(2013) 09 GUJ CK 0006

In the Gujarat High Court

Case No : Tax Appeal No. 518 of 2013

State of Gujarat APPELLANT

Vs

Ruparel Plastics (P.) Ltd. RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2014) 44 GST 556

Hon'ble Judges : Sonia Gokani, J;Mukesh R. Shah, J

Bench : Division Bench

Judgement

M.R. Shah, J.—The present Tax Appeal is ADMITTED to consider the following substantial question of law:

Whether on the facts and in the circumstances of the case, the tribunal has rightly held that, the letter is issued by the assessing authority, exercising powers u/s 67 of the Gujarat Sales Tax Act, 1969 and therefore, the assessing authority is under the obligation to issue notice in Form 49, read with section 67 of the Gujarat Sales Tax Act, 1969 to the opponent communicating intention of the authority and the notice has not been issued/served to the opponent and, therefore, the proceedings of the sales tax officer (1) Mahuva, Bhavnagar and Assistant Commissioner of Commercial Tax, Unit 33, Amreli are illegal and without jurisdiction?

Heard Ms. Maithili Mehta, learned AGP appearing on behalf of the appellant and Ms. Avani Mehta, learned advocate appearing on behalf of the respondent.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, the present Tax Appeal is taken up for final hearing today.

3. The facts leading to the present Tax Appeal in a nutshell are as under:

3.1 The certificate of deferment of tax was issued in favour of the respondent, which expired on 07/04/1995. The said certificate is issued in pursuance of the notification issued by the State Government u/s 49(2) of the Act. In view of the above and as the time limit of the certificate of deferment of tax expired on 07/04/1995, vide communication dated 22/07/1999 the assessee was directed to pay the tax with interest in six equal instalments. Thereafter, the assessee appeared before the authority and made oral submissions on 13/12/1999 and thereafter vide communication dated 13/12/1999, the very authority i.e. the first authority as such substantially reduced the amount of tax and directed the assessee to pay the tax with interest as per the instalments mentioned in the said order.

3.2 At the outset, it is required to be noted that the orders dated 22/07/1999 and 13/12/1999 are issued by the first authority i.e. the Sales Tax Officer I, Mahuva. It appears that the assessee did not make the payment of tax/interest as per the order dated 13/12/1999. However, subsequently, after a period of approximately three years challenging the communications dated 22/07/1999 and 13/12/1999 issued by the Sales Tax Officer, the assessee approached the Assistant Sales Tax Officer with a prayer to condone the delay and by order dated 09/10/2001 the first appellate authority dismissed the said appeal by observing that considering Section 49(2) of the Act and as the time limit of the certificate of deferment expired on 07/04/1995 the communications dated 22/07/1999 and 13/12/1999 cannot be said to be illegal. Being aggrieved and dissatisfied with the order passed by the first appellate authority dated 09/10/2001, the respondent preferred Second Appeal No. 410/2002 before the Gujarat Value Added Tax Tribunal, Ahmedabad and by impugned judgment and order the tribunal has allowed the said appeal by quashing and selling aside the order dated 09/10/2001 passed by the Assistant Sales Tax Commissioner, Mahuva as well as the communications dated 22/07/1999 and 13/12/1999. Being aggrieved and dissatisfied with the impugned judgment and order dated 28/02/2012 passed by the tribunal, the State has preferred the present Tax Appeal.

4. Ms. Maithili Mehta, learned AGP has vehemently submitted that the tribunal has materially erred in considering the communications dated 22/07/1999 and 13/12/1999 as orders u/s 67 of the Sales Tax Act. 11 is submitted that as such the tribunal has not properly appreciated the fact that both the communications dated 13/12/1999 and 22/07/1999 were by the first authority i.e. the Sales Tax Officer and not by revisional authority. It is submitted that therefore the communications dated 22/07/1999 and 13/12/1999, which were with respect to the deferments with respect to payment of sales tax by the assessee, cannot be said to be an order passed in exercise of powers u/s 67 of the Act.

4.1 It is further submitted that even otherwise on merits, the learned tribunal has committed an error in quashing and setting aside the communications dated 13/12/1999 and 22/07/1999 in consonance with the provisions of the Act, more particularly, Section 49 of the Act and as the time limit of the certificate of deferment of tax expired in the year 1995, the Sales Tax Officer rightly directed the assessee to pay necessary deferred amount in six equal instalment from the next financial year of that date. Making the above submissions, it is requested to allow the present appeal.

5. Ms. Avani Mehta, learned advocate appearing on behalf of the respondent has vehemently submitted that the tribunal has not committed any error and/or illegality in allowing the appeal and quashing and setting aside the order dated 09/10/2001 passed by the Assistant Sales Tax Commissioner, Mahuva as well as the communications dated 22/07/1999 and 13/12/1999. It is submitted that as such while passing the order of assessment, the Assessing Officer declared the payment of tax to be paid by the assessee and granted 12 years time, which is modified by the subsequent communications dated 22/07/1999 and 13/12/1999 and, therefore, it can be said to be a revising order and the tribunal has rightly quashed and set aside the said order/communications.

6. Heard the learned advocates appearing on behalf of the respective parties at length and perused the communications dated 22/07/1999 and 13/12/1999, the order dated 09/10/2001 passed by the Assistant Sales Tax Commissioner as well as the order passed by the tribunal dated 28/02/2012. It appears that vide communications dated 22/07/1999 and 13/12/1999 the Sales Tax Officer directed the assessee to pay the deferred amount of tax in six equal instalments with interest on the ground that the time limit of certificate of deferment of tax expired on 07/04/1995 and, therefore, the assessee was liable to pay necessary deferred amount of tax in six equal instalments from the next financial year of that date and, therefore, the communications dated 22/07/1999 and 13/12/1999 issued by the first authority-Sales Tax Officer, by no stretch of imagination, can be said to be an order passed by the revisional authority in exercise of suo motu revision of the powers u/s 67 of the Act. The tribunal has set aside the impugned orders on the premise that the order dated 09/10/2001 and the communications dated 22/07/1999 and 13/12/1999 are in exercise of powers u/s 67 of the Act.

Section 67 of the Act reads as under:

67. Revision

(1) Subject to the provisions, of Section 66 and to any rules which may be made in this behalf:--

(a) the Commissioner of his own motion within three years or on application made to him within one year from the date of any order passed by any officer appointed u/s 27 to assist him may call for and examine the record of any such order and pass such order thereon as he thinks just and proper within twelve months from the date of service of notice for revision;

(b) the tribunal, on application made to it against an order of the Commissioner (not being an order passed under sub-section (2) of section 65 in Second Appeal or under clause (a) in revision on an application within four months from the date of the communication of the Order may call for and examine the record of any such order, and pass such order thereon as it thinks just and proper.

(2) Where an appeal lies u/s 65 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application:

Provided that the proceeding in revision may be entertained upon an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring an appeal against the order in respect of which an application for revision is made.

(3) No order shall be passed under this Section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.

(4) Where the Commissioner or the tribunal rejects any application for revision under this Section, the Commissioner or, as the case may be, the tribunal shall record the reasons for such rejection.

7. Under the circumstances, as such, the tribunal has committed an error in treating the communications dated 22/07/1999 and 13/12/1999 as the orders passed u/s 67 of the Act. From the impugned judgment and order passed by the tribunal, it appears that the tribunal has observed that the communications dated 22/07/1999 and 13/12/1999 are in breach of principles of natural justice and as such the first authority could have exercised the powers u/s 44 read with section 72 of the Act. The tribunal has also observed that it is assumed that the communications dated 22/07/1999 and 13/12/1999 are in exercise of powers u/s 44 and/or section 72 of the Act, in that case, the authority was required to issue notice upon the assessee and as the notices have not been issued the said communications are bad in law. To the aforesaid, it is required to be noticed that after the communications dated 22/07/1999 and 13/12/1999, the assessee appeared before the authority and made oral request on 13/12/1999 and considering the oral request, communication dated 13/12/1999 came to be issued. It is required to be noted that after the order dated 22/07/1999 when the assessee appeared before the Sales Tax Officer on 13/12/1999 and when communication dated 13/12/1999 is issued, the amount to be paid by the assessee has been substantially reduced. Under the circumstances, in the facts and circumstances of the case, it cannot be said that the communication dated 13/12/1999 is, in any way, against the principles of natural justice. It is required to be noted that so far as the communication dated 22/07/1999, it has been modified vide order dated 13/12/1999 and, therefore, on issuing communication dated 13/12/1999 as such the communication dated 22/07/1999 would not be in existence. Under the circumstances, the tribunal has materially erred in treating the communications dated 22/07/1999 and 13/12/1999 as orders u/s 67 of the Act and also on facts erred in holding that no opportunity was given to the assessee. On the facts and in the circumstances of the case, the impugned order passed by the tribunal dated 28/02/2012 deserves to be quashed and set aside. The present Tax Appeal is allowed to the aforesaid extent. No order as to costs.

