

(2024) 10 RAJ CK 1202

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Revision Petition No. 172 Of 2006

C.T.O.,Suratgarh

APPELLANT

Vs

M/S Ex.Engineer,Border Fencing Div.

RESPONDENT

Date of Decision : 10-10-2024

Acts Referred:

Citation : (2024) 10 RAJ CK 1202

Hon'ble Judges : Pankaj Bhandari, J;Praveer Bhatnagar, J

Bench : Single Bench

Advocate : Sudesh Kasana, Mahendra Shah, Pragya Seth, Tek Chand Sharma, Ravindra Pal Singh, Neeraj Batra, C.S. Sinha, Kanika Vadhvani, R.D. Rastogi

Final Decision : Disposed of

Judgement

Rekha Borana, J

1. The issue in the present revision petition is: if an assessment order is once set aside and after remand, a fresh assessment order is passed, interest on the tax payable would be leviable from which date – the date from which the tax became due to be payable in terms of provisions of the Act; or from the date of the first assessment order; or from the date of fresh assessment order (after remand) was passed?

2. The facts of the case are that assessment order dated 29.10.1992 was passed by the Assessing Authority in terms of Section 10(1)(b) of the Rajasthan Sales Tax Act, 1954 (for short hereinafter referred to as, 'the Act of 1954'). Aggrieved of the said assessment order, an appeal was preferred by the assessee before the Deputy Commissioner (Appeals), Commercial Taxes. The appeal of the assessee was allowed vide order dated 08.12.1998. The assessment order was set aside and the matter was remanded back to the Assessing Authority for passing of a fresh assessment order after affording an opportunity of hearing to the assessee. After remand, notices were issued by the Assessing Authority to the assessee calling upon it to submit the books of accounts. No response to the

said notice was filed by the assessee and hence, vide order dated 05.12.2000, fresh assessment order in terms of Section 29(8)(b) of the Act of 1994 was passed (as by that time, the Act of 1954 stood repealed and that of 1994 had come into effect). Vide the said order, a liability of tax amounting to Rs.14,75,130/- was assessed by the Assessing Authority. Further, in terms of Section 58 of the Act of 1994, the interest on the said amount was quantified as Rs.32,15,785/-. Penalty of Rs.500/- and Rs.5320/- were also imposed. Summing up, a demand of Rs.46,96,735/- was raised against the respondent assessee vide the order dated 05.12.2000.

3. The order dated 05.12.2000 was assailed vide an appeal and the Appellate Authority, vide order dated 21.08.2003, while affirming the order of liability of tax for an amount of Rs.14,75,130/-, set aside the remaining order imposing penalty in terms of Section 58 of the Act of 1994.

4. A second appeal against the order dated 21.08.2003 was preferred before the Rajasthan Tax Board, Ajmer in terms of Section 85 of the Act of 1994. Learned Tax Board although declined to interfere with the order of assessment of liability of tax, while affirming the order of liability of interest, held that the same could have been levied only w.e.f. 05.12.2000, that is, the date on which fresh assessment order was passed by the Assessing Authority after the matter having been remanded.

The impugned order dated 09.08.2004 as passed by the learned Tax Board has been challenged by the petitioner-Department in the present revision petition to the extent the order of assessment qua interest has been modified by the learned Tax Board.

5. Learned counsel for the petitioner submitted that learned Tax Board erred in holding that the interest on the tax payable would be leviable w.e.f. 05.12.2000. In terms of Section 58 of the Act of 1994, the interest becomes leviable if the tax which is payable, is not paid within the time prescribed. As per Section 25(1) of the Act of 1994, the tax payable is to be deposited within the time prescribed. As per Section 26(1) of the Act of 1994, every registered dealer is required to furnish prescribed return in prescribed manner and within the prescribed time to the Assessing Authority. After the said return having been filed, the Assessing Officer shall make an assessment on basis of the said return. If any dealer does not file returns in terms of Section 26(1), the Assessing Authority shall assess the dealer and determine the tax payable by him.

6. Counsel submitted that in the present matter, admittedly, the respondent-Firm did not file the return in accordance with Section 26(1) of the Act of 1994 and hence, the Assessing Authority passed the assessment order dated 29.10.1992. The demand for payment of tax on basis of the said assessment was hence raised by the Assessing Authority. Section 58 of the Act of 1994 provides that where a dealer or person commits default in making payment of such tax, such dealer or person shall be liable to pay interest on such amount for the period

starting from the day immediately succeeding the date specified for such payment to the actual date of payment.

7. Learned counsel therefore submitted that admittedly, the tax amount in pursuance to the assessment order dated 29.10.1992 was not paid and hence, the interest in terms of Section 58 of the Act of 1994 became leviable from the date immediately succeeding the date specified for such payment. After the remand of the matter to the Assessing Authority, the earlier order of assessment of tax to the tune of Rs.14,75,130/- was maintained and hence, the interest was definitely leviable from the date when the tax, as payable, was not paid. Learned counsel submitted that the learned Tax Board erred in holding that the interest was leviable w.e.f. 05.12.2000 only and not from the date it became payable.

8. In support of his submissions, learned counsel relied upon the following judgments:

i. Pepsico India Holdings Ltd. vs. Commissioner of Trade Tax, Lucknow, U.P.; (2011) 13 SCC 68

ii. Commissioner of Income Tax, Orissa vs. Kalinga Tubes Ltd.; (1996) 2 SCC 277

iii. J.K. Synthetics Limited and Birla Cement Works and Ors. vs. Commercial Taxes Officer and State of Rajasthan and Ors; 1994 (4) SCC 276.

iv. Assistant Commissioner, Special Circle, Commercial Taxes, Bhilwara vs. M/s Madhusudan Industries Ltd.; S.B. Civil Revision Petition No.551/2005 (Rajasthan High Court)(decided on 12.09.2023)

v. Commissioner of Income Tax vs. Udaipur Mineral Development Syndicate (P) Ltd.; IT Ref. No.32 of 1995 (Rajasthan High Court)(decided on 12.11.2014)

vi. Commercial Taxes Officer vs. Rastogi Steel Furniture; S.B. Sales Tax Revision No.868/1999 (Rajasthan High Court)(decided on 24.04.2002)

9. Per contra, learned counsel for the respondent, while supporting the finding of the learned Tax Board, argued that once the order dated 29.10.1992 was set aside by the Appellate Authority, it ceased to exist. After the matter been remanded by the Appellate Authority, a fresh assessment order was passed on 05.12.2000. Meaning thereby, the liability to pay interest, if any, accrued only w.e.f. the said date. The order dated 29.10.1992 once having been set aside, lost its existence and hence, the order of interest as levied by the said order, could not have been given effect to.

10. In support of his submissions, learned counsel relied upon the judgment passed by the Hon'ble Apex Court in the case of Philips India Ltd. & Ors. vs. Assistant Commissioner, Commercial Taxes, Calcutta & Ors.; 2004(10) SCC 436 wherein, while relying on earlier judgment of Hon'ble Apex Court in the case of ITO Kolar & Ors. vs. Seghu Buchiah Setty; AIR 1964 (SC) 1473, it was held that in cases where assessment is reduced, enhanced or annulled or where fresh assessment is directed to be made, then the earlier order ceases to exist and the

liability can arise only from the date of fresh demand notice and the Department will necessarily have to issue a fresh demand notice. The Court further held that a party can be considered to be a defaulter only if the payment is not made within the time specified in the fresh demand notice. Further that, in such cases, interest cannot be demanded for an earlier period.

11. Responding to the above argument raised by learned counsel for the respondent, learned counsel for the petitioner, in rejoinder, submitted that the judgment as passed in Seghu Buchiah Setty's case (supra) does not hold good any more. To give a go-bye to the ratio as laid down in the said judgment, the Union of India proceeded on to enact the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (for short hereinafter referred to as, 'the Act of 1964'). After the Act of 1964 having come into effect, the ratio as laid down in Seghu Buchiah Setty's case (supra) would not govern the field.

12. Heard learned counsel for the parties and perused the material available on record.

13. In the opinion of this Court, the issue in question is no more res integra and would be covered by the ratio as laid down and settled by the Hon'ble Apex Court in a series of judgments.

14. Kalinga Tubes Ltd. (supra) was the matter wherein the Sales Tax Officer had assessed additional sales tax for the year 1962-63 which was later reduced by the Sales Tax Tribunal. The assessee claimed this reduced amount as a deduction for the assessment year 1971-72 arguing that the liability was determined only then. In the said case, the Hon'ble Apex Court ruled that under the merchandise system of accounting, such liabilities accrue when the sales occur and not when the liability is finalized.

15. The Full Bench of the Hon'ble Apex Court in J.K. Synthetics Limited (supra), while dealing with the provisions of the Rajasthan Sales Tax Act, 1954 held as under:

"Therefore, the conjoint reading of Sections 7(1), (2) and (2A) and 11B of the Act leaves no room for doubt that the expression 'tax payable' in Section 11B can only mean the full amount of tax which becomes due under Sub-sections (2) and (2A), of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation u/s 7 of the Act and, therefore, it would be difficult to hold that the 'tax payable' by him 'is not paid' to visit him with the liability to pay interest under Clause (a) of Section 11B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do

the near impossible.”

16. In the matter of J.K. Synthetics Limited (supra), the Hon’ble Apex Court held that the majority opinion expressed by Venkararmiah J. in the case of Associated Cement Company

Limited vs. Commercial Tax Officer, Kota & Ors.; AIR 1981 SC 1887 does not state the law correctly and held that the legal position was correctly stated by Bhagwati J. in his minority judgment. The Court therefore, overruled the majority view in the said case and affirmed the minority view as laying down the correct law. Justice Bhagwati in Associated Cements’s case (supra) (the minority view) held as under:

“The only way in which Clauses (a) and (b) of Section 11B can be read harmoniously and full meaning and effect can be give to them is by construing them as dealing with distinct matters or situations. The tax payable under Sub-section (2) of Section 7 dealt with in Clause (a) of Section 11B cannot, therefore, be equated with the amount of the tax assessed forming the subject-matter of Clause (b) of Section 11B and hence it must be held to be tax due on the basis of the return actually filed by the assessee and not on the basis of a correct and proper return which ought to have been filed by him.”

The Hon’ble Apex Court, while referring to the minority view in Associated Cements’ case, observed as under:

“The learned Judge, therefore, concludes that the scheme of taxation under the Act clearly envisages that it is only when the assessment is made and the period specified in the notice of demand or thirty days, as the case may be, expires that the amount of tax as assessed becomes payable and if the same is not paid within a time allowed, the liability to pay interest thereon accrues.”

17. The crux of the above judgments is that the interest is payable on the full tax liability as determined in the final assessment, if there is a delay in paying the said full assessed tax amount, within the stipulated period.

18. The Division Bench of this Court in Udaipur Mineral Development Syndicate (P) Ltd. (supra), while dealing with a situation wherein the declared income of the assessee was revised and re-assessed, observed that the revised or the modified orders relate back to the original assessment order and hence, the interest would be payable w.e.f the original assessment order and not the new demand notice as issued after modification.

19. The Single Bench of this High Court in the case of Rastogi Steel Furniture (supra), while considering the provision of Section 11B of the Act of 1954 and the subsequent amendments made therein, observed that the dealer would be liable to pay interest on the quantified amount of tax based on the return, from the date it was payable but it was not paid.

20. In Maruti Wire Industries Pvt. Ltd. vs. S.T.O., 1st Circle, Mattancherry & Ors.;

2001(3) SCC 735 the Hon'ble Apex Court held that a failure to file return of taxable turnover will render the assessee's liability for any other consequences or penal action as provided by law but cannot attract liability for payment of penal interest.

21. So far as the judgment in the case of Philips India Ltd. (supra) as relied upon by learned counsel for the respondent is concerned, the said judgment was passed relying upon the earlier Apex Court judgment in the case of Seghu Buchiah Setty (supra). So far as Seghu Buchiah Setty's judgment is concerned, the Hon'ble Apex Court in the case of Mohan Wahi vs. Commissioner, Income Tax, Varanasi & Ors.; 2001 (4) SCC 362 specifically observed that the decision in Seghu Buchiah Setty (supra) was superseded by the enactment of Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 which was given a retrospective effect. Vide Section 3 of the Act of 1964, it was provided that it shall not be necessary for the taxing authority to serve upon the assessee a fresh notice of demand.

22. In view of the above position of law, the ratio of Seghu Buchiah Setty (supra) cannot be said to be applicable and the proceedings would definitely be governed by the first assessment order as issued by the competent authority.

23. What can be concluded from the above judgments and the ratio laid therein, is that :

(i) Even if the original assessment order is varied/reversed/modified by a subsequent order, no fresh demand notice will be required to be issued. Only if the amount has been reduced, the intimation of the same to the assessee would be sufficient.

(ii) The interest in terms of Section 58 of the Act would be payable if the demand as raised by the first demand notice is not satisfied within the stipulated period.

(iii) The interest in terms of the first proviso to Section 58(1) shall be chargeable even if the tax recovery is stayed by any appellate authority or the Court.

24. The answer therefore, to the issue as framed in the opening para of this judgment, would be that, even if an assessment order is once set aside and after remand, a fresh assessment order is passed, interest on the assessed demand/tax shall be payable from the date of the first assessment order only (if the amount of tax as assessed, is not paid within the time specified in the notice of demand).

25. With the above conclusions, the present revision petition is allowed, the order impugned dated 09.08.2004 (Annex.3) is quashed and set aside to the extent it has held the interest on the tax amount to be leviable from 05.12.2000 (the date of fresh assessment order). It is hereby declared that the assessee shall be liable to pay interest with effect from 29.10.1992 i.e. the date of first assessment order.