
(2008) 01 AHC CK 0205
In the Allahabad High Court

Upendra Kumar, B.K.O.

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(4A)

Citation : (2009) 25 VST 70

Hon'ble Judges : Sushil Harkauli, J;Rakesh Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sushil Harkauli and Rakesh Sharma, JJ.—The assessment orders of the petitioner were set-aside on the ground of lack of jurisdiction on part of the Assessing Authority. The assessment years involved and the date on which the respective assessment order was set-aside on the above ground has been given below:

1965-66 6.6.1975 {Annexure 2} 1966-67 6.6.1975 {Annexure 2} 1967-68 6.6.1975 {Annexure 2} 1970-71 31.8.1990 {Annexure 4} 1971-72 23.10.1982 {Annexure 5} 1973-74 19.2.1983 {Annexure 7} 1974-75 19.2.1983 {Annexure 7}

2. On 14.1.1993 and 20.2.1993, notices for fresh assessment u/s 21(4-A) of the UP. Trade Tax Act, 1948 (hereinafter referred to as the Principal Act for short), were issued to the petitioner in respect of each of the aforesaid assessment years. These notices have been filed cumulatively as Annexure 1 to this writ petition.

3. By this writ petition, the petitioner has challenged these notices and the consequent proceedings.

The ground for challenge is that Sub-section (4-A) of Section 21 was inserted by the Uttar Pradesh Sales Tax (Amendment) Act, 1992 (U.P. Act No. 8 of 1992) (hereinafter referred to as the Amending Act for short), which received the

assent of the Governor of Uttar Pradesh on 16.3.1992 and was published in the U.P. Gazette dated 17.3.1992.

4. The learned Counsel for the petitioner pointed out that some of the amendments made by the Amending Act have been made retrospective expressly whereas, the other amendments have not been made retrospective.

5. Sub-section (4-A) of Section 21 of the Principal Act was inserted by Section 14 of the Amending Act. Section 1(2) of the Amending Act says that Section 14 of the Amending Act shall be deemed to have come into force on January 1, 1992.

6. The said Section 14 of the Amending Act is reproduced below:

14. Amendment of Section 21. - In Section 21 of the Principal Act,-

(a) In Sub-section (2) after the existing proviso, the following proviso shall be inserted, namely:

Provided further that the assessment or reassessment for the assessment year 1987-88 may be made by March 31, 1993.

(b) After Sub-section (4), the following Sub-section shall be inserted, namely,-

(4-A) If an order of assessment is quashed on the ground of want of jurisdiction of the assessing authority or any other like ground, by any competent authority or court, fresh order of assessment may be made by the assessing authority having jurisdiction within one year from the date of receipt by the assessing authority whose order is so quashed, of the copy of order of such authority or court by March 31, 1993 whichever is later.

(c) After Sub-section (5), the following Sub-section shall be inserted, namely,-

(5-A) If an ex parte order of assessment or reassessment or penalty passed against a sick unit is set aside by the State Government by an order under Sub-section (2) of Section 38, a fresh order of assessment, or reassessment or penalty, as the case may be, for that year may be made within one year from the date of receipt of such order of the State Government by the assessing authority concerned.

(d) In Sub-section (6-A) after the words "any other assessment or reassessment" the words "or any other matter" shall be inserted and be deemed to have been inserted on February 19, 1991.

6. It will be noticed that Section 14(d) of the Amending Act makes the amendment mentioned therein expressly retrospective with effect from 19.2.1991.

Similarly, Section 3 of the Amending Act, which substitutes Section 3-AAAA says that this substitution shall be deemed to have taken place on April 1, 1974. Again Section 4 of the Amending Act, which amends Section 3F of the Principal Act by making certain insertion, expressly says that such insertion by the

Amending Act shall be deemed always to have been inserted.

The insertion of Sub-section (4-A) in Section 21 of the Principal Act has not been made retrospective expressly.

7. Now, obviously the situation obtaining by such non-retrospective amendment would have some difference as compared to a situation if the Legislature had said that the Sub-section (4-A) would be deemed always to have been inserted.

8. Therefore, the newly inserted Sub-section (4-A), not being made retrospective, would apply only to cases where the order of assessment is quashed subsequent to 1.1.1992, which is the date with effect from which the Section 14 of the Amending Act is deemed to have come into force u/s 1(2) of the Amending Act.

9. The words of Sub-section (4-A) of Section 21 are "if an order of assessment is quashed" and not "if an order of assessment has been quashed". This also gives an indication that Legislature did not want ancient matters to be reopened by virtue of the said amendment for the obvious reason that it would cause great hardship to the assesseees.

10. Apparently, this amendment has been made to cover those cases where limitation for assessment has expired and in which the assessment order gets quashed after the amendment on account of want of jurisdiction.

11. From the petitioner's side, reliance has been placed upon the decisions of the Supreme Court in the case of K.M. Sharma v. I.T.O. 2002 UPTC 488 and the case of Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi-I, In both these decisions, the Supreme Court has held that retrospectivity to an amending provision is not to be given unless expressly stated or clearly implied.

12. It is quite obvious from a plain reading of the Amending Act that the insertion of Sub-section (4-A) in Section 21 of the Principal Act has not been expressly given retrospective effect prior to 1.1.1992. The question to be examined therefore would be whether such retrospective effect can or should be given to the newly inserted Sub-section (4-A) because of necessary implication. While considering this, it will have to be kept in mind that the same Amending Statute has expressly given retrospectivity to some of the amendments made by it.

13. We do not find anything in the context, or for that matter any logical reason for holding that retrospective effect was necessarily intended by the Legislature. When the statute does not expressly give retrospective operation to an amendment, it would be for the respondents to show as to why such retrospective operation is to be necessarily inferred.

14. The standing Counsel has argued that amendments relating to limitation should always be given retrospective effect because they relate to procedural law and do not deal with any substantive rights of the assessee. Certain decisions

have also been cited. The principle which emerges from those decisions is that amendment in procedure is normally to be given retrospective effect to the extent that they would apply even to pending proceedings. The law laid down by the judicial decisions is that no person can be said to have a vested right in procedure and, therefore, even if procedure has been changed during pendency of proceedings, the proceedings may be continued and concluded in accordance with the amended procedure. However, we have not been shown any decision where an amendment in procedure has been utilised to reopen concluded proceedings for re-deciding these proceedings according to the amended procedure. Any amendment which has the effect of taking away a vested right or of re-opening closed or concluded proceedings has never been given retrospectivity by any judicial interpretation.

15. Expiry of limitation as also conclusion of legal proceedings confers a valuable and vested right upon the litigant and such vested right can not be taken away by an amendment of law unless the law has been given retrospective effect expressly by the Legislature or where such retrospectivity appears to be a necessary implication because of the nature of the provision or its context.

16. We have already stated above that we do not see any such necessary implication.

17. The standing Counsel has placed reliance upon Section 17 of the Amending Act in an attempt to justify an inference of retrospectivity. The said provision of the amending statute is quoted below for ready reference:

17. Validation. - (1) Notwithstanding anything in any judgment, decree or order of any court or authority, any notification issued or anything done or any action taken before the commencement of this section which conforms to the provisions of the principal Act, as amended by this Act shall be deemed to be and always to have been valid and lawful as if the provisions of this Act were in force at all material times.

(2) Where before the commencement of this section any authority or court has, in any proceeding made any assessment, levy or collection of any tax or passed an order imposing any penalty or making any other demand under the principal Act, or passed any order modifying, setting aside or quashing (wholly or in part), such assessment, levy, collection, penalty or demand and such assessment or other order becomes inconsistent with the provisions of the principal Act as amended by this Act then, subject to the provisions of Sub-section (3) of any party to the proceeding or the Commissioner of Sales Tax may by September 30, 1992, make an application to such authority or court for review of the assessment or order and thereupon, such authority or court may review the proceeding and make such order, varying or revising the order previously made, as may be necessary to give effect to the provisions of the principal Act as amended by this Act.

(3) The Assessing, Appellate or Revising Authority as the case may be, may

within a period of one year from the commencement of this section or within the period specified in Section 22 of the principal Act, whichever expires later, make any rectification in any order passed by it where such rectification becomes necessary in consequence of the amendment of the principal Act:

Provided that no rectification which has the effect of enhancing the assessment, penalty or other dues, shall be made unless the authority concerned has given notice to the dealer or person concerned of his intention to do so and has allowed him a reasonable opportunity of being heard.

17. Heavy reliance has been placed upon Sub-section (1) of Section 17 of the Amending Act quoted above.

We are of the opinion that the reliance is completely misplaced. The said Section 17(1) of the Amending Act only validates actions already taken before the commencement of that provision. The provision means that if an action of the nature mentioned therein has been taken and such action would not be valid but for the Amending Act, it will be protected by the legal presumption that the Amending Act was existing on the date of such action. It can not by any stretch of the language be utilised to confer power for future action of issuing of notice for starting proceedings for fresh assessment or re-assessment.

18. For the reasons given above, the decision of a learned single Judge of this Court in the case of Radha Brick Field v. Commissioner of Trade Tax 2006 30 N.T.N. 23, which has been relied upon by the learned Standing Counsel will have no bearing upon this case inasmuch as, in that decision, the learned single Judge was examining the proviso added to Sub-section (2) of Section 21 in which there was an express provision permitting completion of assessments for an earlier specified assessment year. Thus, it was the express words of the statute because of which the retrospectivity was upheld by the learned single Judge.

19. In view of the reasons given above, this writ petition is allowed and the impugned notices enclosed as Annexure 1 to this writ petition for the assessment years specified above (cumulatively filed as Annexure 1 to this writ petition) and all consequent proceedings are quashed.