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(2014) 03 AHC CK 0229

In the Allahabad High Court

Case No : Writ Tax No. 1628 of 2009

Vaibhav Edibles Pvt. Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 22, 7D

Citation : (2014) 73 VST 295

Hon'ble Judges : Mahesh Chandra Tripathi, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : S.D. Singh, Senior Advocate assisted by Harsh Vardhan Gupta, Advocate for the Appellant; U.K. Pandey, Chief Standing Counsel, Advocate for the Respondent

Judgement

Mahesh Chandra Tripathi, J.—Heard Sri S.D. Singh, senior advocate assisted by Sri Harsh Vardhan Gupta, learned counsel for the petitioner and Sri U.K. Pandey, learned counsel for the respondents. The present writ petition has been with following prayers:

"(i) Issue a writ, order or direction in the nature of certiorari and to quash the Government Orders dated January 12, 2007 (annexure 8), the order dated July 30, 2007 (annexure 10) and the order dated May 22, 2009 (annexure 12) both passed by respondent No. 3 in so far as they deny the claim of refund made by the petitioner.

(ii) Issue a writ, order or direction in the nature of mandamus and direct the respondents to forthwith refund to the petitioner the sum of Rs. 8,38,800 with statutory interest from the date of deposit till the date of refund.

(iii) Award cost of this petition to the petitioner.

(iv) Pass such other and further writ, order or direction in favour of the petitioner, as this honourable court may deem fit and proper in the circumstances of the case."

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2. The petitioner applied for compounding of the liability of trade tax on the production of vegetables oil in pursuance of the compounding scheme u/s 7D of the U.P. Trade Tax Act dated May 19, 2003 hereinafter referred as "the Act, 1948". The petitioner is a company duly incorporated under the Indian Companies Act, 1956 and engaged in manufacture and sale of refined oil. The State Government in exercise of its power u/s 7D of the Act, 1948 issued direction on May 19, 2003 for assessment year 2003-04 for imposition of composition money on refined oil known as "Compounding Scheme". Under the said Compounding Scheme fees were to be computed and paid at the rate of Rs. 575 per tonnes on production of refined oil not exceeding 120 per cent, per annum of the installed capacity of the refined oil unit and at the rate of Rs. 675 per tonne on production exceeding such limit. As per the compounding scheme if the units are sick and remained closed for two years or more years preceding the date March 31, 2003 and which resume production in the assessment year 2003-04, such units would be liable to pay proportionate compounding fees for the period starting from the date of their restarting production.

3. Sri S.D. Singh, learned senior advocate, has submitted that the petitioner-company had started production on October 23, 2003 and as per compounding scheme the company was liable to pay only from the date of starting production for the said financial year. He has also submitted that the company was required to pay compounding fee proportionate to the remaining period beginning from the date of commencement of their manufacturing activity, i.e., October 23, 2003. He has also submitted that the company which has started production on October 23, 2003 and in pursuance of the Compounding Scheme the company has deposited the entire compounding fees as demanded and simultaneously represented against the computation and realisation of such high fees and there was no justification for realising compounding fees for the period of April 1, 2003 to October 22, 2003 (six months and 22 days) during which admittedly the petitioner-company did not engage any manufacturing activity and admittedly the petitioner had made full compliance and also adhered to all the provisions of Compounding Scheme and the conduct of the company was bona fide and in accordance with the law. He has further argued that as per the compounding scheme, the fee is to be realised in proportion of length of manufacturing activity, when company actually starts production. It is wholly unreasonable and discriminatory on the part of the State Government to deny the benefit for the period in which admittedly no production activity had been carried out by the company and in this regard the retention of the amount excess deposited by the petitioner''s company is contrary to law and the order passed by the respondents are contrary to the compounding scheme and is liable to be set aside.

4. Sri U.K. Pandey, learned counsel for the respondents, opposed the contention of the petitioner''s counsel clearly stated that the State Government had initiated compounding scheme vide order dated May 19, 2003 in exercise of power u/s 7D of the Act, 1948 for the assessment year 2003-04. He further states that the petitioner while obtaining for compounding had not requested for acceptance of

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compounding scheme in part of the assessment year rather company has accepted compounding scheme for complete assessment year and he rightly deposited the composition money for the entire assessment period and not entitled for any refund of the composition money deposited by him. He has also submitted that the petitioner had deposited money u/s 7D under Compounding Scheme, the same was not an assessment order as such the application which had been moved by the petitioner u/s 22 was not maintainable and the same could not be decided u/s 22 of the Act and the same had rightly been rejected by the respondent. Once, the petitioner itself opted Compounding Scheme for the entire assessment year and deposited the requisite amount, then there was no occasion for making any somersault and start claiming that the amount could be realised only from the date of starting production. He further states that since the petitioner had deposited the composition money pursuant to the Compounding Scheme, the same cannot be refunded on the false claim made by the petitioner stating therein that he had carried out on business only for part of compounding period.

5. We have heard the rival submissions advanced by the learned counsel for the parties and perused the record.

6. The State Government in exercise of power u/s 7D of the Act, 1948 had issued Government Order on May 19, 2003 for the assessment year 2003-04 known as "Compounding Scheme". The relevant and salient features of the said scheme are quoted as under:

7. The petitioner is a company duly incorporated under the Indian Companies Act, 1956 and engaged in manufacture and sale of refined oil. The petitioner-company was registered on April 2, 2003 in the Department and started actual production since October 23, 2003. Initially installed capacity of the manufacturing unit was 8,000 tonnes on October 23, 2003 and subsequently, increased to 9,000 tonnes. The petitioner modified the application for compounding with installed capacity of 9,000 tonnes. The last date of application under the Compounding Scheme was May 31, 2003, the complete procedure was given under the said Scheme and the merchant who were interested to avail of the said facility had to apply the same on the format along with full description. The scheme along with format has been brought on record through annexure No. 1 to the writ petition. The Compounding Scheme applicable for the entire year 2003-04 beginning from April 1, 2003 up to March 31, 2004. The only exception for proportionate benefit for the period, for which the unit was operated, was given to those units, which were either sick and were closed for two years or more prior to March 31, 2003 and had started production for the financial year 2003-04. In such category the proportionate benefit for the period had to be given and compounding had to be realised for the remaining period.

8. Bare perusal of the scheme, it is apparent that no other category for giving proportionate benefit has been provided. Specially, clause 16 of the Scheme clearly provides that those units, which had started production late or that for

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certain reasons they could not produce goods for the relevant year, will not be given any benefit of change or reduction for any amount determined for compounding. For ready reference, the clause 16 is quoted below:

9. In the present matter, admittedly, the petitioner had applied on October 23, 2003, there is no doubt that the said scheme was applicable up to May 31, 2003 and as per clause 3 of the Scheme it had been provided from the date of production the firm or company would apply to the Commissioner within 30 days'' time. It is admitted situation that the company got permanent registration on April 2, 2003 and commenced the production since October 23, 2003 and on October 23, 2003 it had been shown capacity of 8,000 tonnes per annum which had, been modified to 9,00.0 tonnes on October 30, 2003. The petitioner has applied for compounding on October 30, 2003 and consequently the petitioner was given benefit of compounding with the liability of interest at Rs. 2,01,996 to be paid by the petitioner on late deposit of the installments of compounding and on which the demand of Rs. 1,94,975 towards the compounding and interest was raised vide order dated July 30, 2007. In the present matter the petitioner was assessed for trade tax and the entry tax vide order dated August 9, 2007 passed by the Deputy Director Commissioner (Assessment)-2, Trade Tax, Kanpur. In the assessment order dated August 9, 2007 it was found that the petitioner had applied for compounding which was extended in its case up to October 30, 2003 and consequently the petitioner was given benefit of compounding. It also reveals that the State Government had clarified vide its order dated January 12, 2007 on the representation for clarification dated March 3, 2006 made by, the Commissioner, Trade Tax by which it had been clarified that the compounding will be admissible for those units, which had started production in the middle of the year 2003-04 proportionately, for the period they had actually made production and for that purpose even if the production started, in the middle of month, the entire month will be counted for production but those units, which had paid the entire amount under the Compounding Scheme for the entire year, will not be given any refund on such clarification. Section 7D of the Act runs as under:

"7D. Composition of tax liability.--Notwithstanding anything contained in this Act, but subject to directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon:

Provided that any change in the rate of tax which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum on the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

Explanation.--For the purposes of this section the assessing authority includes an officer not below the rank of Trade Tax Officer, Grade II, posted at a check-post."

10. The section 7D of the Act is very clear which enables the company or firm to

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the traders to pay sales tax in lump sum in lieu of tax. For that purpose, the dealer executes an agreement with undertaking to pay the sales tax in lump sum and the liability arises under such agreement is not related to actual turnover of the petitioner. The petitioner have agreed to pay the tax in lump sum could not be permitted to turn around and contend that he was not liable to pay the amount agreed to be paid by him because his turnover turned out to be either nil or that it was not adequate on account of various factors. In the present case, clause 16 of the agreement specifically provides that it would not open to the dealer to pay a reduced amount or to resile therefrom as that clause clearly contemplated that once a dealer agreed to pay the tax in lump sum, they cannot insist on payment of the tax on the basis of actual turnover or any other reason for, e.g., started production very late.

11. In the present case, the petitioner itself voluntarily applied under the Compounding Scheme deposited the requisite tax and submitted the form on the pro forma, it implies that the petitioner had accepted the terms and conditions voluntarily. As scheme specifically provided that there would not reduction in the composition money.

12. The honourable Full Bench of this court in the case of Bhadauria Gram Sewa Sansthan Vs. Asstt. Commissioner, Sales Tax, Allahabad Division, Sales Tax Officer (A) and State of Uttar Pradesh, has considered section 7D of the U.P. Trade Tax Act, 1948. The relevant portion is quoted below (pages 369 to 372 in 148 STC):

"31. Having given our anxious considerations to the various submissions made by the learned counsel for the parties, we find that section 7D which provides for composition of tax liability, starts with a non obstante clause. A plain reading of section 7D of the Act shows that an option has been given to a dealer who is covered by a scheme issued by the State Government from time to time to opt for payment of lump sum amount in lieu of the amount of tax. It excludes the applicability of other provisions of the Act which deals with the assessment and payment of tax. A non obstante clause, as observed by the apex court in the case of State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, is generally appended to a section with a view to give the enacting part of the section, in case of a conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions or Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs. The payment of compounded tax is a convenient, hassle-free and a simple method of assessment. A dealer who has opted for payment of lump sum amount in lieu of tax, is not required to file monthly or quarterly return of its turnover. It has to pay a fixed sum of money as tax as agreed upon by the Department. It is the choice of a dealer to opt for compounded payment of tax and if the said choice is

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in accordance with the scheme and is ultimately accepted by the authority concerned, it becomes an agreed amount of tax. The Department as also the dealer are bound by the said agreement. Once a dealer has opted to pay the tax in lump sum u/s 7D of the Act after it has been accepted by the Department, any demand for that period is not relatable to the actual turnover but the sum agreed upon. In other words, the Department as well as the dealer both know the amount payable and receivable by each other. The determination of lump sum amount in lieu of tax displaces the requirement of regular assessment proceeding and the quantification of tax liability is by agreement as per the term of the scheme which would bind both the parties. The object of introducing such a scheme under a taxing statute is well established as so many advantages are attached to such scheme besides being hassle-free to the dealer. It also avoids unnecessary litigation. The Department in its turn receives a fixed amount of tax without undertaking the assessment work and, thus, saves a lot of time. It also facilitates the speedy recovery of tax.

32. In the case of Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, the apex court while considering the scheme announced by the Government of Andhra Pradesh, providing that instead of payment of entertainment tax on the basis of actual number of cinema goers, the proprietor of a cinema hall may opt to pay a consolidated levy on the basis of gross collection capacity per show, has held that the compound payment of entertainment tax is a more convenient mode of levy of the tax inasmuch as it dispenses with the need of verification or to enquire into the number of persons admitted to each show and to verify the correctness or otherwise of the returns submitted by the proprietor containing the number of persons admitted to each show and the amount of tax collected. The aforesaid decision has been followed by the apex court in the case of State of Kerala and another Vs. Builders Association of India and others, wherein the apex court has held that the object of levy of compound payment of tax is not to increase the Revenue. The Legislature provides the alternate method of taxation with a view to realise the tax with least discomfort to the assessee. It is only a convenient mode of realisation of tax. It also ensures the fixed amount of payment of tax to the Government irrespective of the fact that the business of the assessee earned profit or not. Similar view has been taken by the apex court in the cases of Mycon Construction Ltd. Vs. State of Karnataka and Another, Commissioner of Central Excise and Customs Vs. M/s. Venus Castings (P) Ltd., and Union of India and Others Vs. Supreme Steels and General Mills and Others,

33. A Full Bench of this court in the case of Satish Prakash Ajai Kumar [1980] UPTC 64 (All) [FB] while considering the provision of section 3(1)(b) of the U.P. Sugarcane Purchase Tax Act, 1961 and rule 13 of the Rules framed thereunder, has held that they do not contemplate any exemption from the liability for payment of tax by the owner of a unit who has opted for payment of tax on assumed basis merely because he has, by chance or on account of some mechanical defect, been unable to work some of the crushers in his unit.

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34. Clause 19 of the Scheme under which the petitioner had applied for composition, specifically provided that if the firing is started late or is not commenced or, for any other reason, the amount of composition money would neither be reduced nor changed. Thus, from the provision of section 7D of the Act as also the Scheme announced thereunder, we are of the considered opinion that the liability for payment of tax is dependent upon the agreement entered into by the parties and the amount so agreed would continue to be payable by the dealer notwithstanding the fact that the dealer has neither manufactured nor sold any bricks during the period for which it had opted for the composition u/s 7D of the Act.

35. The amount payable under the Composition Scheme is not relatable to any actual turnover but depends upon the agreement under the scheme at the option of the dealer. The dealer having once exercised its option, cannot, therefore, be permitted to turn around and resile from its liability merely on the ground that he had no turnover or had not done any manufacturing activity during the relevant year.

36. So far as the decisions and the dictionary meaning of the words ''in lieu of'' relied upon by Sri Navin Sinha, learned senior counsel, are concerned, we may mention that it is of no help to the petitioner inasmuch as here the amount of tax is being demanded in terms of the Composition Scheme which the petitioner had opted.

37. There cannot be any dispute that there cannot be any estoppel against a statute. However, where the demand is being made under the terms of the contract which specifically provides that there would be no reduction or change in the composition money even if the firing has not been done in brick kiln or it has been started late or for any other reason, the petitioner is bound by the said clause and he cannot be permitted to challenge the same in view of the law laid down by the apex court in the cases of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, State of Orissa and others Vs. Narain Prasad and others, etc. etc., and Bharathi Knitting Co. Vs. DHL Worldwide Express Courier Division of Airfreight Ltd., As we have already come to the conclusion that the liability to pay the composition money is not relatable to actual sales at all, the principle laid down by the apex court in the case of The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., will not be attracted."

13. In the present matter, the petitioner had opted Compounding Scheme voluntarily issued by the State Government which facilitate to the company for payment of lump sum amount in lieu of the amount of tax. This also excludes the applicability of other provisions of the Act which deals with the assessment and payment of tax. The payment of compounded tax is a convenient, hassle-free and simple method of assessment. A company which opts for payment in lump sum amount in lieu of the tax, is not required to fill monthly or quarterly return of its turnover. It has to pay fixed sum of money as tax as agreed upon by the

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Department. It is a choice of company to opt for payment of compounded tax and if the said choice is in accordance with the scheme and is ultimately accepted by the authority concerned, it becomes an agreed amount of tax. The Department as well as the company or the merchant are bound by the said agreement. The company which has opted to pay tax in lump sum u/s 7D of the Act, displaces the requirement of regular assessment proceeding and the quantification of tax liability and eventually the liability is to be governed on the basis of an agreement. As per the terms of the scheme which would bind both the parties. It is further clarified that the Compounding Scheme has many advantages, once opted to it, as it is hassle-free and also avoids unnecessary litigation. The Department in turn received a fixed amount of tax without undertaking the assessment work and thus saves a lot of time. In the present matter, the petitioner had applied for composition without any conditionalities, the same was with free will without any conversion or subjugation, whereas the clause 16 of the agreement specifically provides if the production is started late or is not commenced or for any other reason, the amount of composition money, neither be reduced nor changed. Thus from the provisions of section 7D of the Act has also scheme commenced thereunder.

14. We are of the considered opinion that the liability of payment of tax is dependent upon the agreement entered into by the parties and the amount so agreed would continue to be payable by the company notwithstanding the fact that the company could not produce during the period for which it had opted for composition u/s 7D of the Act. The said scheme is not relatable to any actual turnover but depends upon the agreement under the scheme. The company once exercises its option under the Compounding Scheme, thereafter, cannot be permitted to turn around and resile from its liability merely on the ground that it had no turnover or had not produced during the said period.

15. In view of above, Government Orders dated January 12, 2007, July 30, 2007 and May 22, 2009 are fully justified and sustainable in the eyes of law. In view of the above, we do not find any error in the impugned orders, which requires interference by this court. In the result, the writ petition, being devoid of merits, fails and is dismissed.

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