(2013) 03 AHC CK 0289

Allahabad High Court

Case No: Writ Tax No. 1142 of 2007

Siva Electronica (India) Pvt. Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: March 1, 2013

Citation: (2014) 67 VST 158

Hon'ble Judges: Ram Surat Ram (Maurya), J; Prakash Krishna, J

Bench: Division Bench

Advocate: Praveen Kumar and Ashok Kumar, for the Appellant; C.B. Tripathi, Special Counsel, for the Respondent

Final Decision: Allowed

Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Ashok Kumar for the petitioner and Sri C.B. Tripathi, Special Counsel for the State of U.P. This writ petition has been filed for quashing the order dated March 9, 2007 passed by the Additional Commissioner, Grade-I, Trade Tax, Ghaziabad Zone, Ghaziabad (respondent No. 2) and notice dated March 14, 2007 issued by the Deputy Commissioner (Assessment)-2, Trade Tax, Ghaziabad (respondent No. 3) for the assessment year 2000-01, by which in exercise of power u/s 21(2) of the Trade Tax Act, permission for reassessment was granted and accordingly, the assessing authority has issued the notice for reassessment.

2. The petitioner is a company engaged in the business of manufacture and sale of loudspeaker parts, namely, paper cone, dust cap and spider. For the assessment year 2000-01, the petitioner was assessed and the aforesaid components were treated as electronic components. Accordingly, trade tax was assessed at four per cent. Thereafter, the proceeding for reassessment was started on the ground that the parts manufactured and sold by the petitioner are liable to be assessed under the head "other electronic goods" and trade tax at eight per cent was liable to be assessed on it. Accordingly, the report was submitted by the assessing officer and in pursuance of the said report, the Additional Commissioner (respondent No. 2)

issued a show-cause notice dated February 15, 2007 to the petitioner. In response to the aforesaid show-cause notice, the petitioner filed his reply dated February 27, 2007 in which he has stated that the parts manufactured by the petitioner are the components of loudspeaker which is an electronic goods, accordingly, the parts were assessed as electronic goods. Being the component of electronic goods, it is liable to be assessed in the head of "electronic goods" itself and not in the head of "other electronic goods". It has also been stated in the reply that for the year 2003-04, the parts manufactured by the petitioner were assessed in the head of "other electronic goods" against which, the petitioner filed Appeal No. 737 of 2006 before the Joint Commissioner (Appeals) which was allowed by the judgment dated November 30, 2006 in which it has been held that the parts manufactured and sold by the petitioner are the components of electronic goods and liable to be assessed in the head of "electronic goods". Since the judgment of the appellate authority inter-parties has become final, accordingly, it is binding upon the assessing officer and no reassessment proceeding is required to be taken. However, respondent No. 2 by the impugned order dated March 9, 2007 rejected the objection of the petitioner and granted permission u/s 21(2) of the Trade Tax Act for reassessment. In pursuance of the aforesaid order, the notice was issued by the assessing officer (respondent No. 3) on March 14, 2007.

3. The counsel for the petitioner submitted that the parts manufactured and sold by the petitioner were finally held by the appellate authority as the components of electrical goods coming in the head of "electronic goods". The judgment of the appellate authority inter se is binding and it is not proper for the assessing authority to overreach the judgment and restart the reassessment proceeding in respect of the same goods. Accordingly, the permission as granted u/s 21(2) as well as reassessment proceeding are bad. The counsel for the petitioner placed reliance on the judgment of this court in AAY Sons Elastomerics (India) v. State of U.P. [1995] 29 ATJ 561; judgment of the Supreme Court in Municipal Corporation of City of Thane Vs. Vidyut Metallics Ltd. and Another, and Union of India and others Vs. Kamlakshi Finance Corporation Ltd., .

4. In reply to the aforesaid argument, the standing counsel submitted that under the taxation law, each assessment year is treated as separate assessment and the order of a particular assessment year cannot be treated as res judicata for the purposes of any other assessment year. The Standing Counsel placed reliance on the judgment of the Supreme Court in the case of Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, , Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, and judgment of this court in Sir Shadilal Enterprises Ltd. Vs. State of U.P. and Others, .

5. Having considered the arguments of the parties, the Supreme Court in Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, after reviewing the earlier case law, held as follows (pages 104 and 105 in 145 STC):

20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. The mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a Coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.

6. There is no dispute that the appellate authority in Appeal No. 737 of 2006 by order dated November 30, 2006 has held that the parts manufactured and sold by the petitioner were components of electronic goods, and accordingly assessed the parts in the head of "electronic goods". This order between the parties has become final. Since the issue of fact between the parties has been finally decided by the appellate authority, as such, the order was binding upon the assessing authority and it was not proper for him to reopen the assessment proceeding taking a contrary view.

7. In the circumstances of the case, the impugned order dated March 9, 2007 passed by respondent No. 2 and notice dated March 14, 2007 issued by respondent No. 3 are illegal and are liable to be quashed.

8. Accordingly, the writ petition is allowed and the order dated March 9, 2007 passed by respondent No. 2 and notice dated March 14, 2007 issued by respondent No. 3 are quashed. However, the parties shall bear their own costs.