

Goodwill Refrigeration and Spare Parts Supply Co. Vs. Sales Tax Officer and Others

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Court : Delhi

Decided On : Jul-19-1985

Reported in : [1986]61STC60(Delhi)

Judge : Charanjit Talwar, J.

Acts : Bengal Finance (Sales Tax) Act, 1941 - Sections 20(3), 26 and 26(2); Delhi Sales Tax Rules, 1951 - Rule 66(2)

Appeal No. : Civil Writ No. 725 of 1973

Appellant : Goodwill Refrigeration and Spare Parts Supply Co.

Respondent : Sales Tax Officer and Others

Judgement :

Charanjit Talwar, J.

1. The petitioner, M/s. Goodwill Refrigeration & Spare Parts Supply Co., carrying on its business at Delhi has challenged the order dated 28th March, 1973, of the Financial Commissioner, Delhi, passed under section 20(3) of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as the 'Act'), as extended to the Union Territory of Delhi, where by the application of the petitioner was dismissed on the ground that it has been filed 5 days after the period of limitation.

2. Mr. Bhagwati Pershad, the learned counsel for the petitioner, submits that rule 66(2) of the Delhi Sales Tax Rules, 1951 (hereinafter referred to as the 'Rules'), which provides for limitation for filing of application for revision is ultra virus the Act. The contention is that under the power to make rules as per section 26 of the Act, the Chief Commissioner had no authority to lay down the period of limitation for filing of the applications covered under sub-section (3) of section 20 of the Act.

3. Section 20 of the Act provides for appeals, revisions and reviews under the Act. The relevant provision under which application for revision can be entertained is contained in sub-section (3) of that section. That sub-section reads as under :

'Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the Rules there under by a person appointed under section 3 to assist him, and subject as aforesaid, the Chief Commissioner may, in like manner, revise any order passed by the Commissioner :

Provided that before rejecting any application for the revision of any such order the Commissioner or the Chief Commissioner, as the case may be, shall consider it and shall record reasons for such rejection;'

4. The Rules were made in exercise of powers conferred by section 26 of the Act by the Chief Commissioner, Delhi. Appeals and revisions are dealt with in rules 60 and 70. Limitation for filing application is provided in sub-rule (2) of rule 66. It reads as follows :

'(2) No application for review of an order shall be entertained unless it is presented within 30 days from the date of communication of such order and no application for revision for an order shall be entertained unless it is presented within sixty days from the date of such communication :

Provided that an application for review or revision may, after the period so specified be entertained if the applicant satisfies the authority to which such application is made that he had sufficient cause for not presenting the application within such period.'

5. According to the petitioner the first application by way of revision had been filed by it before the Commissioner of Sales Tax within the period prescribed. Thereafter the second revision application was filed to the Chief Commissioner but beyond the period of limitation. The Financial Commissioner, who has been delegated the powers of the Chief Commissioner, had no occasion to consider the question of extension of time or condensation of delay as no application was filed before him along with revision application and hence the impugned order.

6. In a nutshell, the contention of the petitioner is that the above-quoted sub-rule which lays down the time-limit for filing of application for revision is without jurisdiction as under section 26 of the Act such a rule cannot be framed.

7. Section 26 of the Act provides that the Chief Commissioner may make rules for carrying out the purposes of the Act. Under sub-section (2) which provides 'In particular and without prejudice to the generality of the foregoing power, such rules may prescribe -' a number of matters have been enumerated. I quote items (p) and (r) as the same are relied upon by the learned counsel for the parties in support of their respective contentions :

'(p) the procedure for, and other matters (including fees) incidental to, the disposal of appeals and applications for revisions and reviews under section 20;'

'(r) the manner in which, and the time within which, applications shall be made, information furnished and notices served, under this Act.'

8. Mr. Arora, the learned counsel for the respondents, submits that sub-rule (2) of rule 66 has been framed for carrying out the purposes of this Act. His further submission is that it was mandatory to lay down limitation as per requirement of sub-section (2)(r) of section 26 of the Act. His emphasis is on the language of sub-section (3) of section 20 under which the Commissioner can revise the order either suo motu or on the application made by the assessed. Under that very sub-section a further application is competent to the Chief Commissioner. The argument is that the time-limit provided in sub-rule (2) of rule 66 cannot be said to be beyond the rule-making

power. As against this Mr. Bhagwati Pershad, learned counsel for the petitioner, states that applications for revision have specifically been mentioned under item (p) of sub-section (2) of section 26 wherein no time-limit has been provided. It is his contention that provision wherein limitation has been laid is not for carrying out the purposes of the Act.

9. In my view the submission is misconceived. The rule has been framed for carrying out the purposes of the Act. The application seeking revision having been provided in sub-section (3) of section 20 the time within which it has to be filed must specifically be laid down. This is also the requirement of sub-section (2)(r) of section 26. By sub-rule (2) of rule 66 this is exactly what has been achieved. I hold that the rule is intra vires and is also legal. No other point was urged. In the result the writ petition fails and is dismissed.

10. No order as to costs.

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