

(1968) 10 AHC CK 0007

In the Allahabad High Court

Case No : Writ Petition No's. 529, 530 and 623 of 1968

Steel Enterprises (Private) Ltd.

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 03-10-1968

Acts Referred:

Income Tax Act, 1961 — Section 141

Citation : (1970) 26 STC 133

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : R.R. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—M/s. Steel Enterprises (Pvt.) Ltd., the petitioner in this and the connected cases, is a private limited company owning a rolling mill situated at Kanpur. The petitioner says that it purchases steel billets and steel ingots from Tata Iron & Steel Company Limited and other steel manufacturing companies and after converting them into bars and flats in its mills, it sells them to different dealers. The petitioner filed the return of its turnover, for the quarters ending 30th June, 30th September and 31st December, 1967, under the U.P. Sales Tax Act and under the Central Sales Tax Act. As according to it, the turnover of the bars and flats sold by it was not liable to tax, it stated in the return that the tax liability was nil. Therefore, it did not deposit any tax in respect of this turnover before filing the quarterly returns. The Sales Tax Officer finding that no tax had been deposited by the petitioner in respect of the turnover for the quarters ending 30th June and 30th September, 1967, made a best judgment assessment on 8th January, 1968, under Rule 41(3) of the U.P. Sales Tax Rules in respect of the U.P. sales tax liability and an assessment order of the same date under Rule 41(3) of the U.P. Sales Tax Rules in respect of the Central sales tax liability. As regards the quarterly return for the quarter ending 31st December, 1967, he

issued a notice to the petitioner dated 16th February, 1968, calling upon it to show cause why an assessment under Rule 41(3) of the U.P. Sales Tax Rules should not be made against it. The petitioner has accordingly filed this and the connected petitions challenging the jurisdiction of the Sales Tax Officer to make the assessment orders for the quarters ending 30th June and 30th September, 1967 and to take the assessment proceedings proposed by him for the quarter ending 31st December, 1967. By the instant petition for *certiorari* the petitioner challenges the assessment order made in regard to the U.P. sales tax liability. Writ Petition No. 530 of 1968 is directed against the assessment order in respect of the Central sales tax liability. Writ Petition No. 623 of 1968 challenges the jurisdiction of the Sales Tax Officer to take proceedings under Rule 41(3) of the U.P. Sales Tax Rules for the quarter ending 31st December, 1967.

2. A number of contentions have been raised by learned counsel for the petitioner before us. But it appears to us that the petitions can be disposed of by reference to one contention alone. That contention is that Rule 41(3) does not permit the Sales Tax Officer to make a best judgment assessment on the ground that sales tax has not been deposited by the dealer even where the dealer does not admit his liability in that behalf. Rule 41(1) requires a dealer to file a return in respect of the quarters ending 30th June, 30th September, 31st December and 31st March. Rule 41(2) requires the dealer to deposit in the treasury the amount of tax calculated by him on the turnover in such return. That deposit must be made before the return is submitted and the dealer must submit the treasury chalan with the return. Where the tax is not deposited in the treasury, a cheque for the amount of tax calculated by the dealer must be submitted with the return. Rule 41(3), by reference to which the impugned action has been taken by the Sales Tax Officer, reads :

If no return is submitted in respect of any quarter or month, as the case may be, within the period or if the return is submitted without payment of tax in the manner prescribed in Rule 48, the Sales Tax Officer shall, after making such enquiries as he considers necessary, determine the turnover to the best of his judgment, provisionally assess the tax payable for the quarter or the month, as the case may be and serve upon the dealer a notice in Form XI and the dealer shall pay the sum demanded within the time and in the manner specified in the notice.

3. Rule 41(5) empowers the Sales Tax Officer to determine the turnover of the assessment year upon the expiry of the assessment year and assess the tax thereon.

4. It is plain from the scheme set out in Rule 41 that what is intended is the advance deposit of the tax admitted by the dealer to be due on the basis of the return. The statute is a fiscal enactment and the intention appears to have been to ensure an expeditious payment of the tax admitted by the dealer to be due without waiting for the regular assessment at the end of the year. The provision is not unknown to taxation statutes. Similar provision is to be found in Section

23-B of the Indian Income Tax Act, 1922 and Section 141 of the Income Tax Act, 1961. It is plain from the language of Sub-rules (1), (2) and (3) of Rule 41 that the dealer was required merely to deposit the tax admitted by him to be due and when filing the return for each quarter to adduce proof of such payment. If the return was filed and the proof adduced there was no jurisdiction in the Sales Tax Officer to make any assessment of the turnover at that stage. It is only if no return was submitted by the dealer or the return was submitted without payment of the tax that Rule 41(3) empowered the Sales Tax Officer to determine the turnover to the best of his judgment and provisionally assess the tax payable for the quarter and require the dealer to pay the tax so assessed. It is not disputed that the petitioner filed the returns for the requisite quarters and on the basis that no tax was attracted to the turnover in question he did not deposit any amount towards tax. There was no jurisdiction in the Sales Tax Officer to enquire whether the position assumed by the petitioner when filing his returns of turnover that he was not liable to tax in relation to the said turnover was justified in law. That jurisdiction has not been conferred upon the Sales Tax Officer by Rule 41(3). Accordingly we hold that the impugned assessment orders made by the Sales Tax Officer and the proceedings proposed to be taken by him are without jurisdiction.

5. It is contended, however, on behalf of the respondents that there was jurisdiction in the Sales Tax Officer u/s 7(3) of the U.P. Sales Tax Act to make the impugned assessment orders and to take the action proposed by him. Section 7(3) provides :

If no return is submitted by the dealer under Sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof:

Provided that before taking such action under this Sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

6. The assessment orders made in the instant case by the Sales Tax Officer are provisional assessments and the action proposed by him is intended for making a provisional assessment order. In our opinion provisional assessment orders are not contemplated by Section 7(3) of the Act.

7. Section 7 of the Act provides for the determination of turnover and assessment of tax. Sub-section (1) of Section 7 requires the dealer to submit a return or returns of his turnover at such intervals, within such period, in such form and verified in such manner as may be prescribed. Rule 41(1) prescribes the returns, the intervals, period, form and manner of verification of the returns to be filed by the dealer. Sub-section (1A) of Section 7 requires the dealer to deposit the amount of tax due on the turnover at or before the time of

submitting the return. To the extent of Sub-sections (1) and (1A) of Section 7 on the one hand and Sub-rules (1) and (2) of Rule 41 on the other the separate schemes set out in Section 7 and in Rule 41 may be said to correspond substantially. Thereafter, there is a departure between the two. Sub-rule (3) of Rule 41 provides for a provisional assessment of the tax payable for the quarter or month for which the returns have been filed. Under Sub-rule (3) the Sales Tax Officer is required to make a best judgment assessment if no return is submitted or if the return is submitted without the treasury chalan or cheque evidencing the deposit of the tax. Sub-sections (2) and (3) of Section 7 do not speak of a provisional assessment at all. They appear to contemplate a final or regular assessment. Sub-section (2) provides that if the assessing authority is satisfied that the returns submitted under Sub-section (1) are correct and complete he will assess the tax on the basis thereof. Sub-section (3) declares that if no return is submitted by the dealer within the period prescribed in that behalf or if the return submitted appears to the assessing authority to be incorrect or incomplete the assessing authority shall determine the turnover to the best of his judgment and assess the tax on the basis thereof. The scope of Sub-section (3) of Section 7 is materially different from that of Sub-rule (3) of Rule 41. While the jurisdiction to make a best judgment assessment if no return is submitted within the prescribed period is common to both the provisions, there is material difference in regard to the circumstances in which the jurisdiction to make a best judgment assessment can otherwise be exercised. While Sub-section (3) permits a best judgment assessment if the return appears to be incorrect or incomplete, Sub-rule (3) contemplates a best judgment assessment if the return is submitted without a treasury chalan or cheque evidencing deposit in respect of the tax. Under Sub-section (3) the Sales Tax Officer is required to examine the relevant material and determine whether the turnover mentioned in the return reflects the true turnover of the dealer, whether the several details of the return required in the form of the return have all been entered and been correctly entered. If it appears to him that it is not so and the return is, therefore, incorrect or incomplete he acquires jurisdiction to make a best judgment assessment. These considerations point to the final nature of the assessment made by him. It is unusual to find power marked by such features vested in an assessing authority in relation to a provisional assessment. In contrast, Sub-rule (3) does not empower the Sales Tax Officer to sit in judgment over the correctness or completeness of the return. The jurisdiction to make a best judgment assessment arises from the circumstance that no return has been submitted or the return is submitted without the treasury chalan or the cheque. Sub-rule (3) speak's of such an assessment as provisional only. The assessment is no more than that. Its entire objective is to ensure the early collection of the tax which may prima facie be found to be due from the dealer. It is upon the expiry of the assessment year that a final or regular assessment is made. Sub-rule (5) empowers the Sales Tax Officer to make such assessment. It has to be made after the assessment year has expired, because at that stage the turnover of the assessment year liable to tax can be ascertained. The tax is an annual levy; that

is clear from Section 3, the charging section. If it is found upon the final, or regular assessment that the tax assessed differs from the total amount deposited or paid by cheque, Sub-rule (6) provides that the difference shall be realised or refunded by the Sales Tax Officer as the case may be. Provision of a corresponding nature will be found in Section 23-B of the Indian Income Tax Act, 1922 and Section 141 of the Income Tax Act, 1961, where again the Legislature has incorporated a scheme for advance collection of the tax before the final or regular assessment.

8. As I have said, Sub-section (3) of Section 7 does not speak of a provisional assessment. That it contemplates a final or regular assessment is further reinforced by the consideration that it is part of the scheme expressed in Sub-section (2). If the assessing authority is satisfied that the returns submitted by the dealer are correct and complete he assesses the tax on the basis thereof. Sub-section (2) contemplates that the assessing authority, at the end of the assessment year, will take up the returns filed during the year by the dealer and make a final or regular assessment on their basis. If an assessment is not made under Sub-section (2) then a best judgment assessment is contemplated under Sub-Section (3). In line with the nature of the assessment to be made under Sub-section (2), the best judgment assessment under Sub-section (3) must also be a final or regular assessment.

9. Learned counsel for the respondents urges that the returns filed by the petitioner were incomplete and, therefore, Section 7(3) was attracted. The returns were incomplete, he says, because they were not accompanied by any treasury chalan. Now, a treasury chalan would be required only if the dealer admitted that he was liable to tax in respect of the turnover in question and that compliance was necessary in view of Rule 41(2). We have already pointed out that the petitioner in these cases did not admit any tax liability. When there was no admission of any tax liability there was no question of payment of the admitted tax and therefore no question of submitting a treasury chalan along with the return. In our opinion, it cannot be said that the returns filed by the petitioner were incomplete because treasury chalans were not filed with them. Therefore, even if we assume that Section 7(3) was invoked by the Sales Tax Officer, we are satisfied that the condition precedent to the exercise of jurisdiction under that provision was not made out.

10. Upon the aforesaid considerations, in our judgment the impugned assessment orders made by the Sales Tax Officer for the quarters ending 30th June and 30th September, 1967, along with the consequential notices of demand, are liable to be quashed and the petitioner is entitled to certiorari quashing the notice issued by the Sales Tax Officer in respect of the quarter ending 31st December, 1967 and to prohibition restraining him from taking assessment proceedings consequent to that notice.

11. The petitions are allowed with costs. The assessment orders dated 8th January, 1968, for the quarters ending 30th June, 1967 and 30th September,

1967, made respectively under the U.P. Sales Tax Act and the Central Sales Tax Act and the consequent notices of demand are quashed. The notice dated 18th February, 1968, issued by the Sales Tax Officer for the quarter ending 31st December, 1968, is also quashed and he is restrained from taking assessment proceedings pursuant to that notice.