

Commissioner, Sales Tax, U.P. Lucknow vs Anoop Wines, Khuldabad, Allahabad on 26 August, 1988

Equivalent citations: 1988 AIR 2042, 1988 SCR SUPL. (2) 599, AIR 1988 SUPREME COURT 2042, (1988) 3 JT 631 (SC) 1988 SCC (SUPP) 731, 1988 SCC (SUPP) 731

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

COMMISSIONER, SALES TAX, U.P. LUCKNOW

Vs.

RESPONDENT:

ANOO WINES, KHULDABAD, ALLAHABAD

DATE OF JUDGMENT 26/08/1988

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 2042 1988 SCR Supl. (2) 599

1988 SCC Supl. 731 JT 1988 (3) 631

1988 SCALE (2) 550

ACT:

Uttar Pradesh Sales Tax Act, 1948/Uttar Pradesh Sales Tax Rules 1948: Sections 8A(1)(c) and 15A (1)(g)-Registration of dealer-Failure to register-Imposition of penalty without notice-Whether justified.

HEADNOTE:

On the basis of a survey conducted, the respondent, a dealer in foreign liquor was directed to get itself registered for 1977-78 as a dealer. But this direction was not complied with. Such a direction in respect of 1976-77 was also not complied with. The Sales Tax Officer imposed a penalty of Rs.4,500 for non-registration under Section 15A(1)(g) of the Act. The respondent went on appeal before

the Assistant Commissioner (Judicial) who dismissed the appeal. Thereafter it preferred a revision before the Additional Judge (Revision) which was subsequently transferred to the Sales Tax Tribunal. The Tribunal dismissed the appeal. The respondent challenged the Tribunal's order, before the High Court by way of revision. Allowing the revision, the High Court held that the respondent was not under the legal obligation to seek registration and so the question of penalty under Section 15A(1)(g) of the Act did not arise.

This appeal, by special leave is against the aforesaid decision of the High Court.

Dismissing the appeal,

HELD: 1.1 Without calling upon the assessee or the dealer to explain its claim on Section 8-A(1)(c) the imposition of the penalty which was sought to be sustained and maintained under clause (d) of Section 8-A(1) of the Act cannot be sustained by reference to clause (c). [603A-B]

1.2 Clause (d) of Section 8-A(1) has no application to the facts of the present case. The dealer did not commence business during the course of the assessment year and as such he was not registrable in terms of that section. Clause (d) of the said section refers to a dealer who has commenced

PG NO 599

PG NO 600

business during the course of an assessment year. It is abundantly clear that the assessee had started the business in the preceding year and is not the one who commenced his business during the course of the assessment year 1977-78. Therefore, clause (d) is inapplicable to the assessee. The contention that the order for the imposition of penalty could and should have been justified on clause (c) of Section 8-A(1) being a dealer who would, but for any exemption made or granted under the Act, be liable to pay tax thereunder provided his actual or estimated turnover for the assessment year is not less than fifty thousand rupees, was never agitated before the authorities below. The assessee or the dealer never had any occasion to meet this case. It is not a question of sustaining jurisdiction by reference to a wrong section, but imposition of penalty without notice. [602d-H; 603A]

L. Hazari Mal Kuthiala v. Income-tax Officer, Special Circul, Ambala Cantt. and Anr., [1961] 41 I.T.R. 12p. 20, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 14274 of 1985.

From the Judgment and Order dated 7.2.85 of the Allahabad High Court in sales Tax Revision No. 206/1984. A. K. Srivastava for the petitioner.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. This is a petition for leave to appeal against the decision of the High Court of Allahabad, dated 7th February, 1985.

It is a matter dealing with sales-tax. The dealer commenced business of foreign liquor from 1st May, 1976. From the record, it appears that a survey was made on 7th August, 1976 and the respondent was directed to get itself registered for 1977-78 as a dealer. It did not. This was so inspite of having been directed to do so in respect of 1976- 77 and, as such, penalty was imposed. The Sales Tax Officer by his order dated 16th December, 1977 imposed penalty of Rs. 4,500 for non-registration under section 15A(i)(g) of the Uttar Pradesh Sales Tax Act, 1948 (hereinafter called 'the Act'). Section 15A empowers the assessing authority, if satisfied, that any dealer had not done certain things as contained in the various sub-clauses of sub-section (1) therein stated it would be liable to penalty. The dealer is liable if he fails to obtain transit pass or to deliver the PG NO 601 same as provided in section 28-B of the Act. It is on this score, that is to say, failure to obtain or deliver transit pass that the dealer was found guilty and was penalised. Against the aforesaid order, the respondent-dealer filed an appeal before the Assistant Commissioner (Judicial) Sales Tax, Allahabad Range, Allahabad. The said Assistant Commissioner by his order dated 31st March, 1980 dismissed the appeal and confirmed the order of the Sales Tax Officer. Aggrieved thereby the dealer preferred a revision before the Additional Judge (Revisions) Sales Tax, which was subsequently transferred to the Sales Tax Tribunal. Allahabad Bench. Allahabad. The Sales Tax Tribunal by its order dated 27th February. 1984 dismissed the appeal of the dealer and confirmed the order of the Assistant Commissioner (Judicial), Sales Tax. Aggrieved thereby the assessee challenged the same in the High Court by way of revision. The High Court in the impugned judgment allowed the revision. The High Court noted the contention of the assessee that it was not under the legal obligation to seek registration and therefore, the question of any penalty under section 15A(1)(g) of the Act did not arise. In this connection it is relevant to refer to Section 8A of the Act. Section 8A so far as material for our present purpose provides as follow:

"8A. Registration of dealers and realization of tax by dealers. (1)(a) Every dealer who sells any goods imported by him from outside Uttar Pradesh the turnover whereof is liable to tax under sub-section (1) of section 3-A; and

(b) every dealer who is liable to pay tax under any other provision of this Act; and (

c) every dealer who would, but for any exemption made or granted under this Act, be liable to pay tax thereunder, provided his actual or estimated turnover for the assessment year is not less than fifty thousand rupees in the case of manufacturers and one lakh rupees in the case of other dealers or such large amount as may be notified under sub- section (2) of section 3; and

(d) every dealer commencing business during the course of an assessment year whose average monthly estimated PG NO 602 turnover for the remainder of the year, or

whose actual turnover in any month during the aforesaid period, is not less than one-twelfth of fifty thousand rupees in the case of manufacturers and one lakh rupees in the case of other dealers or of such larger amount as may be notified under sub-section (2) of section 3; shall apply for registration or renewal as the case may be to the assessing authority in such form, in such manner and within such period as may be prescribed. The application for registration or renewal shall, as from the assessment year 1978-79, be made for a period of three assessment years and the applications for subsequent renewals shall be made for every three years hereinafter referred to as the triennial renewal:"

We are not, in the instant case, concerned with the different provisos and the subsequent clauses. It appears that clause (d) has no application to the facts of this case. The dealer indeed in this case did not commence business during the course of the assessment year and as such he was not registrable in terms of that section. Clause

(d) of the said section refers to a dealer who has commenced business during the course of an assessment year. It is abundantly clear in this case that the assessee had started his business in the preceding year and is not the one who commenced his business during the course of the assessment year 1977-78, therefore, clause (d) is inapplicable to the assessee. The High Court noted that he is not said to have been covered by any other clause of sub-section (1) of section 8A. That is the parameter within which the matter was canvassed before the authorities below. Counsel for the revenue, however, sought to urge before us that the order for the imposition of penalty could have been and should have been justified on clause (c) of section 8-A(1) being a dealer who would, but for any exemption made or granted under the Act, be liable to pay tax thereunder, provided his actual or estimated turnover for the assessment year is not less than fifty thousand rupees. This point was never agitated before the authorities below. The assessee or the dealer had never any occasion to meet this case. It is not a question of sustaining jurisdiction by reference to a wrong section as was done in the case of *L. Hazari Mal Kuthiala v. Income tax Officer, Special Circle, Ambala Cantt. and Anr.*, [1961] 41 I.T.R. 12 at page 20 where this Court held that if a particular action is valid under one section, it cannot be rendered invalid because reference was made to another section, and it makes no difference if the two empowering provisions are in the same statute. But this principle will have no application where in a penal action no notice was PG NO 603 given or resort to such a provision was made to the delinquent or the offending party.

In that view of the matter, we are of the opinion that without calling upon the assessee or the dealer to explain its claim on section 8-A(1)(c) the imposition of the penalty which was sought to be sustained and maintained under clause (d) of section 8-A(1) of the Act cannot be sustained in this case by reference to Clause (c).

In the premises, the High Court was right in the view it took. The petition raises no substantial question of law which requires looking into or interference by this Court. The petition, therefore, fails and is dismissed accordingly.

G.N.

Petition dismissed.

