Commissioner, Sales Tax Vs Dunlop India Limited

Court: Allahabad High Court

Date of Decision: Oct. 5, 1991

Acts Referred: Central Sales Tax Act, 1956 â€" Section 14
Land Acquisition Act, 1894 â€" Section 4

Hon'ble Judges: B.P. Jeevan Reddy, C.J

Bench: Single Bench

Judgement

B.P. Jeevan Reddy, C.J.
These revisions u/s. 11 of the U.P. Sales Tax Act are preferred by the Commissioner, Sales Tax, Lucknow,

against the judgment and order of the Sales Tax Tribunal, Lucknow, allowing the appeals preferred by the respondent-assessee. The respondent-

assessee, M/s. Dunlop India Ltd., is a registered dealer under the U.P. Sales Tax Act as well as under the Central Sales Tax Act. It deals in tyres

of motors, trucks, scooters and cycles, etc. For the assessment year 1975-76 and 1976-77 it submitted its return disclosing the taxable turnover at

Rs. 8, 90, 93, 957.11 and Rs. 9, 20, 18, 922.23 respectively. It also deposited the requisite amount of tax. The assessing authority, however did

not agree with the assesee''s contention that the tyres and tubes sold by it to dealers holding recognition certificates were exempt from sales tax

during the said assessment years. It also did not accept the assesee''s plea that cycle rims were iron and steel as defined u/s. 14 of the Central

Sales Tax Act and, therefore, subject to the ceiling prescribed in the said section. On this basis the assessing authority enhanced the taxable

turnover for both the years against which the assessee filed appeals before the Deputy Commissioner (Appeals) which were dismissed. The

assessee then carried the matter in further appeal to the Tribunal. The Tribunal did not agree with the petitioner''s contention that cycle rims were

iron and steel within the meaning of s. 14 of the Central Sales Tax Act and accordingly rejected that contention. But so far as the other contention

is concerned it accepted the same and it is only that aspect which is relevant in these revisions.

2. Section 4-B of the U.P. Sales Tax Act provides a kind of relief to certain manufacturers. It is not necessary to notice the entire section. It will be

sufficient if we notice cl. (a) to sub-s.(1) and sub-s.(2) which only are relevant for our purpose. They read as follows:

Section 4B. Special relief to certain manufacturers.-(1)

(a) Where any goods liable to tax under sub-s.(1) of section 3-D are purchased by a dealer who is liable to tax on the turnover of first purchases,

under that sub-section or where any goods are purchased by any dealer in circumstances in which such a dealer is liable to purchase tax in respect

thereof u/s 3-AAAA and the dealer holds a recognition certificate issued under sub-s.(2) in respect thereof, he shall be liable in respect of those

goods to tax at such concessional rate, or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions

specified in that behalf, as may be notified in the Gazette by the State Government in that behalf;

(a-1) Where any declared goods liable to tax under sub-s.(1) of section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to

another dealer, holding a valid recognition certificate issued under sub-s.(2) in respect thereof, the dealer who made the first purchase shall in

respect of such purchase and subject to such conditions and restrictions as may be specified by notification in that behalf, be exempt from tax or be

liable to tax at such concessional rate as may be notified by the State Government:

(2) Where a dealer requires any goods, referred to in sub-s.(1) for use in the manufacture by him, in the State of any notified goods, or in the

packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the

course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner

and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof; and if the applicant satisfies such

requirement and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such

form, and subject to such conditions, as may be prescribed.

3. A reading of the above sub-sections shows that where a dealer is engaged in manufacture of notified goods and where such goods

manufactured by him are intended to be sold by him within the State or in the course of inter-State trade or commerce or in the course of export

out of India he may apply and obtain a recognition certificate. Such recognition certificate entitles him to purchase the raw material required by him

at a concessional rate or without paying any sales tax, as the case may be.

4. On October 10, 1968, the Government had issued Notification No. 4748 according to which bicycles and perambulators among others were

declared as notified goods and certain concessions were provided in the matter of purchase of raw material by manufacturers of such notified

goods. It was by virtue and in pursuance of this notification that certain dealers obtained recognition certificates and who issued the same to the

assessee-dealer herein while purchasing their requirements of raw material from the assessee-dealer.

5. On June 11, 1974, however, the Government issued another notification u/s 4-B bearing Notification No. 3867 in supersession of certain earlier

notifications including Notification No. 4748 dated October 10, 1968. The notifications superseded were mentioned in the margin to that

notification. In describing Notification No. 4748 dated October 10, 1968 however, there was a slight printing error. Instead of mentioning the date

as October 10, 1968 it was mentioned as October 10, 1969. It is necessary to mention that Notification No. 3867 dated June 11, 1974 evolved

an altogether different scheme u/s 4-B. It would be appropriate to set out Notification No. 3867 in so far it is relevant:

In exercise of the powers section 4-B of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948) as amended by the Uttar Pradesh Sales Tax

(Amendment) Ordinance, 1974 (U.P. Ordinance No. 11 of 1974) read with s. 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of

1904), the Governor is pleased to supersede, with immediate effect, the marginally noted notification, and to order that, subject to the conditions

and restrictions specified in the said section 4-B,-

(1) ST-2262/X-902(63)-50, dated June 12, 1969, (S. No. 369)

(2) ST-2619/X-900(21)-69, dated July 1, 1969.

(3) ST-4748/X-900(15)-61, dated October 10, 1969.

(4) ST-11-1/X-902(70)-72, dated January 2, 1974, (S. No. 72)

6. The aforesaid printing error was discovered by the Government only after several years. Then it issued another Notification No. 4841 dated

June 25, 1986 by way of corrigendum. This notification merely stated that in the margin to Notification No. 3867 dated June 11, 1974,

Notification No. 4748 dated October 10, 1969 should be read as Notification No. 4748 dated October 10, 1968.

7. The appeals preferred by the respondent-assessee before the Tribunal came up for hearing in the 1989. The contention urged by the

respondent-dealer and accepted by the Tribunal runs as follows:

Notification No. 4841 dated June 25, 1986 (corrigendum) must be related to s. 25 of the U.P. Sales Tax Act which empowers the State

Government to issue a notification with retrospective effect. However, the proviso to s. 25 limits the retrospectivity to six months only. The said

notification has, therefore, retrospective effect only for a period of six months preceding its issuance. The assessment years concerned herein are

clearly outside the said retrospectivity. So far as the assessment years 1975-76 and 1976-77 are concerned, it must be deemed that Notification

No. 4748 dated October 10, 1968 continued to be in force during those years inasmuch as Notification No. 3867 dated June 11, 1974 did not

purport to supersede the said notification but another notification bearing No. 4748 dated October 10, 1969.

8. In my opinion, the Tribunal was not right in the view it has taken.

9. Notification No. 4841 dated June 25, 1986 does not purport to have been issued under s. 25 of the Act. It does not cite any provision of law

under which it was issued. It merely claims to be a corrigendum. It was the respondent dealer who sought to relate the said notification to s. 25 and

the Tribunal appears to agree implicitly with the dealer that it is so. In my opinion, there was no justification for doing this, particularly when

Notification No. 4841 expressly states that it is a corrigendum, i.e., a correction or rectification as it may be called. We may in this connection

notice that the power to issue above notification is derived not from section 25, but from section 4B and the rules made thereunder, namely, rules

25-A and 25-B. S. 25 merely empowers the State Government to issue notifications with retrospective effect but such retrospectivity shall not

exceed six months. This is, how s. 25 reads:

S. 25: Power to issue notification with retrospective effect-Where the State Government is satisfied that it is necessary so to do in public interest, it

may issue a notification u/s 3-A or section 3-D, or s. 4 or section 4-B so as to make it effective from a date not earlier than six months from the

date of issuance of such notification:

Provided that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section.

10. In my opinion, Notification No. 4841 is in the nature of a correction (corrigendum) and, therefore, it dates back to the date of the notification

corrected thereby, namely, June 11, 1974, on which date Notification No. 3867 was issued. A correction is a correction only when it dates back

to the original order or the proceeding as the case may be. It ceases to be correction if it is effective from the date of its issuance; it then becomes

an amendment. This intrinsic nature of concept of correction cannot be lost sight of. By way of illustration I may refer to a notification issued u/s. 4

of the Land Acquisition Act, where it describes the boundaries of a particular land correctly but while describing its survey number it mentions

111/10 instead of 111/11. Suppose, a corrigendum is issued after one year correcting the number as 111/11, would it be permissible to argue that

the date of notification u/s 4, so far as survey No. 111/11 is concerned, is not the original date of notification but the date of corrigendum

notification ? I think not. The same result should follow here. It is equally relevant to notice that in the margin to Notification No. 3867 not merely

the notification number but full reference of notification is given as ""ST-4748/X-900(15)-61"" besides the date. Both the notifications, namely, No.

4748 and No. 3867 expressly purport to have been issued u/s 4-B and deal with the subject of recognition certificate and levy of concessional

duty or exemption from duty, as the case may be. It is then argued by the learned counsel for the petitioner that in matters of taxation, strict

construction must be adopted and that if the assessee is entitled to any advantage or benefit on account of any error or mistake of the assessing

authority it should not be denied to him. I do not think that the said principle has any relevance here, where an accidental printing error is sought to

be corrected in a statutory notification issued by the Government. It is difficult to deny this right of correction to the Government. Such a power is

ancillary and incidental to the substantive power conferred upon the Government to issue a notification by section 4-B. Such a power is necessary

for an effective exercise of the substantive power.

11. It is next argued that the assessee was not supposed to read the date of the notification correctly and that it was the duty of the Government to

have expressed its intention clearly and without any error. It is also argued that if the Government has committed any error, be that an accidental

error, it alone must take the consequences and not the assessee. I find it difficult to accede to this argument. Every law must be reasonably

interpreted. No interpretation should be adopted which tends to defeat the very purpose of the law. Even a taxation law must be reasonably

construed and the same principle applies to a notification issued under the taxation statute.

12. Lastly it is argued by Sri P.N. Mathur, learned counsel for the respondent assessee, that this question indeed has been adjudicated upon by a

learned single Judge of this Court in a case of this very assessee though relating to another assessment year. The reference is to the judgment of

Anshuman Singh, J., dated November 5, 1985 reported as Dunlop India Limited v. Commissioner of Sales Tax in Sales Tax Revision No. 227 of

1985. That revision related to assessment year 1974-75 and this very contention was urged before the learned Judge. The contention was dealt

with in the following words:

The learned counsel for the applicant has contended that since notification dated October 10, 1968 has not been superseded by the notification

dated June 11, 1974, the view taken by the Tribunal that the benefit of section 4-B was not available in the case of the assessee, is wholly

erroneous. The said contention appears to have some force. If the notification dated October 10, 1968 had not been superseded or withdrawn

and was in existence on the date of the assessment, the Tribunal was not justified in refusing to give the benefit of section 4-B of the U.P. Sales Tax

Act. It appears that the Tribunal has not tried to look into the notification dated October 10, 1968 while deciding the case and, as such, it is

expedient that the Tribunal should be directed to decide the appeal afresh taking note of the notification dated October 10, 1968. In case the said

notification has not been superseded and the assessee sold goods to the customers against the issuance of form 3 Kha, who had been granted

recognition certificate u/s 4-B of the U.P. Sales Tax Act, the applicant would be entitled to the said benefit inasmuch as he could not have realised

the sales tax from the customers, if they had been given recognition certificate and had issued form 3 Kha.

In the result, the revision succeeds and the order passed by the Tribunal dated December 14, 1984, is set aside and the Tribunal is directed to

decide the case afresh in the light of the observations made above. However, there shall be no order as to costs.

Sri P.N. Mathur, learned counsel for the respondent-assessee, contended that the said observations uphold his contention. I am unable to agree.

All that the learned Judge said was that ""the said contention appears to have some force"" but then he sent the matter back precisely to find out

whether Notification No. 3867 did or did not supersede Notification No. 4748. Indeed, if the learned Judge had accepted the petitioner''s

contention, as contended by Sri Mathur, then there was no occasion to send the matter back to the Tribunal to verify the said aspect. When I

asked the learned counsel as to what decision did the Tribunal take in pursuance of the said order of remand, I am told that the Tribunal has not so

far decided the matter. If indeed it is so, it is but proper that the Tribunal decides the matter at an early date. For the above reasons, both the

revisions are allowed. The order of the Sales Tax Tribunal is set aside and the order of the Deputy Commissioner (Appeals) is restored. No costs.