
National Engg. Industries Ltd. Vs Commissioner of Income Tax

IT Reference No. 75 of 1986

Court: Calcutta High Court

Date of Decision: April 12, 1990

Acts Referred:

Income Tax Act, 1961 "Section 256(1)

Citation: (1993) 70 TAXMAN 42

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati-Prasad Banerjee, J

Bench: Division Bench

Advocate: R.K. Bajoria, J.P. Khaitan and A.K. Dey, for the Appellant;

Judgement

Suhas Chandra Sen, J.

The Tribunal has referred the following question of law to this Court u/s 256(1) of the income tax Act, 1961 ("the Act"):

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sales-tax liability of Rs. 49,560 did not

arise and was not allowable in the assessment year 1974-75?

The assessment year involved is 1974-75 for which the relevant year of account is the financial year 1973-74. The facts found by the Tribunal are

as under:

The assessee-company observed mercantile method of accountancy. During the accounting period relevant to the assessment year 1964-65 the

assessee-company purchased raw materials ostensibly for manufacture in the State of Rajasthan and thereby paid sales tax at concessional rate 1

per cent on the purchase price of raw materials. During the course of assessment it was found by the Sales-tax Officer that the said raw material

was utilised by the assessee for the purpose other than for which it was purchased taking benefit of concessional rate of sales tax. He, therefore,

levied sales tax u/s 5C(2) of the Rajasthan Sales-tax Act at penal rate and, thus, raised the demand of Rs. 49,560 on 30th June, 1965 which date

fell in the assessment year 1966-67. The appeal of the assessee from the order of the Sales-tax Officer was dismissed by the Deputy

Commissioner of Sales-tax (Appeals) on 6-7-1973 which date fell in the assessment year 1974-75.

The income tax Officer while framing the assessment for the assessment year 1974-75 did not allow the claim of deduction of said Rs. 49,560.

2. Mr. Bajoria, the learned Advocate appearing on behalf of the assessee, had contended that this is not a case of liability arising out of the sale or

purchase simpliciter. The principle enunciated by the Supreme Court in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of

Income Tax, (Central), Calcutta, will not apply to the facts of this case. In this case, the assessee-company purchased raw materials for

manufacturing in the State of Rajasthan and that is why it paid sales tax at a concessional rate of 1 per cent on the purchase price of the raw

materials. The finding of the Sales-tax Officer was that the raw material was utilised by the assessee for a different purpose altogether and,

therefore, the concessional rate was not allowed and a penal rate of tax was charged. Mr. Bajoria has contended that the Tribunal has itself

recognized this and has held that the principle laid down in the case of Kedarnath Jute Mfg. Co. Ltd. (supra) will not apply. The fact is that the

demand was made by the Sales-tax Officer in Rajasthan on 30-6-1965 which fell within the accounting period relevant to the assessment year

1966-67. It was contended by Mr. Bajoria that as soon as goods are sold the liability to pay sales tax arises in an ordinary case. But since that

principle cannot be invoked on the facts of this case, the assessee was entitled to claim deduction in the year in which the claim of additional tax or

levy of penalty became finalised.

3. I am unable to uphold this contention. The assessee paid sales-tax at a concessional rate of 1 per cent in the accounting period relevant to the

assessment year 1964-65. The subsequent demand was raised by the Sales-tax officer on 30-6-1965 which fell within the assessment year 1966-

67. The assessee's appeal against the order of the Sales-tax Officer dated 30-6-1965 was dismissed by the Deputy Commissioner (Appeals) on

6-7-1973. The assessee cannot claim that its liability to pay sales-tax accrued or arose on the date when its appeal was dismissed. The law in this

regard is well-settled. In the case of Pope The King Match Factory Vs. Commissioner of Income Tax, Madras, it was held that the endeavour

made by the assessee to get out of the liability arising out of the order of the statutory authority by preferring appeals will not in any way detract

from or retard the efficacy of the liability imposed by the competent authority levying duty and making a demand for payment of that duty. The

assessee was entitled to debit the amount as accrued liability when the demand was made.

4. In Pope the King Match Factory's case (supra) a demand for excise duty amounting to Rs. 21,373.70 was served on the assessee by the

Collector of Excise on 9-12-1954. The assessee objected to the demand and went up in appeal. It was held by the Madras High Court that the

assessee had incurred an enforceable legal liability on and from the date on which he received the Collector's demand for payment, viz., 9-12-

1954 and the liability had accrued on that date. The amount was a proper allowable deduction in computing the income of the accounting year

1954-55.

5. The facts of the instant case are very similar to the facts in the case of Pope the King Match Factory (supra). The Madras High Court decision

was approved by the Supreme Court in Kedamath Jute Mfg. Co: Ltd. 's case (supra) wherein it was observed, after referring to Pope the King

Match Factory's case (supra), ""In our judgment, the above decision lays down the law correctly"".

6. In the instant case, the demand was raised by the STO in Rajasthan on 30-6-1965 which fell within the accounting period relevant to the

assessment year 1966-67. The assessee cannot lawfully claim a deduction on account of that liability in the assessment year 1974-75 on the

ground that the appeal to get rid of that liability was dismissed in this year.

7. Mr. Bajoria has referred to two decisions of this Court in support of his contention. The case of Commissioner of Income Tax Vs. Orient

Supply Syndicate, was in respect of a liability for payment of provident fund. The demand was raised by the statutory authority for the first time in

the accounting year relevant to the assessment year 1964-65. The demand, however, was in respect of assessee's liability to make contributions

for the earlier year. It was held in that case that though the liability related to the earlier years, the assessee could claim such deduction in the year in

which the demand was raised by the statutory authority for the first time.

8. In the instant case, the demand was raised by the STO for the first time on 30-6-1965. The principle laid down in this case really goes against

the contention made on behalf of the assessee.

9. We were also referred to the case of Shalimar Chemical Works Private Ltd. Vs. Commissioner of Income Tax, In that case there was a dispute

about the assessee's liability to make contributions under the Employees State Insurance Act, 1948. The Act, as originally promulgated, had not

cast any liability upon the assessee to make any contribution in respect of its head office staff. The Act was thereafter extended to include certain

categories of employees including head office staff. The extension was challenged by way of a writ petition by the assessee. Ultimately, the writ

petition failed. Thereafter, a further demand was made by the Employees State Insurance authorities on the assessee on 20-2-1974. The assessee

agreed to pay its dues and claimed the contribution as deduction. It was held that the amount could be claimed as deduction by the assessee in the

assessment year 1975- 76 although the demand related to an earlier period of time. The legal basis for this judgment was that the extension of the

Employees State Insurance Act itself to various categories of persons was under challenge. In the instant case, the vires of the Act is not under

challenge in any way. The demand was raised by the STO on 30-6-1965. The assessee went up in appeal challenging the levy made by the

statutory authority. The facts of the case are identical with the facts in the case of Pope the King Match Factory (supra) and the principles laid

down in that case will clearly apply to the instant case.

10. Under these circumstances, the question is answered in the affirmative and in favour of the revenue. There will be no order as to costs.

Banerjee, J. -

I agree.