COMMISSIONER OF SALES TAX, U.P. LUCKNOW

v.

ATMA RAM MISRA ETC.

MARCH 19, 1990

[S. RANGANATHAN AND A.M. AHMADI, JJ.]

U.P. Sales Tax Act: Section 9—Appeal against assessment—Whether obligatory on assessee to pay admitted tax.

The respondents in each of these three cases was subjected to assessment under the U.P. Sales Tax Act. In each of these cases the assessee preferred an appeal to the first appellate authority and moved an application for the waiver of any deposit of the tax which was necessary before the appeal could be entertained. The first appellate authority in two of the cases dismissed the application and in the third directed the assessee to deposit 10% of the disputed tax within ten days from the date of the order. Dis-satisfied with the orders of the first appellate authority each of the assessees preferred an appeal to the Tribunal. The Tribunal in all the three cases directed the assessee to pay 10% of the assessed tax before the appeal could be entertained. Each of the assessees preferred a revision petition before the High Court.

The High Court held that the condition requiring deposit of tax was not applicable in the instant case of M/s Atma Ram Misra as no returns at all had been filed by the assessee for the relevant assessment year and no turnover stood admitted by the assessee at any stage of the assessment proceedings which was followed in the other two cases with the result that the first appellate authority was held bound to entertain the appeals of the assessee without calling upon it for deposit of any portion of tax. The department has preferred these appeals by special leave against the decision of the single judge of the High Court in all the three cases.

This Court while dismissing the appeals made it clear that it did not agree with the High Court's interpretation of the statutory provisions and,

HELD: The provision in question makes two relaxations. It does not make it obligatory on the assessee to deposit the entire amount of assessed tax. It restricts the deposit to 20% of the assessed tax. [1039C]

A **It empowers the appellate authority to waive or relax the requirements of clause (b). [1039C]**

The deposit contemplated under clause (b) also covers cases where no returns have been filed and no admission of any turnover has come from the assessee. [1039E]

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This, however, does not in any way affect the power of the appellate authority to waive or reduce the amount to be deposited, depending on the circumstances of each case, under the proviso to the above subsection. [1039G]

C *Vishamber Nath* **v.** *Commissioner of Sales Tax, U.P.,* **[1979] U.P.T.C. 1276.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1465 of 1990. etc. etc.

D From the Judgment and Order dated 13.3.1987 & 27.2.1989 of the Allahabad High Court in S.T.R. Nos. 522/86, 202/89 & 203 of 1989.

S.C. Manchanda and A.K. Srivastava for the Appellant.

E The Judgment of the Court was delivered by

RANGANATHAN, J. These three Special Leave Petitions can be disposed of together as they involve a common point. Notices of these petitions have been duly sent but there is no appearance on behalf of the respondents. After hearing the counsel for the petitioner F we grant leave and also proceed to dispose of the appeals.

The respondents in each of these cases was subjected to assessment under the U.P. Sales Tax Act. The assessment years are different for the three cases being assessment years 1981-82, 1983-84 and 1982-83 respectively but this does not make any material difference. In each C of the cases, the assessee preferred an appeal to the first appellate authority and, along with the appeal, moved an application praying for the waiver of any deposit of tax which was necessary before the appeal could be entertained. But the first appellate authority, in two of the cases, dismissed the application. In the third he directed the assessee to deposit 10% of the disputed tax within ten days from the date of the H order. Dis-satisfied with the orders of the first appellate authority,

each of the assessees preferred an appeal to the Tribunal. The Tribunal, in all the three cases, directed the assessee to pay 10% of the assessed tax before the appeal could be entertained. A

Each of the assessees preferred a revision petition before the High Court. The learned Single Judge who heard the revision petition in the main appeal preferred by *Atma Ram Misra* distinguished the earlier judgment of the Court in *Vishamber Nath* v. *Commissioner of Sales Tax, U.P.*, [1979] U.P.T.C. 1276 and held that the condition requiring deposit of tax was not applicable in the instant case as no returns at all had been filed by the assessee for the relevant assessment year and no turnover stood admitted by the assessees at any stage of the assessment proceedings. This was followed in the other two cases with the result that the first appellate authority was held bound to entertain the appeals of the assessee without calling upon it for deposit of any portion of the tax. It is this conclusion of the learned Single Judge that is the subject matter of the present appeals. B C

The question at issue turns upon the language of s. 9 of the U.P. Sales Tax Act. Since this section has been amended from time to time, it is necessary to extract the provisions of this section, in so far as it is relevant for the present purposes, as it stood from time to time: D

The section, when originally enacted read as follows: E

> "*Sec. 9 Appeals.*
>
> (1) Any assessee objecting to an assessment made on him may, within thirty days from the date on which he was served with notice of the assessment, appeal to such authority as may be prescribed: F
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> Provided that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable as the case may be." G
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> xxx xxx xxx

This provision made it obligatory on an assessee to pay up the admitted tax before his appeal against the assessment could be entertained. H

A There were amendments to the above sub-section by Amendment Act No. 8 of 1954, Amendment Act No. 7 of 1959 and Amendment Act No. 11 of 1968. These are not material for the present purposes. Next came an amendment by Amendment Act No. 3 of 1971 which took effect from 1.10.1970. This substituted the following provision in place of the original sub-section (1):

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> "(1) Any dealer objecting to any order made by the assessing authority other than an order mentioned in section 10-A, may within thirty days from the date of service of the copy of order, appeal to such authority as may be prescribed:
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> Provided that no appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of not less than:
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> (a) When return is filed—the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the return filed by him or at a later stage in proceeding before the assessing authority, whichever is greater.
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> E
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> (b) Where no return is filed—the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be admitted at any stage in proceedings before the assessing authority, or 20 per cent, of the amount of tax of fee assessed whichever is
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> greater.

Provided further that the appellate authority may, for special and adequate reasons to be recorded in writing, waive or relax the requirements of clause (b) of the proceeding proviso."

G This provision, it will be observed, effected two important changes:

> (a) The assessee had to deposit the highest amount of tax due on his admitted turnover. However, if he had filed no return and had been assessed to tax, he had to deposit 20% of the assessed
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> tax, if that was higher than the admitted tax; and

(b) A discretion was conferred on the appellate authority to waive or relax the above requirement in appropriate cases. A

The next amendment was by U.P. Act No. 12 of 1979 with effect from 1-11-1978. The provision, as now amended, stood as follows:

> "(1) Any dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in section 10-A may, within thirty days from the date of service of the copy of the order, appeal to such authority as may be prescribed: B
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> Provided that no appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of not less than— C
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> (a) Where all the returns for the assessment year have been filed, the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater; or D
>
> (b) Where some the returns for the assessment year have not been filed or no return has been filed for such year, the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns, if any, filed by him or at any stage in any proceedings under this Act or 20 per cent of the amount of tax or fee assessed whichever is greater; and E F
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> Provided further that the appellate authority may, for special and the adequate reasons to be recorded in writing, waive or relax the requirements of clause (b) of the preceding proviso. G
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This provision was in substance the same as the earlier one, but a change in language was necessitated by the fact that the Act contemplated not one but several returns from an assessee in the course of an assessment year and the earlier provision, which proceeded on the H

A basis of a single return due from an assessee for the year having been filed or not filed, needed to be clarified.

Finally came Amendment Act No. 22 of 1984 on the heels of earlier ordinances which effected an amendment in Section 9 with effect from 12.2.1983. The new sub-section reads as follows:

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"(1) Any dealer or other person aggrieved by an order made by the Assessing Authority, other than an order mentioned in Section 10-A, may, within thirty days from the date of service of the copy of the order, appeal to such authority as may be prescribed:

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Provided that where the disputed amount of tax, fee or penalty does not exceed one thousand rupees, the appellant may, at his option, request the Appellate Authority in writing for summary disposal of his appeal, whereupon the

D Appellate Authority may decide the appeal accordingly.

(1-A) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.

(1-B) No appeal against an assessment order under this Act shall be entertained unless the appellant has

E furnished satisfactory proof of the payment of not less than—

(a) the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns filed by

F him or at any stage in any proceedings under this Act, whichever is greater, where all the returns for the assessment year have been filed, or

(b) the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may

G be, admitted by the appellant in the returns, if any, filed by him or at any stage in any proceedings under this Act, or twenty per cent, of the amount of tax or fee assessed, whichever is greater, where some of the returns for the assessment year have not been filed or

H no return has been filed for such year:

Provided that the Appellate Authority may, for special and adequate reason to be recorded in writing, waive or relax the requirement of the Clause (b) of this sub-section in so far as it relates to deposit of twenty per cent of the amount of tax or fee assessed."

Except for shifting the contents of the relevant provision to new sub-section (1-B) and for a recasting of the section, the new provision has brought about no material change in the position so far as the issue before us is concerned.

It may be mentioned here that the assessment years before us being 1981-82 to 1983-84 appear to be governed by the provisions of the Act as they stood before the amendment in 1983. However this does not make much of a difference since, as already pointed out, the effect of the provisions before and after amendment is the same.

The section, as it stands since 1-11-78, provides for two sets of situations. Clause (a) deals with a case where all the returns for the assessment year have been filed by the assessee. This means that there is a figure of turnover admitted by the assessee. Again, in the course of the assessment proceedings, it is possible that he may have admitted a different figure of turnover from that disclosed in his returns. In such a situation the provision requires the assessee to deposit the amount of the tax admitted by him (either in the returns or at any subsequent stage of the proceedings before the officer, whichever is greater). Clause (b) deals with the situation where (a) some, though not all, the returns due from the assessee have been filed and (b) no return at all has been filed. In this eventuality, the requirement of deposit turns not merely on the admitted amount of tax (as there may be no such admitted tax where no return at all has been filed) but is also made to turn on the assessed tax. The provision requires the assessee to deposit the amount of tax admitted in the returns or at any stage of the proceedings under the Act *or 20% of the amount of tax assessed whichever was greater*. In other words, the provision contemplates a comparison of (i) the admitted tax and (ii) 20% of the assessed tax. Whichever of these two figures is higher has to be deposited by the assessee before his appeal against the assessment can be entertained.

There are perhaps two ways of reading clause (b). One is that, in a case where no return at all has been filed and no admission had at all has been made by the assessee of any figure of turnover, then the first figure to be computed under clause (b) will be *zero*. If, however, there is an assessment made on the assessee of any tax higher than nil, that

A will be the greater of the two figures to be computed under the clause and the assessee will have to deposit 20% of the assessed tax. The other way of interpreting the sub-section, which appears to have commended itself to the High Court, is to say that clause (b) will be attracted only if two figures are available for comparison: (1) a figure of turnover admitted in a return or in subsequent proceedings; and (2) B a figure of assessed tax. If the assessee has filed no return at all and if he has made no admission regarding his turnover at any stage of the proceedings, then figure (1) above cannot be computed. Hence it is not possible to make a comparison between the two figures indicated above and therefore the provisions of deposit contained in clause (b) will not at all apply.

C We think it is manifest that the first of the two constructions referred to above is the correct one. The interpretation accepted by the High Court, is, in our view, erroneous for two reasons. In the first place, it does not give full effect to the last few words of clause (b) which clearly cover a case where no return at all has been filed for the D assessment year in question. True, even on this interpretation, the provision will govern a case where no return has been filed but the assessee has, in the course of the assessment proceedings, made some admission regarding his turnover but such cases are likely to be very few. When the provision clearly contemplates a deposit of tax in cases where no return has been filed or where only some returns have been E filed, it would be running in the teeth of the provision to interpret it in such a manner as to exclude the majority of such cases. Secondly, the High Court's interpretation leads to a clear anomaly. For, it would indeed be odd to suggest that a deposit is necessary where an assessee has filed his returns or admitted his turnover in the course of assessment proceedings but that an assessee who has not filed any return at F all or made any admission at all can be allowed the privilege of an appeal even without making any deposit at all. Such an interpretation will only result in putting a premium upon recalcitrant and dishonest assessees. We do not think that this is the correct and proper way of interpreting the statutory provision. The clear intent of the clause is that an assessee should be asked to pay up the admitted tax or 20% of G the assessed tax, whichever is greater, before an appeal could be entertained and the provision should be interpreted in such a way as to give effect to this intent.

In this context, it is significant that the provision does not call upon the assessee to pay up the entire amount of assessed tax. The H Legislature fully appreciates that an assessment made, in the absence

of any return or admission, may not always reflect the correct figure of tax leviable on the assessee. It could be that the assessed figure involves an estimate which takes it beyond the figure which may be ultimately determined in the case. But, at the same time, it cannot be said, merely because an assessee has not filed any return or made any admission expressly, that he necessarily disputes the entirety of the assessed tax. It could well be that he has not done either of these things just to postpone the payment of even the tax which he may not be in a position to contest.

Realising this situation, the provision in question makes two relaxations. It does not make it obligatory on the assessee to deposit the entire amount of assessed tax. It restricts the deposit of 20% of the assessed tax (a figure which can be treated as an *ad hoc* statutory quantification, on an average, of the tax demand in such cases on which there could be no quarrel). Added to this, it empowers the appellate authority to waive or relax the requirements of clause (b). This is because the appellate authority will be in a position to, *prima facie,* judge the extent to which, in the circumstances of a particular case, there is a real dispute in the appeal and to insist upon the deposit of such percentage of the assessed tax (not exceeding 20%) as it may consider appropriate. If the intention of the legislature were only that the deposit should be confined only to the admitted tax in all cases, the second part of clause (b) referring to deposit of 20% of the assessed tax and, indeed, even the bifurcation made in clauses (a) and (b) would be redundant. We are, therefore, of opinion that the deposit contemplated under clause (b) also covers cases where no returns have been filed and no admission of any turnover has come from the assessee.

We would like to make it clear that we modify the judgment of the High Court only in so far as it directs that an assessee who has not made any return at all and has not admitted any figure of turn over in the course of the assessment proceeding is relieved of the requirement to deposit 20% of the assessed tax under section 9(1) or 9(1-B), as the case may be. What we have held, however, does not in any way affect the power of the appellate authority to waive or reduce the amount to be deposited, depending on the circumstances of the each case, under the proviso to the above sub-section.

We should also like to make it clear that, despite our above conclusion, we do not propose to interfere in any of the three appeals, with the ultimate result of the High Court's decision. This is because

A the High Court has already permitted the appeals to be disposed of without requiring any deposits. The learned counsel for the appellants is not in a position to state whether the appeals are still pending or whether they have since been disposed of pursuant to the directions of the High Court. It would not be proper, in this situation, to modify the decretal position of the High Court's order. We, therefore, dismiss
B these appeals but make it clear that we do not agree with the High Court's interpretation of the statutory provisions for the reasons set out above. We make no order as to costs in the circumstances of the case.

R.N.J. Appeals dismissed.

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