(2011) 10 AHC CK 0015

In the Allahabad High Court

Case No : Trade Tax Revision No. 248 of 2011

Tata Motors Ltd. APPELLANT

Vs

Commissioner, Commercial Taxes RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A
Uttar Pradesh Value Added Tax Act, 2008 — Section 57

Citation : (2012) 54 VST 157

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, assisted by Rahul Agarwal and Rahul Srivastava, for the Appellant; Sanjay Sarin, for the Respondent

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard Mr. Bharat Ji Agrawal, senior advocate assisted by Mr. Rahul Agarwal and Mr. Rahul Srivastava, learned counsel for the revisionist and Mr. Sanjay Sarin, learned standing counsel. By means of these revisions, the revisionist has assailed the order dated October 12, 2011 passed by the Commercial Tax Tribunal in Second Appeal No. 597 of 2011 for the assessment year 2008-09 under the U.P. Trade Tax Act and the Central Sales Tax Act, respectively.

2. Brief facts of the revisionist''s case are that the revisionist is a public limited company incorporated under the Indian Companies Act having its registered office at Mumbai and is engaged in manufacturing motor vehicles/motor chassis from its factory situate at Chinhat, Deva Road, Lucknow. The motor vehicles are taxable at single point, i.e., at the point of sale to consumer.

3. During the assessment year 2008-09, certain stock was transferred by the revisionist-company to its branch office and consignment agents located outside the State of U.P. and as such, forms F are required to be issued u/s 6A of the Central Sales Tax Act. Forms F are obtained from respective branch offices/

consignment agents and further forms C are obtained from the purchasers located outside the State of U.P. and the same were handed over to the assessing authority but admittedly beyond time as practically. It is very difficult for the branch offices/consignment agents/purchasers situated outside the State to obtain and furnish forms C and forms F within the time stipulated in rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957.

4. Looking into this practical aspect, the Commissioner of Trade Tax vide circular No. 873, dated August 26, 2000 and circular dated November 25, 2009 has specifically provided the assessing authorities concerned to extend the time for filing forms if there are reasonable grounds for failure to file them within the stipulated time. As the revisionist had not received various forms C from its outside State purchases and forms F from its branch offices/consignment agents within time of three months as contemplated in rule 12(7) of the Rules and as such, was unable to submit them within time to the assessing authority in terms of rule 12(7) as stated above. Thus, while computing the turnover for the assessment year under consideration, the assessing authority vide assessment order dated September 1, 2011 treated the transfer of stock as Central sales though 269 forms in original with Rs. 13,13,65,743 were tendered considering the said stock transfer but admittedly beyond time. The assessing authority also rejected the forms C on the ground that the Central Sales Tax Act has been amended with effect from October 1, 2005 and the revisionist was required to file the aforesaid forms by the end of next quarter in respect of which forms were issued under rule 12(7) of the aforesaid Rules, though the revisionist filed an application for extension of time for submission of balance form F and C and proof of export for 2008-09 on August 11, 2011.

5. The counsel for the revisionists submits that admittedly, the form C and form F were not filed within the time, hence an application was filed but the assessing authority recorded a finding that no time was sought by the applicant for filing form C and form F though the same was filed on August 11, 2011 and is on record. Accordingly, the assessing authority imposed a tax of Rs. 2,05,45,62,565 on the revisionist in his assessment order. Against the said levy, the revisionist had admitted a tax liability of Rs. 22,73,03,735 which already stood paid.

6. The learned counsel for the revisionist submits that the said demand has been created solely due to the non-acceptance of forms C and F and proof of export by the revisionist without considering the application dated August 11, 2011 for exercising powers under the proviso of rule 12(7) of the Rules by the assessing authority to extend the time for furnishing of forms. Being aggrieved, the revisionist filed an appeal and the Additional Commissioner (Appeals), by the order dated October 3, 2011 granted stay of 45 per cent of the disputed amount of tax. As the revisionist has not satisfied with the order, he filed second appeal u/s 57 of the U.P. VAT Act. By the impugned order dated October 10, 2011, the Tribunal has partly allowed the appeal filed by the revisionist by granting 20 per cent further stay.

7. The revisionist''s contention is that even the Act and the Rules prescribed under the Central Sales Tax Act provide that the forms can be filed beyond the prescribed time and if sufficient cause for not filing the same within time is established, the time can be extended and the forms can be accepted by the assessing authority. Further, the Commissioner, Commercial Taxes, has time and again clarified that the time for filing the forms can be extended by the assessing authority and the forms can be accepted even if filed beyond the time prescribed under the Rules. In support of the said submissions, reliance has been placed in the case of Dhan Prakash Cane Crusher Vs. Commissioner of Trade Tax, , where this court has specifically held that statutory forms can be filed in appeal also which could not be furnished before the assessing authority and accordingly, the matter was remanded for reassessment after accepting the said forms.

8. On the other hand, Mr. Sanjay Sarin, learned standing counsel, submits that there is no illegality or infirmity in the impugned order, as the revisionist has not submitted the required forms well within the time.

9. Considering the peculiar facts and circumstances of the case, the impugned order passed by the Tribunal dated October 10, 2011, is modified to the extent that if the revisionist deposits 10 per cent of the total demanded tax for the assessment year 2008-09 latest by November 15, 2011, 93 per cent of the demanded tax shall be kept in abeyance till disposal of appeal. The revisionist shall furnish security of the stayed amount within 30 days to the satisfaction of the assessing authority. It is further provided that in case demanded amount as per assessment orders has been deposited by the revisionists, the same shall not be adjusted against any other outstanding dues/demand, if any. In view of the above, the trade tax revision is partly allowed. The first appellate authority is directed to decide the appeal, in accordance with law, latest by December 31, 2011.

