(1982) 08 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 329 (Tax) of 1977

Victor Cables Corporation and Another APPELLANT

Vs

The Assistant Commissioner (Assessment), Sales Tax and Others RESPONDENT

Date of Decision : 02-08-1982

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1983) 54 STC 94

Hon'ble Judges : R.R. Rastogi, J;H.N. Seth, J

Bench : Division Bench

Advocate : Bharatji Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.R. Rastogi, J.—By this petition under Article 226 of the Constitution the petitioners challenge the proceedings for the recovery of Rs. 92,617.25 in pursuance of the notice dated 1st July, 1977, relating to the assessment year 1976-77.

2. M/s. Victor Cables Corporation, Ghaziabad, petitioner No. 1, is a partnership firm of which petitioner No, 2, Sri B.K. Gupta, is a partner. The head office of the firm is at New Delhi and its factory is situated at Ghaziabad. It is engaged in the manufacture of electric wires and electric cables. For the assessment year 1975-76 the petitioners effected intra-State sales of aggregate sum of Rs. 38,27,252.19 out of which sales to the extent of Rs. 35,87,576 were made to Government departments and on those sales tax at the concessional rates of 3 per cent and 4 per cent in view of Section 3-G of the U.P. Sales Tax Act was to be charged. This provision has come into force on 26th May, 1975. While filing the quarterly/monthly returns the petitioners deposited the sales tax on the sales made to the various Government departments at the rate of 7 per cent plus 1 per cent which amount came to Rs. 2,85,058.10 whereas at the concessional

rates the amount of tax payable was only Rs. 1,92,440.85. In this way the petitioners deposited an excess amount of Rs. 92,617.25. They made an application before the Deputy Commissioner (Executive), Sales Tax, Meerut, through the Assistant Commissioner (Assessment), Sales Tax, Ghaziabad, respondent No. 1, who is the assessing authority of the petitioners, on 27th April, 1977, for adjustment of the said amount towards the sales tax payable by the petitioners for the assessment year 1976-77 and further while filing the monthly returns for that year they also specifically mentioned in the returns that the aforesaid excess amount was being adjusted by them. Respondent No. 1 did not pass any order on that application but referred it to the Deputy Commissioner (Executive), Sales Tax, Meerut, who in turn, informed the petitioners that he would refer the matter to the Commissioner of Sales Tax, U.P., Lucknow. However, no order was passed on that application. Provisional assessment orders were passed for the months April, May and November, 1976, under the U.P. Sales Tax Act and for the month of April, 1976, under the Central Sales Tax Act creating a total tax liability of Rs. 1,22,650.57. The petitioners had already deposited a sum of Rs. 23,615.54 and hence a demand for Rs. 99,035.03 was issued against the petitioners. They deposited a sum of Rs. 6,200 on 25th June 1977 and claimed adjustment of the balance against the amount refundable to them for the preceding year and in regard to which their application for adjustment had been pending. It appears that without disposing of that application the petitioners were served with a notice of demand dated 1st July, 1977, requiring them to pay Rs. 92,617.25 and that notice form the subject-matter of challenge in this writ petition.

3. No counter-affidavit has been filed on behalf of the respondents and hence the averments made in the petition have to be accepted as correct.

4. It was submitted before us on behalf of the petitioners by their counsel, Sri Bharatji Agrawal, that without adjusting the amount found refundable to the petitioners, the impugned proceedings for recovery could not be taken. In the same connection it was also contended that the assessing authority could not have referred the petitioners'' application for adjustment to the Deputy Commissioner (Executive), Sales Tax, Meerut, nor the latter could have referred it to the Sales Tax Commissioner, Lucknow. We do not think it necessary to go into the second question because we find that in answer to the first contention raised before us the petitioners are entitled to succeed. Section 29 of the Sales Tax Act provides for refunds. Sub-section (1) provides that the assessing authority shall, in the manner prescribed, refund to a dealer any amount of tax, fees or other dues paid in excess of the amount due from him under this Act. The proviso to this section states that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956 and only the balance, if any, shall be refunded. It would be seen that this proviso makes it obligatory on the Sales Tax Officer to make adjustment of any tax assessed or penalty levied from out of the money due as refund. A similar question had come up for

consideration before a Bench of this Court in Dhingra Mechanical Works v. Commissioner of Sales Tax 1971 UPTC 821. It was ruled that this proviso clearly casts a duty upon the assessing authority to adjust the refund due to an assessee towards the outstanding liability of tax or penalty, etc. When a tax liability is to be discharged by an assessee, he can ask the Sales Tax Officer to adjust against such liability any amount which may be refundable to him. It was further held that under this proviso, there is a provision for an automatic adjustment.

5. As we have indicated above, for the assessment year 1975-76 the petitioners had made excess payment of Rs. 92,617.25. They made an application on 27th April, 1977, for adjustment of that amount towards the tax payable by them for the assessment year 1976-77. They also mentioned specifically in the returns filed for that year that the excess amount was being so adjusted by them. It is unfortunate that the assessing authority did not pass any order on that application and sought to enforce recovery of the amount payable by the assessee for the subsequent year, i.e., 1976-77. He could not have done so.

6. In the result, therefore, the petition succeeds and is allowed and a mandamus is issued to the respondents directing them not to enforce the impugned recovery of Rs. 92,617.25 in pursuance of the notice dated 1st July, 1977, relating to the year 1976-77 without first deciding the petitioners'' application dated 27th April, 1977, for adjustment of the excess amount paid by them for the assessment year 1975-76. We make no order as to costs.