

Pradeep Phosphates Ltd. Vs. Commissioner of Trade Tax

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Court : Allahabad

Decided On : Oct-12-1999

Reported in : [2000]119STC477(All)

Judge : P.K. Jain, J.

Acts : Uttar Pradesh Sales Tax Act, 1948 - Sections 15A(1)

Appeal No. : Trade Tax Revision No. 160 of 1996

Appellant : Pradeep Phosphates Ltd.

Respondent : Commissioner of Trade Tax

Advocate for Def. : B.K. Pandey, Standing Counsel

Advocate for Pet/Ap. : Piyush Agrawal, Adv.

Disposition : Petition allowed

Judgement :

P.K. Jain, J.

1. The revisionist is a Central Government undertaking. In the assessment year 1992-93 in the month of August, 1992, the return along with admitted amount of tax were not deposited by September 30, 1992. The case of the revisionist is that the draft from the head office was received in his office on October 3, 1992.

October 4, 1992 to October 6, 1992 were holidays. The amount along with monthly return was deposited in the office of the assessing authority on October 7, 1992. The assessing authority initiated penalty proceedings under Section 15-A(1)(a) of the Sales Tax Act and imposed penalty of Rs. 7,25,115 by order dated October 8, 1992. The appeals preferred by the revisionist before the Deputy Commissioner, Appeals, Meerut, and the Tribunal were dismissed.

2. Aggrieved by the judgment and order, the applicant has filed the present revision.

3. Shri Piyush Agrawal, learned counsel for the revisionist and Shri B.K. Pandey, learned Standing Counsel has been heard. Shri Piyush Agrawal, submits that the Tribunal has observed in his judgment that in case there was delay in obtaining the funds from the head office, an application for extension of time should have been moved in the present case. He submits that the second appeal could not have been dismissed on this ground. It is also submitted that explanation submitted by the revisionist for delay in filing the return and deposit of tax has not been considered by the Tribunal. It is further submitted that the dealers specific case was that the amount of tax was deposited along with interest due up to date which fact has also not been considered by the Tribunal. The learned Standing Counsel submits that the Tribunal has observed that this was not the first default on the part of the dealer, in the month of August in assessment year 1990-91 also the return and admitted amount of tax were deposited with delay. Therefore, the Tribunal has rightly dismissed the appeal.

4. Failure to apply for extension of time is not a sufficient ground for dismissal of the appeal. It was held by this Court in *Spencer and Co. Ltd, v. Commissioner of Sales Tax* 1980 UPTC 121 that 'mere non-filing of application for extension of time could not be equated with absence of reasonable cause. In the absence of any finding that there was no reasonable cause for late filing of return and non-deposit of admitted tax within time, the order imposing penalty could not be maintained.'

5. In the instant case, the Tribunal has not recorded any finding with regard to the adequacy or otherwise of the explanation furnished by the dealer. The claim of the assessee that he has deposited the amount of tax along with interest due thereon

has also not been considered by the Tribunal. In some cases, this Court has held that if before passing of the penalty order the assessee has deposited the entire amount of admitted tax along with interest, the penalty should not be imposed. Since the Tribunal is the last fact finding authority and such finding has not been recorded by the Tribunal, the matter deserves to be reconsidered by the Tribunal in the light of the above observations.

6. The revision is allowed. The order passed by the Tribunal is set aside, and the matter is remanded back to the Tribunal for re-hearing of the second appeal and disposal in accordance with law considering the observations made above.

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