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Dafedar Niranjan Singh & Another v. Custodian, Evacuee Property (Pb.) & Another

Subba Rao J.

orders that had become final before the Act came into force.

Nor do we find any force in the argument of learned counsel for the State that under s. 27 of the Act, the Custodian-General may at any time revise the order of any Custodian and, therefore, the Custodian-General can revise without any limit of time any order made by any Custodian under any previous law. Section 27 of the Act can be given retrospective operation only to the extent permitted by s. 58(3) of the Act. We have held that s. 58(3) does not affect the previous operation of the law and therefore cannot affect the finality of the orders made under the Ordinance. So the words in the section "any time" or "any Custodian" must necessarily be confined only to orders of any one of the Custodians defined in the Act and to orders of Custodians deemed to have been made under the Act but had not become final before the Act came into force.

No other point was raised. In the result, the order of the Custodian-General is set aside and that of the Custodian dated June 6, 1949, is restored. The respondents will pay the costs to the appellants.

Appeal allowed.

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March 10.

THE COMMISSIONER OF EXCESS PROFITS TAX, HYDERABAD

v.

M/S. S. R. V. G. PRESS COMPANY, KURNOOL

(J. L. KAPUR and J. C. SHAH, JJ.)

Excess Profits Tax—Sales Tax—Provisional payment in advance, if permissible deduction—Excess Profits Tax Act, 1940 (XV of 1940), r. 12, Sch. 1.

The respondents were entitled to a rebate of sales tax on goods purchased by them and used in their manufacturing process. They had adopted the system which was permissible under law,

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of paying sales tax provisionally assessed by the Sales Tax Officer on the basis of turnover of the previous year, the liability being adjusted at the end of the year of account in the light of the actual turnover of that year, as a result of which, in some years the respondents were assessed to pay tax in excess of the amount provisionally assessed, in others they obtained refund of the excess tax paid under the provisional assessment. The Income Tax Officer recognised the system and permitted deduction of sales tax actually paid under the provisional assessment. The Excess Profits Tax Officer had in assessing liability to excess profits tax for previous periods adopted the same method of computation, but for the chargeable accounting period, he did not allow the deduction of the full amount of tax provisionally debited to the sales tax, because in his view it was not reasonable and necessary expenditure and thus not a permissible deduction.

The question was whether the sales tax payments were unreasonable and unnecessary having due regard to the requirements of the business and consequently not deductible under r. 12 Sch. 1 of the Excess Profits Tax Act.

Held, that it is for the Excess Profits Tax Officer to decide whether the deductions claimed are reasonable and necessary having regard to the requirements of the business. But the reasonableness and necessity of the expenditure sought to be deducted under r. 12 Sch. 1 of the Excess Profits Tax Act in assessing excess profits tax liability must be adjudged in the light of commercial expediency, and not on any legalistic consideration. Payments made in satisfaction of liability which arises by virtue of assessment made by the Sales Tax Officer cannot be called unreasonable. Payment of sales tax as assessed being obligatory and necessary for the purpose of carrying on the business, it must be deemed to satisfy the requirements of r. 12 of Sch. 1 of the Excess Profits Tax Act.

In re M. P. Kumaraswami Raja, (1955) 6 Sales Tax Cases 113, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 270 of 1960.

Appeal from the judgment and order dated February 21, 1956, of the Andhra Pradesh High Court in Case Reference No. 4 of 1955.

K. N. Rajagopal Sastri and *D. Gupta*, for the appellant.

H. J. Umrigar, *Thiyagaraja* and *G. Gopalakrishnan*, for the respondents.

1961. March 10. The Judgment of the Court was delivered by

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SHAH, J.—The assessees are a firm carrying on business at Kurnool, of manufacturing ground-nut oil and cake. Under the Madras General Sales Tax Act IX of 1939, the assessees were entitled to a rebate of sales tax paid on goods purchased by them and used in the manufacturing process. The assessees maintained their books of account according to the Samvat Year ending with Diwali. The system of accounting was a mixture of mercantile and cash. Purchases and sales of goods on credit were duly entered in the books of account. The sales tax actually recovered by the tax authorities was debited when paid and amounts if any refunded were credited when received. The assessees had adopted the system which was premitted by the Act of paying tax calculated on the turnover of the previous year of account. Under this system, tax was provisionally assessed by the Sales Tax Officer on the basis of the turnover of the previous year, and thereafter the liability was adjusted at the end of the year of account in the light of the actual turnover of that year, and of rebate allowed in respect of groundnuts pressed into oil. As a result of the final adjustment made by the sales tax authorities, in some years the assessees were assessed to pay tax in excess of the amount provisionally assessed and in others they obtained refund of the excess tax paid under the provisional assessment. The following tabular statement shows the official years for sales tax, provisional demands made by the sales tax authorities, the final demands and the adjustments made in that behalf:

Official Year ended.	Provisional demand.	Final demand.	Adjustment Refund/	Additional levy.
	Rs.	Rs.	Rs.	Rs.
31-3-1942	2,679	1,872	807	
31-3-1943	3,046	2,863	183	
31-3-1944	14,509	18,402		3,893
31-3-1945	47,276	20,037	27,239	
31-3-1946	45,315	13,379	31,936	

For the assessment year 1946-47 (corresponding to the year of account October 18, 1944 to November 4, 1945), the assessees claimed in their assessment to

income-tax to deduct Rs. 49,633 being the amount of sales-tax paid under a provisional assessment. In the year ending 31-3-1945, the assessees had paid Rs. 47,276 as sales-tax provisionally assessed. They also had paid in that year Rs. 3,894 in adjustment of the liability for the previous year towards sales-tax due. After giving credit for Rs. 1,537 received as rebate, the total sales-tax liability under the provisional assessment was Rs. 49,633. The Income-tax Officer accepted this claim, and debited it from the income in the assessment year 1946-47 in assessing the taxable income of the assessees. Deduction of sales-tax actually paid under provisional assessment less rebates was permitted by the Income-tax Officer not only in the assessment year 1946-47 but also in the earlier years. The Excess Profits Tax Officer had also adopted for the chargeable accounting period prior to October 18, 1944 the same method of computation, but for the chargeable accounting period October 18, 1944 to November 4, 1945, the Excess Profits Tax Officer allowed out of the amount of Rs. 47,276 debited to sales tax only Rs. 17,055 as properly attributable to that period in computing the Excess Profits Tax liability. According to the Excess Profits Tax Officer, the excess amount paid under the provisional assessment i.e., Rs. 30,221 could not be taken into account, because under r. 12 of Sch. 1 of the Excess Profits Tax Act, expenditure in excess of the amount reasonable and necessary for the business was not a permissible deduction. In appeal against the order of the Excess Profits Tax Officer, the Tribunal affirmed the order. Against the order passed by the Tribunal confirming the order of the Excess Profits Tax Officer, the assessees applied for and obtained an order referring the following question to the High Court of Judicature of Andhra Pradesh,

"Whether there are materials for the Tribunal to hold that the aforesaid sales-tax payments of Rs. 30,221 were unreasonable and unnecessary having due regard to the requirements of the business and not consequently deductible under r. 12 of Sch. 1 of the Excess Profits Tax Act?"

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The High Court answered the question in the negative and against the order of the High Court, this appeal is preferred with leave under s. 66A(2) and (3) of the Income-Tax Act read with s. 21 of the Excess Profits Tax Act.

It is manifest that the assessees had not altered the method according to which their accounts were maintained. Year after year, they were paying tax provisionally assessed by the Sales-tax Officer on the turnover of the previous year subject to adjustment at the close of the year of account. This system of payment of tax under provisional assessments was not adopted with a view to evade tax liability. Nor was recovery of the amounts ordered to be refunded to the assessees delayed because of any deliberate inaction on the part of the assessees. It is not found that excess tax on inflated returns was paid in anticipation of the repeal of the Excess Profits Tax Act. The assessees for reasons of convenience adopted, as they were entitled under the Madras General Sales Tax Act, a system of payment of tax on provisional assessment based on the turnover of the previous year subject to final adjustment to be made at the end of the year. The assessees could opt for the system of paying sales-tax on provisional assessment, but the liability to pay tax imposed was on that account not voluntarily incurred. This system produced no direct benefit to the business and adjudged in retrospect, it undoubtedly reduced the taxable income; but if otherwise the payment was reasonable and necessary having regard to the requirements of the business, it was not liable to be ignored in assessing the Excess Profits Tax liability of the assessees. By r. 12 of Sch. I of the Excess Profits Tax Act, it is provided that "in computing the profits of any chargeable accounting period, no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business;...".

It is for the Excess Profits Tax Officer to decide whether the deductions claimed are reasonable and necessary having regard to the requirements of the

business. But the reasonableness and necessity of the expenditure sought to be deducted in assessing Excess Profits Tax liability must be adjudged in the light of commercial expediency. The payments made by the assessees were in discharge of obligation imposed lawfully and were necessary for the proper conduct of the business. By s. 10 of the Madras General Sales Tax Act, the assessees were obliged within 15 days from the date of service of the notice of assessment to pay tax and in default, the amount was liable to be recovered as if it were an arrear of land revenue. Again, by s. 15, if the assessees failed to submit the return as required by the provisions of the Act or the rules made thereunder or failed to pay the tax within the time prescribed, they were liable to be penalised. Payments made in satisfaction of liability which arises by virtue of the assessment made by the Sales Tax Officer cannot be called unreasonable. Payment of sales-tax as assessed being obligatory and necessary for the purpose of carrying on the business, it must in our opinion be deemed to satisfy the requirements of r. 12 of Sch. 1 of the Excess Profits Tax Act.

The Excess Profits Tax Officer was, in our opinion, in error in thinking that the tax paid was in excess of the requirements of the business. We are also of the view that the Tribunal was in error in holding that by seeking to deduct only the tax properly attributable to the actual turnover during the chargeable accounting period, the Excess Profits Tax Officer was not seeking to disturb the method of accounting which was followed by the assessees and was accepted by the taxing authorities for many years.

Counsel for the Commissioner submitted that the rules relating to advance provisional assessment and levy of tax framed under the Madras General Sales Tax Act, 1939 were inconsistent with the provisions of the Act and the assessees should have raised this contention and have obtained a decision from the court before paying tax on provisional assessment and not having done so, payments made cannot be regarded as either reasonable or necessary. Counsel says that in *In re M. P. Kumaraswami Raja* (1), the Madras High

(1) [1955] 6 Sales Tax Cases 113.

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Court has declared this scheme of taxation on provisional assessment *ultra vires*. But the reasonableness or the necessity of payments under r. 12 Sch. 1 of the Excess Profits Tax Act must be ascertained in the light of what may be regarded as commercially expedient and not on any legalistic considerations. It would not be expected of a businessman to start a litigation in respect of a tax which the Legislature of the State was competent to levy on the ground that the method devised for computing the tax liability was *ultra vires*. The tax was duly assessed and paid and the reasonableness and necessity must be adjudged in the light of the circumstances then prevailing and not in the light of subsequent developments. It may also be noticed that since the Madras High Court's decision in *In re Kumaraswami Raja's case* (1), the Madras Legislature by the Madras General Sales Tax Amendment Act VIII of 1955 retrospectively validated the levy. By virtue of this Act, assessments made provisionally and the levy of the tax were to be regarded as valid notwithstanding any initial inconsistency between the provisions of the Act and the Rules framed thereunder. It may also be pointed out that no such question was referred to the High Court and not even an argument appears to have been raised in the High Court on this question. We are of the view that the High Court was right in answering the question in the negative.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

(1) [1955] 6 Sales Tax Cases 118.