
(2014) 09 UK CK 0010

In the Uttarakhand High Court

Case No : Commercial Tax Revision Nos. 8, 9, 21 and 22 of 2014

Texplas (India) Pvt. Ltd.

APPELLANT

Vs

Commissioner Commercial Tax, Dehradun

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC
Central Sales Tax Act, 1956 — Section 10, 10A, 9, 9(2A)
Uttar Pradesh Trade Tax Act, 1948 — Section 15A(1)(a)
Uttarakhand Value Added Tax Act, 2005 — Section 23(7), 23(8), 58, 58(1)(vii), 58(1)(vii)(a)

Citation : (2015) 77 VST 199

Hon'ble Judges : K.M. Joseph, C.J.; V.K. Bist, J

Bench : Division Bench

Advocate : P.R. Mullick, Advocates for the Appellant; H.M. Bhatia, Advocates for the Respondent

Judgement

K.M. Joseph, C.J.

1. Since the questions involved in all these four revisions are same, hence they are being decided by this common judgment. The revisionist was visited with penalty under section 58 of the Uttarakhand Value Added Tax Act, 2005 (hereinafter referred to as "the Act"). The quarters in question are the fourth quarter for 2011-12 and the first quarter for 2012-13. In respect of these two quarters, revisionist filed the return on time. It was not accompanied by the admitted tax. On this basis, the assessing officer imposed penalty at the rate of 50 per cent of the tax for both the quarters. Revisionist filed appeals. The first appellate authority reduced the rate of penalty from 50 per cent to 10 per cent for the fourth quarter of 2011-12 and reduced the penalty from 50 per cent to five per cent for the first quarter in 2012-13 because the appellate authority took note of the fact that the interest on the delayed payment was also deposited by the revisionist. The Department carried the matter in second appeal before the Tribunal. The Tribunal interfered with the order of the first appellate authority

and imposed penalty at the rate of 20 per cent for both the quarters. Feeling aggrieved by the said orders, Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014 have been preferred. After preferring Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014, revisionist preferred second appeals against the orders of the first appellate authority; those were accompanied by applications seeking condonation of delay of 236 days. The Tribunal did not find merit in the cause shown for condoning the delay and, on that basis, without going into the merit of the matters, dismissed the second appeals. The said orders are challenged separately in Commercial Tax Revision Nos. 21 of 2014 and 22 of 2014, which we are disposing of by this common judgment.

2. We have heard the learned counsel for the revisionist Shri P.R. Mullick and the learned counsel for the Revenue/Department Shri H.M. Bhatia.

3. The following are the substantial questions of law, which have been raised in Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014:

(a) Whether on facts, law and circumstances of the case, the honourable Commercial Tax Tribunal, Dehradun, was legally justified to mechanically enhance the penalty for both the disputed quarters of 2011-12 and 2012-13, from the penalty upheld by the Joint Commissioner (Appeals), Commercial Tax, Dehradun for 10 per cent and five per cent of the admitted tax liability, to 20 per cent of the admitted tax liability, without going into the reasonable cause for delay in deposit of tax, being financial crisis and slack collection from debtors?

(b) Whether on facts, law and circumstances of the case, the honourable Commercial Tax Tribunal, Dehradun, was legally justified to enhance the penalty at 20 per cent of the admitted tax liability, without appreciating that the revision had deposited the interest on the delay in deposition of admitted tax liability for Rs. 1,93,719 and Rs. 54,356, concerning the impugned quarters of 2011-12 and 2012-13, respectively, and also without appreciating, that the revisionist had accepted the first appellate authority orders and had also deposited the penalties of 10 per cent and five per cent of the admitted tax liability aggregating to Rs. 1,03,261, for the fourth quarter of 2011-12 and a penalty of Rs. 1,94,149, for the first quarter of 2011-12, respectively?

(c) Whether on facts, law and circumstances of the case, the honourable Commercial Tax Tribunal, Dehradun, was legally justified to confirm penalties, in respect of Central sales also, whereas, factually no penalty notice could be issued, in respect of transactions concerning Central sales under section 58(1) (vii) of the Uttarakhand VAT Act, 2005; whereas, penalty notices should have been issued under the Central Sales Tax Act, 1956, to cover Central sales transactions?

(d) Whether on facts, law and circumstance of the case, the honourable Commercial Tax Tribunal Dehradun, was legally justified to negate the orders passed by the first appellate authority and not to appreciate the ratio of decisions as enunciated by the apex court in Hindustan Steels Ltd. and the ratio of

decisions passed by honourable Allahabad High Court while dealing with the erstwhile provision of section 15A(1)(a) of the erstwhile U.P. Trade Tax Act, 1948?

4. Elaborating on the said substantial questions of law, Shri P.R. Mullick would point out that in all cases, only on account of financial constraints faced by the revisionist, revisionist could not pay in time. Learned counsel for the revisionist drew our attention to the facts that returns have been filed on time. He would point out that the revisionist supplies goods to Government concerns and recovery of the bills extends to 300 days and there is a genuine reason, which compelled the revisionist not to submit the tax along with the returns. He would, in fact, submit that this is the first time the revisionist is levied with penalty. He would submit that application for extension of time was given and since the application was given and there was no response, it must be treated as having been allowed. In this regard, he drew our attention to a judgment of the Allahabad High Court, reported in Commissioner of Income Tax Vs. Rohit Organics (P.) Ltd., . Still further, he would submit that the penalty is imposed on the revisionist under section 58 of the Act. This is a State law. There is no provision in the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act") for levying penalty on the lines it has been imposed under the State enactment. He drew our attention to section 9 of the Sales Tax Act and contends that it provides only for levying penalty by the State authorities invoking the State Act relating to sales tax, which may include the VAT Act, for penalties leviable under the Central Act. He drew our attention to the provisions contained under sections 10 and 10A of the Central Act and pointed out that there is no provision, which enables the State authority to levy penalty under the Central enactment in respect of the matter in question. There is no dispute that proceedings in this case relate to the inter-State sales also. Reasonable cause was there. He would submit that the Tribunal, after interfering with the finding of the first appellate authority on the basis that section 58 of the Act provides for the minimum and maximum, gave no ground for imposing penalty at the rate of 20 per cent. He would also draw our attention to the judgment reported in Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, to contend that even if there is a provision for imposition of minimum penalty, circumstances must be looked into and it is not necessary to impose penalty.

5. Per contra, the learned counsel for the Department Shri H.M. Bhatia would submit that the court may note that as against the order of first appellate authority, the revisionist did not carry any second appeals originally. This means his contention based on presence of sufficient cause for not remitting the tax cannot be accepted as he is bound by the order of the first appellate authority imposing penalty under section 58 of the Act on the basis that there is no sufficient cause. Having accepted that finding, it is not open for the revisionist to re-agitate that issue in the revisions filed as Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014. He points out that the conduct of the revisionist in trying to wriggle out the position by filing belated second appeals, which have been rightly rejected by the Tribunal, and no interference is called for. As regards the

contention based on the absence of power with the State authorities, he would submit that section 9(2A) of the Central Act provides an answer and after the amendment to the Central Act enacted in the year 1976 there can be no dispute that there is power to impose penalty in a case like this. He would also submit that the revisionist did not produce any proof regarding the alleged financial difficulty.

6. The question of law, which is pressed before us by the learned counsel for the revisionist, would appear to have been there is absence of power. Section 58 deals with penalty. It is, undoubtedly, a penal provision. It is a provision, which contains the minimum and maximum penalties, which may be imposed. No doubt, penalty, in this case, was imposed for the reason that tax was not paid along with the return. That appears to be covered by provision of section 58(1)(vii)(a) of the Act. Section 58(1)(vii)(a) of the said Act reads as under:

"58. Offences and penalties.--(V) If the assessing authority is satisfied that any dealer or other person--

(vii) has, without any reasonable cause failed--

(a) to deposit the tax due under the Act, before furnishing the return or along with the return, it may, after such inquiry as deemed necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him."

7. The only basis for imposing penalty can only be that there is no sufficient cause. There can be no dispute about that, but once the sufficient cause is not there, then there can be no doubt that there will be no illegality if the minimum is imposed. This would appear to flow from the judgment of the apex court in Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, . An attempt was made by the learned counsel for the revisionist to import in considerations which were relevant to the facts of that case, namely, that unless there is fraud, willful mistake or suppression of facts, penalty could not be levied under section 11AC of the Central Excise Act, 1944, but such a requirement cannot be imported in a case under section 58 of the VAT Act, as there is no such requirement and we reject such contention of the learned counsel for the revisionist. Under the Uttarakhand VAT Act, there is, undoubtedly, provisions contained in sections 23(7) and 23(8) of the Act for extension of time to file return. Sections 23(7) and 23(8) of the same read as follows:

"23. Periodical returns and payment of tax.-- (1) to (6) . . .

(7) The assessing authority may in its discretion, for reasons to be recorded in writing, extend the date for submission of the return by any person or class of persons.

(8) Whereas a consequence of the date for the submission of return being extended under sub-section (7), the deposit of tax under sub-section (1) or sub-section (2) is deferred, there shall be payable an interest at the rate of fifteen

per cent per annum on such deposit from the date immediately following the last date prescribed for the submission of the return till the date of deposit of such amount."

8. According to the revisionist, this is a case where the revisionist's case is on better footing. Revisionist filed the return on time, but we notice that there is no provision as such for granting extension of time to make the payment. What is contemplated is time to file the return. At any rate, we need not be detained by this aspect in the facts of this case for the reason that the revisionist had accepted the juridical basis for finding the penalty was leviable, which was the absence of sufficient cause. It is not open to the revisionist to raise these questions and, that too, as substantial questions of law in a challenge against the order of the Tribunal, which was rendered in appeals filed by the Department. Therefore, we find no merit in the said contention.

9. In this context, we also are not impressed by the contention of the learned counsel for the revisionist, in regard to Commercial Tax Revision Nos. 21 of 2014 and 22 of 2014. The appeals were filed after the disposal of appeals by the Department and after the Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014 were filed. This appears to be an afterthought. No doubt, learned counsel for the revisionist would point out that the matters were being proceeded with on the basis of legal advice. We also notice the judgment of the Kerala High Court, reported in K. Kuttan Nair Vs. P. Mammi and Another, and also the judgment of Jammu and Kashmir High Court, reported in 2002 AIHC 4273 (Hakim Nusrat Jabeen v. State of Jammu and Kashmir). They proceed to lay down that wrong advice may not be a ground for condonation of delay. We do not wish to go on that basis for the reason that in the facts of this case, we would think that the attempt to get the matter re-agitated in a case where the departmental appeals were already disposed of, appears to have been highly belated and, at any rate, we did not find that there is merit in the substantial question of law raised and those revisions will stand dismissed.

10. Regarding the other question of law, originally under section 9 of the Central Act till the amendment, which was carried out in 1976 with effect from January 5, 1957, the apex court had taken the view in Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur, , that since penalty is a substantive matter and unless the penalty is provided for in the Central Act, no penalty could be levied by virtue of section 9 of the Central Act, under the State law but by validating Act the law was amended with effect from 1956 and section 9(2A) of the Central Act was inserted. Section 9(2A) of the Central Act reads as follows:

"9. Levy and collection of tax and penalties.--

(2A) All the provisions relating to offences, interest and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions

relating to matters provided for in sections 10 and 10A) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payments as if the tax under this Act were a tax under such sales tax law."

11. After that there can be no dispute that the penalty of the nature, which is imposed in this case, would be permissible under the State law. We have seen the judgment of the Allahabad High Court, reported in Commissioner of Sales Tax Vs. New Central Jute Mills Co. Ltd., . Therefore, in the light of this, we are of the view that after section 9(2A) of the Central Act was inserted by the amendment in 1976, there is power to visit an assessee with penalty in the circumstances made out under section 58 of the Act and the said question of law is answered against the revisionist.

12. The Tribunal finds fault with the assessing authority and the appellate authority.

13. Thereafter, the Tribunal has, proceeded to impose penalty at the rate of 20 per cent. Imposition of penalty is certainly a discretionary matter. In the circumstances, penalty could not have been less than 10 per cent. We take note of the submission of the learned counsel for the revisionist that it is for the first time and apart from this there is no penalty levied. In the circumstances of the case, we would think that rather than remitting the matter we can fix the penalty at 15 per cent in both the quarters in place of 20 per cent fixed by the Tribunal. Accordingly, Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014 are partially allowed and the order of the Tribunal will stand modified and in place of penalty at the rate of 20 per cent, revisionist will be liable to pay penalty at the rate of 15 per cent of the tax amount for both the quarters. The Commercial Tax Revision Nos. 8 of 2014 and 9 of 2014 are, accordingly, partially allowed as above, while Commercial Tax Revision Nos. 21 of 2014 and 22 of 2014 will stand dismissed. No order as to costs.