(1972) 03 AHC CK 0038

Allahabad High Court

Case No: Supreme Court Appeal No. 51 of 1971

The Sales Tax Officer, Sector V, Kanpur		APPELLANT
	Vs	
Prime Products Ltd., Kanpur		RESPONDENT

Date of Decision: March 6, 1972

Acts Referred:

- Constitution of India, 1950 - Article 133(1)
- Uttar Pradesh Sales Tax Act, 1948 - Section 22

Citation: AIR 1972 All 332

Hon'ble Judges: N.D. Ojha, J; H.N. Seth, J

Bench: Division Bench

Advocate: R.K. Gulati, for the Respondent

Final Decision: Dismissed

Judgement

N.D. Ojha, J.
This petition has been filed by the Sales Tax Officer, Sector V, Kanpur, tinder Article 133(1)(a) and (c) of the Constitution of India for a certificate to file an appeal in the Supreme Court against the judgment of this Court dated November 17, 1970 allowing Civil Misc. Writ Petition No. 3079 of 1970.

2. The respondent No. 1 M/s. Prime Products Ltd., Kanpur, which is a private limited company deals in manufacture and supply of sole leather tanned by it as also supply of military boots to the Military Department. The sales tax on leather goods upto the year 1961 was leviable at the rate of 2 paise per rupee, but by a notification dated April 5, 1961 the said rate was raised to 3 paise per rupee. For the year 1963-64 the respondent No.1 was assessed to sales tax at the rate of 2 paise per rupee. In 1964-65 it was assessed to a sales tax at the rate of 3 paise per rupee. Against this assessment for the year 1964-65 the respondent No. 1 filed an appeal wherein it succeeded and it was held

that the rate applicable to the goods dealt with by it was 2 paise per rupee and not 3 paise per rupee. In the meantime however, the petitioner being of the view that a mistake had been committed at the time of assessment for the year 1963-64 in assessing the respondent No. 1 at the rate of 2 paise per rupee only in place of 3 paise per rupee issued a notice to the respondent No. 1 u/s 22 of the U. P. Sales Tax Act (hereinafter referred to as the Act), to show cause why the assessment order for the year 1963-64 may not be amended. The respondent No. 1 showed cause against the said notice but the petitioner passed an order on January 31, 1966 amending the assessment order on the ground that there was a patent mistake on the record. As a result of the rectification made by virtue of the said order an additional tax in the sum of Rs. 16,836.20 P. was assessed on the respondent No, 1. Respondent No. 1 filed an appeal which was dismissed by respondent No. 2 on April 1 1970. The respondent No. 1 thereafter filed the aforesaid Civil Misc. Writ Petition No. 3079 of 1970 in this Court wherein reliefs (a) and (b) were as follows:--

"(a) to issue a writ, order or direction in the nature of certiorari quashing the following orders:--

(i) order of respondent No. 1 dated 31st January, 1968, annexure "H" to this writ petition.

(ii) order of respondent No. 2 dated 1st April, 1970 annexure "I" to this writ petition.

(b) to issue a writ, order or direction in the nature of prohibition commanding the respondent No. 1 not to recover any tax levied in pursuance of the order dated 31st January, 1968."

3. The writ petition was contested by the petitioner but was allowed by this Court on November 17, 1970. Now the petitioner has made the aforesaid application for certificate under Article 133(1)(a) and (c) of the Constitution. From a perusal of the writ petition it is clear that the challenge was in regard to the jurisdiction of the petitioner to pass an order of rectification u/s 22 of the Act. The quantum of the tax assessed or even sought to be recovered was not challenged, if the assessment order was held to be within the jurisdiction of the petitioner. So the subject-matter of the dispute was incapable of valuation and as such Article 133(1)(a) will not be attracted. In regard to the nature of proceedings under Article 226 of the Constitution it will be useful to remember the following observations of their Lordships of the Supreme Court in the case of Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others,

"Under that jurisdiction the High Court does not hear an appeal or revision. The High Court is moved to intervene and to bring before itself, the record of a case decided by or pending before a Court or Tribunal or any authority within the High Court"s jurisdiction. A petition to the High Court invoking this jurisdiction is a proceeding quite independent of the original controversy. The controversy in the High Court, in proceedings arising under Article 226 ordinarily is whether a decision of or a proceeding before a court or Tribunal or

authority, should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent on the face of the record."

4. It may be said that on the result of the writ petition, would depend the liability of the respondent No. 1 to pay the tax assessed which is capable of valuation. If that contingency is taken into consideration Article 133(1)(b) may be attracted but no certificate has been prayed for under Clause (b).

5. Article 133(1)(a) will not be attracted even otherwise. In so far as relief (a) of the writ petition is concerned there is no manner of doubt that the said relief being only for a writ of certiorari to quash the order of assessment and the order passed on appeal therefrom the amount of the subject-matter in dispute qua that relief even if the assessment order be treated as the subject-matter was less than Rs. 20,000/- the amount assessed being only Rs. 16,836.20 P.

6. The contention of the learned Standing Counsel, however, was that the valuation of the subject-matter of relief (b) which was in the nature of prohibition commanding the respondent No. 1 not to recover any tax levied in pursuance of the order of assessment was more than Rs. 20,000/-. In this behalf it was asserted that the amount of sales tax which was the subject-matter of dispute in the writ petition was Rs. 16,836.20 P. and since even after a notice of demand having been served upon the respondent No. 1 as required by Section 8 (1-A) of the Act, the tax payable under the order of assessment remained unpaid for six months after the expiry of the time specified in the notice of assessment and demand the respondent No. 1 was liable to pay simple interest at the rate of 18 per cent per annum and that if the said amount of interest which became part of the tax for all purposes as contemplated by the said section was added to the sum of Rs. 16,836.20 P. the amount of the subject-matter in dispute in the writ petition qua relief (b) was more than Rs. 20,000/- and the same amount still was in dispute for purposes of filing an appeal before the Supreme Court. In support of this contention reliance was placed by the learned Standing Counsel on the case of Hajilal Mohammad Bidi Works, Allahabad Vs. The State of U.P. and Others, wherein a Full Bench of this Court held that it was not necessary for the Sales Tax Officer to make an assessment order in respect of the interest and to issue a notice of demand in respect of such interest and further that the default in payment of tax would automatically attract the liability of interest. It was contended that in the instant case the notice of assessment and demand was served upon the respondent No. 1 on February 9, 1968 and at the time when the writ petition was filed in July, 1970 the amount payable by the respondent No. 1 under the said notice was more than Rs. 20,000/-.

7. We are, however, unable to accept the submission of the learned Standing Counsel made in this behalf. It is relevant to note that in none of the grounds taken in the writ petition, either the authority to levy interest or the quantum of interest was challenged. In fact from a perusal of paragraphs 30, 32 and 33 of the writ petition it is clear that even for purposes of relief (b) the amount in contemplation of the respondent No. 1 was only Rs.

16,000/- odd which was the amount assessed under the impugned order passed by the petitioner and not the entire amount which may have become due by then as a result of non-compliance with the notice of demand. It may be that relief (b) as couched was inadequate but that would not be a justification for enlarging its scope for purposes of ascertaining the amount of the subject-matter in dispute, when it is clear that the respondent No. 1 had not cared to challenge the liability to pay interest either deliberately or due to inadvertence.

8. For purposes of finding out what was the subject-matter of dispute in the writ petition in so far as relief (b) is concerned it is the nature of the relief claimed which would be decisive. As already pointed out the said relief was for a writ, order or direction in the nature of prohibition commanding the appellant not to recover any tax levied in pursuance of the order dated January 31, 1968. The words "in pursuance of the order dated January 31, 1968" are important. It is true that we are not construing any provision of law but only a relief claimed in a writ petition. Even so, for purposes of ascertaining the subject-matter of dispute the true import of the words "in pursuance of" has to be found out. An act can be said to have been done in pursuance of a decree or order only if the said act is required to be done by the decree or order itself. If the required act is done voluntarily, such an act will obviously be in pursuance of the decree or order. If its obedience is compelled through an executing agency the act of the executing agency will be in pursuance of the decree or order only if the decree or order requires that precise act to be done. The point may be clarified by means of certain illustrations. If a decree for sale of a mortgaged house is passed and the house is sold in execution of that decree it can be said that the house has been sold in pursuance of the decree. On the other hand, if a house is sold in execution of a decree for money it cannot be said that such a sale is in pursuance of the decree -- the decree not being for its sale. Likewise, if a construction is demolished in execution of a decree for mandatory injunction it will be a case of demolition in pursuance of the decree, but if a judgment-debtor to a decree for prohibitory injunction is punished for disobedience of such decree the punishment cannot be said to be in pursuance of the decree, because the decree per se does not direct such a punishment to be meted out to the judgment-debtor. The punishment is a consequence of the judgment-debtor''s act of disobedience of the decree.

9. Coming to the instant case if the order of assessment itself had contained a direction that in case of non-payment of the amount assessed within six months the assessee would be liable to pay interest at the rate of 18 per cent from the date of the order and that such interest would be deemed to be part of the tax, the amount of interest that may have accrued due as a consequence of non-compliance of the order could be said to be a tax levied in pursuance of the order of assessment. If the liability to pay interest does not flow from the order of assessment but is a consequence of the assessee''s default to pay the tax assessed, notwithstanding service upon him of a notice of demand, within the specified period such liability, even though an automatic one, upon such default, cannot be said to be in pursuance of the order of assessment. It would be in pursuance of the

statutory provision contained in Section 8 (1-A) of the Act. To put it succinctly an act or consequence can be said to be in pursuance of a decree or order only if the former is directly correlated with the latter.

Reliance was placed by the learned Sadaria and Another Vs. The Rajasthan Board of Revenue and Others, wherein it was held that the words "in pursuance of used in a notification do not mean that it would be conveyed by "in exercise of powers conferred by". The words "in pursuance of have several meanings. It may appropriately in a particular case mean "conformable to" or "in accordance with". This case, however, is of no assistance inasmuch as the interest levied in the instant case under the provisions of Section 8 (1-A) of the Act cannot be said to be either "conformable to" or "in accordance with" the order of assessment, for the simple reason that the levy of interest does not flow directly from the order of assessment but flows from the act of non-compliance of the respondent No. 1 of the statutory requirement of the aforesaid Section 8 (1-A).

10. It is true that the existence of an order of assessment is necessary before provisions of Section 8 (1-A) of the Act could be applied but the mere existence of such an order is not enough to levy interest. If the notice of assessment and demand is complied with by the assessee the existence of the said order cannot authorise levy of interest. It is thus clear that the power to levy interest flows not from the order of assessment but from the act of non-compliance of the notice of assessment and demand.

11. Even if the contention of the learned Standing Counsel was correct in regard to the amount of the subject-matter in dispute for purposes of relief (b) contained in the writ petition, certificate under Article 133(1)(a) cannot be granted for another reason. This Court by its order dated November 17, 1970 only quashed the order of assessment and the order passed on appeal therefore. In this way only relief (a) of the writ petition was granted and not relief (b). In the application for certificate no ground has been taken which may have a bearing on relief (b) and consequently, even if it was possible to hold that the amount of the subject-matter in dispute in the writ petition was more than Rs. 20,000/- it cannot be said that the same amount is still in dispute in appeal to the Supreme Court. The appeal is obviously against the relief granted by this Court and since relief (b) has not been granted by this Court and the amount of the tax assessed for purposes of relief (a) is admittedly only Rs. 16,836.20 P. Article 133(1)(a) is not applicable. It is true that in case the proposed appeal to the Supreme Court succeeds the respondent No. 1 may be liable to pay a tax in a sum of over Rs. 20,000/- and in this Way the claim or question respecting property of a value of not less than Rupees 20,000/- may be involved but that does not afford a ground for the grant of a certificate under Article 133(1)(a) of the Constitution. In this behalf it would be pertinent to keep in view the distinction pointed out by their Lordships of the Supreme Court in regard to the requirements of clauses (a) and (b) of Article 133(1) of the Constitution in the case of Chhitarmal Vs. Shah Pannalal Chandulal, Their Lordships observed:--

"The variation in the language used in Clauses (a) and (b) of Article 133 pointedly highlights the conditions which attract the application of the two clauses. Under clause (a) what is decisive is the amount or value of the subject-matter in the court of first instance and "still in dispute" in appeal to the Supreme Court; under clause (b) it is the amount or value of the property respecting which a claim or question is involved in the judgment sought to be appealed from. The expression "property is not defined in the Code, but having regard to the use of the expression "amount" it would apparently include money. But the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter clause (a) will apply; if there is involved in the appeal a claim or question respecting property of an amount or value not less than Rs. 20,000/- in addition to or other than the subject-matter of the dispute clause (b) will apply."

12. In so far as the prayer for certificate under Article 133(1)(c) of the Constitution is concerned it is enough to point out that this Court in allowing the writ petition took the view that there was no mistake apparent on the face of the record of the proceedings for the assessment year 1963-64 and that the petitioner had consequently no jurisdiction to take action u/s 22 of the Act. In view of the aforesaid finding recorded by this Court no such question appears to be involved in the proposed appeal for which a certificate could be granted under Article 133(1)(c) of the Constitution.

13. In this view of the matter the petition for certificate to file an appeal to the Supreme Court fails and is dismissed with costs.