Commissioner Of Trade Tax,Lucknow vs M/S Kanhai Ram Thekedar on 29 April, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3033, 2005 AIR SCW 2493, 2005 ALL. L. J. 1585, 2005 (4) SCALE 495, 2005 (4) SCC 472, (2005) 2 KER LT 948, (2005) 31 ALLINDCAS 191 (SC), (2005) 5 JT 13 (SC), 2005 (4) SLT 216, (2005) 4 SCJ 567, (2005) 3 SUPREME 756, (2005) 4 SCALE 495, (2005) 185 ELT 3

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Bench: S.N. Variava, Ar. Lakshmanan

CASE NO.:
Appeal (civil) 2679 of 2000

PETITIONER:
Commissioner of Trade Tax,Lucknow

RESPONDENT:
M/s Kanhai Ram Thekedar

DATE OF JUDGMENT: 29/04/2005

BENCH:
S.N. Variava & Dr. AR. Lakshmanan

JUDGMENT:

J U D G M E N T Dr. AR. Lakshmanan, J.

This appeal is filed by the Commissioner of Trade Tax, U.P. challenging the final order dated 16.9.1999 passed by the High Court of Judicature at Allahabad in the Trade Tax Revision No.3 of 1999 whereby the High Court allowed the revision of the respondent-assessee.

The brief facts pertaining to the present appeal are as under:

> By the impugned order, the High Court allowed the revision filed by the respondent and quashed the order of demand of interest on the ground that no notice in writing was issued. It was observed in the judgment that even if the dealer was liable to pay interest on the late payment of amount of tax a notice is necessary for demand of interest. In the instant case, the assessing authority passed the order on 30.7.1990 imposing interest against the respondent. The respondent filed appeal before the Commissioner (Judicial) Sales Tax, now Trade Tax, Allahabad Region, Allahabad. In

> the appeal, the respondent mentioned that ex parte proceedings imposing interest against the respondent has been passed which is barred by time. The Assistant Commissioner dismissed the appeal of the respondent on 27.7.1991. The respondent filed second appeal before the Sales Tax Tribunal which passed the order dated 21.7.1998 remanding the case to the assessing authority for decision after giving notice to the respondent. The respondent filed a Trade Tax Revision before the High Court against the order of the Tribunal and the High Court by the impugned order dated 16.9.1999 allowed the revision of the respondent. Aggrieved by the impugned order, the State has preferred the above appeal by way of special leave.

We heard Mr. R.G. Padia, learned senior counsel appearing for the appellant and Mr. Ranbir Singh Yadav, learned counsel appearing for the respondent. Learned senior counsel appearing for the appellant submitted that the order of the High Court to the extent that a notice of demand was necessary before passing the order of interest is legally not sustainable. He further submitted that the levy of interest is by operation of law and does not require a separate order.

Learned counsel appearing for the respondent submitted that the impugned assessment order passed by the assessing authority dated 30.7.1990 does not refer to any notice served upon the dealer before passing the impugned order and, therefore, the said order has been quashed by the Tribunal in respect of remanding the matter. It was also submitted that the rectification order could be passed within three years from the date of the order of the assessment or the order passed in appeal or revision. The impugned order was passed beyond the period of three years and, therefore, the said order is not sustainable. In this background of facts, the following questions of law arise for consideration by this Court:

> 1. Whether no subsequent proceeding can be initiated against the revisionist as the subsequent proceeding to the assessment is barred by limitation?
>
> 2. Whether the order of the High Court to the extent that a notice of demand was necessary before passing the order of interest is legally sustainable?

We have carefully perused the entire pleadings, orders passed by the authorities and the High Court and the annexure filed along with this appeal. In this case, the assessment order for the assessment year 1977-78 was passed on 6.6.1986 imposing tax liability of Rs.18053.98 paise. The respondent deposited the tax in two instalments namely, 2,817/- on 26.6.1982 and Rs. 15,236.98 paise on 30.8.1986. The assessing authority passed another order on 30.7.1990 holding that on admitted amount of tax it was liable to pay interest at the rate of 24% p.a. from 1.5.1978 on amount of tax the assessee has not deposited. The assessing authority held that the dealer was liable to pay interest to the tune of Rs.33,291/-. The respondent-dealer filed first appeal against the said order which was dismissed. Against that order, the second appeal was filed before the Tribunal, which remanded the matter to the assessing authority for fresh decision after giving an opportunity of hearing to the dealer. Feeling aggrieved, the dealer filed a revision before the High Court. The dealer submitted that the amount of tax was deposited by 30.8.1986.

The liability for payment of interest arises in view of the provisions contained in Section 8 (1), 8(1-B) and sub-section (2) of Section 8 of the U.P. Sales Tax Act,1948 (now the U.P. Trade Tax Act, 1948) (for short "the Act"). The relevant portion of Section 8 read as under:

> "8. Payment and recovery of tax (1) The tax admittedly payable shall be deposited within the time prescribed or by the thirty first day of August, 1975, whichever is later, failing which simple interest at the rate of 2 per cent per mensem shall become due and be payable on the unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount, whichever is later, and nothing contained in section 7 shall prevent or have the effect of postponing the liability to pay such interest.

Explanation - For the purpose of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, the turnover of purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or proceeding under this Act, whichever is greater, or if no accounts are maintained then according to the estimate of the dealer, and includes the amount payable under Section 3-B or sub-section (6) of Section 4-B. (1-A) The tax assessed under this Act shall be deposited in the manner specified in, and within thirty days of the service of, the notice of assessment and demand.

(1-B) If the tax, other than the tax referred to in sub-section (1), assessed by any Assessing Authority is not paid within the period specified in the notice of assessment and demand referred to in sub-section (1-A), simple interest at the rate of one and half per cent per mensem on the unpaid amount calculated from the date of expiration of the period specified in such notice shall become due and be payable.

(1BB) If the tax, assessed under this Act is enhanced in reassessment or otherwise by any authority, tribunal or court the dealer shall also be liable to pay simple interest at the rate specified in sub-section (1-B) on the unpaid amount of the enhanced tax from the date of expiration of the period specified in such notice of assessment and demand already served on the dealer under sub-section (1-A) and it shall not be necessary to give a fresh notice of assessment and demand with respect to the enhanced tax and it shall be deemed that the tax so enhanced was assessed in the order of assessment made for the first time.

(1-C) The amount of interest payable under sub-section (1), (1- B) (1-BB) and (2) shall be without prejudice to any other liability or penalty that the dealer may incur under this Act or under any other law for the time being in force, and shall be added to the amount of tax and be also deemed for all purposes to be part of the tax.

(2) Where realization of any tax remained stayed by any order of any Court or authority and such order of stay is subsequently vacated, the interest referred to in sub-section (1-B) shall be payable also for any period during which such order remained in operation.

(2-A) Notwithstanding anything contained in sub-section (1), (1-A), (1-B), (1-BB), (1-C) or (2) the Commissioner may on the application of a manufacturer within such time and in such manner as may be prescribed grant in lieu of exemption under section 4-A moratorium for payment of the admitted tax subject to such conditions as may be prescribed. The Commissioner may withdraw any such moratorium in the circumstances in which it could have withdrawn the exemption under section 4-A, but no such withdrawal shall be made with retrospective effect.

Provided that on and after commencement of the Uttar Pradesh Trade Tax (Amendment) Ordinance, 1997, the Commissioner may on the application of a manufacturer having a small scale industry, the date of starting production of which falls on or after April 1, 1990, grant, in lieu of exemption under section 4-A, moratorium for payment of the admitted tax and the provision of rule 43 of the Uttar Pradesh Trade Tax Rules, 1948, as amended by the Uttar Pradesh Trade Tax (Second amendment) Rules, 1993, shall apply for granting such moratorium.

(2-B) Notwithstanding anything contained in any other provision of this Act and rules made thereunder, the State Government may grant moratorium from payment of the admitted tax to a Power Project Industrial Unit, subject to such conditions as may be prescribed.

(3) Notwithstanding anything contained in any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the assessing authority , require

(a) any person from whom any amount is due or may become due to the dealer, or

(b) any person who holds or may subsequently hold money for or on account of the dealer, to pay to the assessing authority

(i) forthwith upon the money becoming due or being held, or

(ii) at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or other due under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation - For the purpose of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be legally subsisting."

The High Court was of the view that even if the dealer was liable to pay interest on delayed payment of amount of tax, a notice in writing before passing the impugned order was necessary which is not shown to have been done in the present case. The impugned order dated 30.7.1990 nowhere states that any notice was sent to the dealer, therefore, such an order could not be sustained. Consequently, the Tribunal has committed an error in passing the impugned order dated 21.7.1998 remanding the matter to the assessing authority. Holding so, the High Court allowed the revision and quashed the order of the Tribunal.

In our opinion, the order passed by the High Court is absolutely illegal. In the case of Commissioner of Sales Tax vs. Qureshi Crucible center , 1993 suppl (3) SCC 495, the Commissioner of Sales Tax was the appellant. The appeal was preferred against the judgment of the learned single Judge of the Allahabad High Court allowing the sales tax revision filed by the assessee. After referring to Section 8(1), this Court held as under:

> "According to this section, a dealer shall have to deposit the tax admittedly payable either within the time prescribed or by August 31, 1975 whichever is later. If he fails to do so, simple interest at the rate of 2% per mensem becomes payable. This levy of interest is by operation of law. It does not require a separate order as such by any authority. The explanation defines the expression "tax admittedly payable". It means the tax which is payable, inter alia, according to the return filed by the dealer.
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> In this case, the dealer filed a return for the assessment years 1975-76. The goods in which he was dealing fell within the category of unspecified goods. For unspecified goods, the rate of tax prior to December 1, 1973 was 3.5%. With effect from the said date, however, the rate was revised to 7%. In the return filed by the respondent-assessee, he arrived at the tax admittedly payable on the turnover disclosed by him, by applying rate of 3.5%. The authorities held that inasmuch as he has not paid the tax admittedly payable within the meaning of Section 8(1) inasmuch as he has not calculated and paid the tax at the rate prescribed by law he must be held to have failed to comply with the requirement of Section 8(1). Accordingly, interest as prescribed by the said section was levied. The appellate authority as well as the Tribunal affirmed the said levy. The matter was carried to the High Court by way of a revision. The learned Judge allowed the revision holding that "there has been no finding by the Tribunal that the assessee acted mala fide in not depositing the tax at the rate of 7%. The demand of interest was not justified."

In the case of The Sales Tax Officer, Sector I, Kanpur & Anr. Vs. M/s Dwarika prasad Sheo Karan Dass, (1977) 1 SCC 22, this Court has held that the assessee is liable to pay interest under Section 8(1-A) of the U.P. Sales Tax Act, 1948 on unpaid amount of tax and that such liability arises automatically by operation of law. This Court also held that fresh notice of demand not necessary where amount of tax or other dues reduced as a result of the appeal, revision or other proceedings. This Court had an occasion to consider sub-Section (1-A) of Section 8 of the Act in the case of Haji Lal Mohd. Biri Works vs. State of U.P. , (1974) 3 SCC 137 and held that the liability to pay interest under Section 8(1-A) of the Act is automatic and arises by operation of law. It was further observed in that case that it is not necessary for the Sales Tax Officer to specify the amount of interest in the recovery certificate. This Court had also considered the question whether it was necessary for the Sales Tax Officer to issue a fresh notice of demand to the respondent after the tax assessed by the Sales Tax Officer was reduced on appeal and further reduced on revision. This Court after considering sub-Section (9) which has been added in Section 8 of the Act by the U.P. Sales Tax (Amendment) Act (3 of 1971) held that it shall not be necessary to the assessing authority to serve upon the dealer a fresh notice. Similar view was taken by the Allahabad High Court in the case of Firm Parshuram Rameshwar Lal vs. State of U.P., (1974) 33 STC 540 (All) which has also been

referred to in this judgment.

In view of the above, this Court accepted the appeal filed by the Sales Tax Officer and set aside the judgment of the High Court and dismissed the writ petition filed by the assessee.

In the case of Prahlad Rai & Ors. vs. Sales Tax Officer, Meerut & Ors., 1991 Supp(2) SCC 612, this Court had an occasion to consider the payment of interest on arrears of sales tax. In this case, the assessee contended that he had admittedly paid the entire arrears of sales tax voluntarily and, therefore, they did not become defaulters and not liable to pay interest. Rejecting the said argument, this Court held that the accrual of interest is automatic and no separate notice of demand was required to be served in that respect.

Thus, we are of the opinion that the High Court was not justified for deleting the interest levied by the authorities on the ground that no notice was served. In this view, the impugned judgment would normally be unsustainable. However, as already noticed, the respondent-assessee has specifically urged that the subsequent proceedings to the assessment is barred by limitation and that even though the order was passed on 6.6.1986 imposing tax liability etc., the assessing authority had passed another order only on 30.7.1990 holding that on admitted amount of tax, the assessee was liable to pay interest at 24% p.a. from 1.5.1978 and, therefore, on the question of delay in demanding interest, the demand has to be set aside. This argument of the learned counsel appearing for the respondent merits acceptance. In this case, the assessment relates to the assessment years 1977-78. The respondent furnished his return to the assessing authority and the assessing authority passed an assessment order against the respondent and in accordance with the assessment order, the assessee has deposited the entire amount of tax amounting to Rs. 15,236.98 paise on 30.8.1986 and Rs.2,817/- on 26.6.1982. However, on 30.7.1990, the assessing authority passed an order imposing interest against the respondent. Thus the demand was after nearly four years. There was no demand of interest in the assessment order which, in our opinion, form part of the assessment order. As the assessment order did not include a claim for interest, the demand for interest had to be made within a reasonable period thereafter. To be noted that for rectification of the assessment order, a limitation period of three years is laid down. Since the demand of interest was made after almost four years, we hold that the demand is not within a reasonable period and the assessee is not liable to pay the interest as demanded. The Department is not entitled to recover the interest from the assessee-respondent but is at liberty to recover the amount of interest demanded from the Assessing Officer concerned who have not taken steps for four years.

We are in entire agreement with the law laid down by this Court on the interpretation of Section 8 of the Act in the judgments referred to above. But we, however, hold that the demand of interest was not justified because of the inordinate delay on the part of the officers concerned for raising the demand of interest from the assessee and in the peculiar facts and circumstances of this case. The civil appeal ,accordingly, stands dismissed. However, there shall be no order as to costs.