

Radha Kishan Anandeshwar vs Commr. Of Sales Tax, U.P., Lucknow And ... on 20 January, 1954

Equivalent citations: AIR1954ALL553, AIR 1954 ALLAHABAD 553

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. All these four writ petitions have been filed by persons carrying on business in Kanpur in various commodities, for example,. silver, gold, 'bardana', cerials etc. Proceedings are going on against all these petitioners for assessment of sales tax under the U. P. Sales Tax Act of 1948.

The petitioners have filed these petitions praying for the quashing of the proceedings that are going on before the Sales Tax Officers on the allegation that the Sales Tax Officers are seeking to assess tax on the petitioners in respect of forward transactions only and taxation on such forward transactions is not permissible by law as held by a Division Bench of this Court in --'Budh Prakash Jai Prakash v. Sales Tax Officer, Kanpur', AIR 1952 All 764 (A).

In dealing with these petitions, I have had considerable difficulty for the reason that the affidavits filed are not straightforward, do not give facts clearly and concisely and have not been properly verified. In almost all these cases, the petitioners were given opportunity to file supplementary affidavits and in one of them the petitioner has filed a second supplementary affidavit. This last case is case No, 22 of 1954. In spite of these supplementary affidavits, the facts are not clear and are not sufficient to enable this Court to decide the writ petitions properly.

2. The main ground on which the petitioners have come to this Court for issue of writs is that the assessing authorities are seeking to assess the petitioners in respect of forward transactions which are not taxable in view of the decision of the Division Bench of this Court mentioned above. The affidavits filed in all these petitions are, however, so unsatisfactory that in none of the cases can I be satisfied that the assessment proceedings going on against the petitioners are in respect of only such forward transactions as are not taxable according to the view of this Court.

The affidavits mentioned that the petitioners carried on various businesses and particularly business in ready goods in gold and silver species. In addition, the affidavits mentioned that they carried on business in forward transactions in gold, silver, bardana and grains. It is not said in plain words in the affidavits that the forward transaction business of the petitioners is exclusively of those cases in

which no actual delivery at all takes place. Learned counsel, when arguing these petitions, submitted that the petitioners, when mentioning that they deal in transactions known as ready transactions in gold and silver species or in bardana, meant to refer to transactions of forward transactions in which deliveries actually take place and not transactions in which the settlement of accounts and the delivery are all simultaneous.

This interpretation of the affidavits cannot be accepted. In several of the affidavits where mention is made of ready transactions, the commodities mentioned are 'gold', 'silver' and 'bardana' whereas, when the forward contract business is mentioned, besides these commodities 'grains' are also mentioned. If the assessment proceedings are simply in respect of transactions in forward contracts in which no deliveries take place at all and there is no other business of the petitioners in respect of which proceedings are being taken, it should have been possible for the petitioners to say so in clear and unequivocal terms which they have avoided doing. In these circumstances, on the affidavits filed it is not possible to come to any finding that the assessment proceedings relate to only such forward transactions as are not liable to tax, and consequently those proceedings cannot be quashed.

3. There is further nothing in the affidavits filed in support of any of the petitions to show that, even if the proceedings are in respect of forward transactions not liable to tax, the petitioners are not liable to be assessed on other grounds such as realisation of tax by them which was not due in their capacity as registered (dealers and which they are liable to deposit in the treasury under Section 8-A(4), U. P. Sales Tax Act of 1948. It is after proceedings have been gone through and facts have been investigated that it can be determined whether the petitioners should or should not be taxed and, while such determination is necessary, the proceedings for determination before proper authorities cannot be quashed.

4. In this connection, it is important to notice that in the case of none of the four petitioners except one has there yet been any determination by the Sales Tax Officer holding that forward transactions are liable to sales tax. The petitioners proceeded on the assumption that the Sales Tax Officers, when they proceed to pass orders of assessment, would give decisions which would be contrary to the decision of this Court in AIR 1952 All 764 (A). Such an assumption is not justified. The proceedings are yet pending before the Sales Tax Officers and they have to decide whether there are any turnovers of the petitioners which are liable to be assessed to sales tax. There is a possibility that there may be turnovers of these petitioners liable to sales tax which are not of the nature declared not liable to sales tax by this Court in the case mentioned above.

In one case, learned counsel has filed a certified copy of an order of the Sales Tax Officer holding that the turnovers of forward transactions of the petitioners are liable to tax, but that decision was given in the month of March 1952 when, it appears, the decision of this Court was not available and was not produced before the Sales Tax Officer for his guidance. The affidavit merely mentions that some verbal reference to the decision of this Court was made on behalf of the petitioners before the Sales Tax Officer without producing either a certified copy of the Judgment of this Court or the report of the decision in any recognised law reports, and no request was made to the Sales Tax Officer for time to produce a certified copy or an authorised law report. If the Sales Tax Officer in

these circumstances gave a decision which is contrary to the view of the High Court, it cannot be said that even subsequently the decisions are bound to be wrong.

In writ petition No. 22 of 1954 the petitioner has today filed copies of orders by several Sales Tax Officers, Kanpur in which also sales tax has been assessed on turnovers of forward transactions and it has been urged that these 'show that even in the case of the petitioners the Sales Tax Officers would give similar decisions. None of the orders produced shows that the decision of this Court was brought to the notice of the Sales Tax Officers in those cases. It is for the petitioners to produce before the Sales Tax Officers authorised reports of the decision of this Court.

The Sales Tax Officers are competent to deal with the assessment proceedings and, when dealing with them, they may come to the view that no sales tax is payable from the petitioners. It cannot be said that because the petitioners anticipate that the Sales Tax Officers will give incorrect decisions, the Sales Tax Officers have no jurisdiction to deal with the assessment proceedings at all and can be barred from continuing those proceedings by issue of writs of prohibition.

5. Further, even if the Sales Tax Officers do give incorrect decisions, the petitioners have been given the right to go up in appeal to Judges Appeals appointed under the Act and from their incorrect decisions to the Judge revisions. If the decisions be incorrect, even from that court they can seek reference to this Court. The petitioners have therefore an alternative remedy by which they can ultimately come to this Court and seek redress and there is no reason why the ordinary remedy provided for by law should be by-passed and this Court should start entertaining writ petitions in all cases of individual assesseees.

The position was different when the validity of the provisions of the Sales Tax Act was yet in question and no decision had been given by this Court. At that stage, in spite of the ordinary remedy provided by law, exercise of jurisdiction under Article 226 of the Constitution by this Court was appropriate as one decision by this Court was necessary for the purpose of guiding the Sales Tax authorities. The question at that stage was of general importance. At this stage, the cases are of individuals and the principle has already been laid down by this Court in another writ case. If in such cases, incorrect decisions are given it is clear that the persons affected should be left to seek their ordinary remedy provided by law.

This Court should not, in exercise of its writ jurisdiction, start doing the work which has been entrusted by law to other appropriate, authorities. Even if it be assumed that the Sales Tax Officers would not follow the decision of this Court, there is at least no basis at all for assuming that the Judge, Appeals or Judge, Revisions would not follow the decision and arrive at correct conclusions when dealing with the appeals or revisions of these petitioners.

Learned counsel urged that the alternative remedy provided by law was not equally convenient and speedy inasmuch as proceedings under that law are likely to be prolonged and the petitioners' right to come to this Court will only accrue at a very late stage. If, however, the decisions are correctly given by Judge Appeals or the Sales Tax Officers themselves, the remedy there would obviously be much more speedy and convenient.

If the argument of learned counsel be accepted [that, because the assesseees can only come to this Court after having first moved the Judge, Appeals and Judge, revisions, this Court should interfere in exercise of its writ jurisdiction under Article 226 of the Constitution, it would mean that the regular procedure prescribed under the law should be completely scrapped as in all cases grievances made on behalf of the petitioners can be put forward in the identical form. Obviously writ jurisdiction was not meant to do away altogether with the alternative procedure which the legislature considered was appropriate for the particular situation.

In AIR 1952 All 764 (A) the writ petition was entertained principally on the ground that the point involved related to the validity of a law, the question was of general importance and it was necessary that a decision be given by this Court for the guidance of the Sales Tax authorities. That consideration does not now exist.

6. The petitioners' further grievance is that, if they are asked to resort to the usual procedure provided by law, they would be required to deposit the tax first before they could be heard in appeal by the Judge, Appeals and this would operate hardship on the petitioners. This again ignores the policy laid down by the legislature in the Act itself.

If the legislature had intended that the assessee should not be required to pay until the liability to pay had been finally determined, such a provision could easily have been made in the Sales Tax Act itself. But a contrary provision that the assessee should have no right of appeal unless he has first paid the tax assessed by the Sales Tax Officer was obviously made by the legislature in pursuance of its policy that the tax should be deposited as soon as the first assessment proceedings were over, and the writ jurisdiction should not be a means of overriding such express policy of the legislature.

The amount of tax assessed on the assesseees, considering the scale of their business, is not such that it can be held that the depositing of the tax by the petitioners would operate harshly on them.

7. Finally, there is the aspect that there are questions of fact to be determined which can only be determined by proceeding according to the procedure laid down in the Sales Tax Act itself and which cannot be properly gone into in these, writ petitions.

8. For all these reasons I hold that these writ petitions should not be entertained by this Court at this stage and they are therefore rejected.