for the period January 1, 2008 to January 31, 2008 which is certainly over 50 lacs rupees.

13. It is not disputed that the assessee revisionist has not discontinued its business after December 31, 2007 and as such section 18 of the Act would have no application.

14. In view of the above, the assessee-revisionist is clearly within the ambit of State development tax and is liable to pay the same accordingly. The authorities below accepted that the aggregate turnover of the assessee-revisionist is more than 50 lacs rupees in the assessment year but have calculated it by adding the proportionate turnover for the three months in the actual turnover of the preceding nine months which in effect is not the correct legal position.

15. Since the assessee revisionist has continued with the business its actual turnover for the assessment year in question ought to have been taken into account.

16. In the light of the above discussion the question is answered against the assessee and in favour of the Revenue holding that notwithstanding enforcement of VAT Act with effect from January 1, 2008 for the purposes of levy of State Development Tax u/s 3H of the Act, the aggregate turnover for the assessment year would include the turnover for the period of the assessment year prior to the enforcement of the VAT Act as well as for the period after its enforcement. In view of the above, I find no merit in the revision. It is accordingly, dismissed with the direction to the Tribunal to assess the State development tax upon the assessee-revisionist on the basis of its actual turnover for the assessment year in question.