

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1843 OF 2013
(SPECIAL LEAVE PETITION (CIVIL) NO. 36931 OF 2009)

STATE OF UTTAR PRADESH & ORS.

APPELLANTS

VERSUS

M/S.SYSTEMATIC CONSCOM LIMITED

RESPONDENT

W I T H

CIVIL APPEAL NO.1928 OF 2013 @ SLP(C) NO. 1264 of 2011
CIVIL APPEAL NO.1929 OF 2013 @ SLP(C) NO. 1268 of 2011
CIVIL APPEAL NO.1930 OF 2013 @ SLP(C) NO. 1272 of 2011
CIVIL APPEAL NO.1931 OF 2013 @ SLP(C) NO. 1275 of 2011
CIVIL APPEAL NO.1932 OF 2013 @ SLP(C) NO. 1277 of 2011
CIVIL APPEAL NO.1933 OF 2013 @ SLP(C) NO. 1279 of 2011
CIVIL APPEAL NO.1847 OF 2013 @ SLP(C) NO. 15025 of 2010
CIVIL APPEAL NO.1853 OF 2013 @ SLP(C) NO. 15036 of 2010
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CIVIL APPEAL NO.1927 OF 2013 @ SLP(C) NO. 36479 of 2010

A N D

WITH CIVIL APPEAL NOS.1845-1846 OF 2013 @SLP(C) NO. 8975-8976 of 2010

O R D E R

1. Applications for exemption from filing Official Translation are allowed.

2. Delay in filing and re-filing the Special Leave Petitions is condoned.

3. Leave granted in all the Special Leave Petitions.

4. In this batch of Civil Appeals we are required to consider the exactness or otherwise of the circular issued by the Commissioner of Trade Tax, Uttar Pradesh dated 04.06.2007. By the impugned Circular, the Commissioner taking resort to the proviso appended to Section 7-D of the Uttar Pradesh Trade Tax Act, 1948

(for brevity 'the Act') has directed the assessing authorities to recover State development tax from the dealers under Section 3-H of the Act in addition to the composition money payable under the scheme of composition introduced by the government of Uttar Pradesh prior to 01.05.2005.

5. Aggrieved by the circular so issued by the commissioner, the respondents herein had filed writ petitions before the Allahabad High Court inter alia calling in question the correctness or otherwise of the said circular. The Division Bench of the High Court by the impugned judgment and order has allowed the Writ Petitions filed by the assesseees and annulled the circular instructions issued by the Commissioner of Trade Tax dated 04.06.2007 and also set aside the orders of assessment passed by the assessing authority pursuant to the circular instructions so issued.

6. The facts in nutshell are: The respondents are civil and electrical contractors engaged in executing the civil works for repairing, construction of buildings, etc. The materials used by the dealers in execution of the said civil works is either purchased within the state or from outside the state attracting

liability for payment of tax under the provisions of the Act as envisaged under Section 3-F of the Act. Section 3 of the Act provides for levy and incidence of tax by which the tax is levied on every transaction in the nature of sales and purchases of goods at the 'rates of tax' stipulated in respect of different goods in Section 3-A of the Act.

7. The Government of Uttar Pradesh had announced a scheme, known as "Composition Scheme", under the provisions of Section 7-D of the Act under which the state government is empowered to accept a lump sum amount in-lieu of tax that may be payable by the dealer in respect of such goods or class of goods and for such period as may be agreed upon. For that purpose, the dealer is obliged to execute an agreement of undertaking to pay the sales tax in lump sum and the same was assessed at an agreed rate as envisaged under the Act itself. The scheme as introduced by the legislature provides for a bilateral agreement between the assessee and the Sales Tax Authorities with an object to dispense with the requirement of regular assessment and for the easy purposes of levy and collection of the tax payable under the Act. A dealer who has opted for payment of lump sum amount in lieu of tax, is not required to file

monthly, quarterly or annual returns of his turnover. It is the choice of a dealer to opt for compounded payment of tax and if the said choice is in accordance with the scheme and is ultimately accepted by the authority concerned, it becomes an agreed amount of tax. The department and the dealer are thereafter bound by the said agreement.

8. The State Government by Act No. 9 of 2005 dated 24.03.2005 with effect from May 1, 2005 has introduced the State Development Tax under Section 3-H of the Act at the rate not exceeding one percent of the taxable turnover as the State Government may by notification specify on the dealers whose aggregate turnover exceeds fifty lakh rupees. In pursuance of such notification, the Commissioner of Trade Tax keeping in view the proviso so appended to Section 7-D of the Act, has issued Circular instruction to all the assessing authorities in exercise of his powers under Rule 4 of the U.P. Trade Tax Rules, 1948 ('the Rules' for short) to levy one percent of state development tax on civil and electrical contractors in addition to composition money payable under the aforesaid composition scheme. The said circular instructions dated 04.06.2007, omitting what is not necessary, is extracted and it reads as under:

" Office of the Commissioner Trade Tax, Uttar
Pradesh
(Vidhi Anubhag)

Lucknow: Dated: 4/6/2007

All Assessing Officers
Trade Tax
Uttar Pradesh

The State Government had from time to time, communicated a number of scheme for composition of Tax payable in lieu of tax payable on sales made by the various dealers as per provisions contained in Section 7-D of the UP Trade Tax Act, 1948. The proviso to Section 7-D of the reads as under:-

'Provided that any change in the rate of tax, which may come into force after the date of such agreement shall have the effect of making a proportionate change, in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remained in force'.

2. The State Development Tax as incorporated u/s 3-H of the UP Trade Tax Act, 1948, had been included in the definition of 'Tax' with effect from 24/3/2005 vide Act No.9 of 2005. The State Development Tax had been enforced with effect from 1/5/2005 vide State Govt. Notification no. 1308 dated 28/4/2005. Thus besides recovering the composition fee from dealers opting composition scheme prior to 1/5/05, the recovery of State Development Tax had also to be ensured. "

[Emphasis supplied by us]

9. The assessing authorities are bound by the circular instruction issued by the Commissioner and therefore in pursuance thereof have quantified the tax payable by the dealers, who had once opted for composition facility in respect of State Development Tax also. The said circular and the orders of assessment

based on such circular has prompted the assesseees to approach the High Court by filing Writ Petitions under Article 226 of the Constitution of India. The main prayer in the Writ Petitions was to declare void the circular instructions issued by the Commissioner dated 04.06.2007 and also to set aside the levy and demand of the State Development Tax in addition to the composition amount which was already agreed upon by the dealers and the assessing authorities.

10. We have heard learned counsel appearing for the respective parties.

11. In our view, the only issue that requires to be considered and decided by us, is, whether the Commissioner was justified in issuing the Circular dated 04.06.2007 on the sole ground that with the introduction of the State Development Tax, there is a change in the rate of tax as provided under the proviso to Section 7-D of the Act and therefore, the assessing authorities are expected to levy and collect the State Development Tax in addition to the composition fee payable by the dealer.

12. In order to appreciate the aforesaid issue a bird's eye view of the Act requires to be noticed. The

dictionary clause of the Act defines the meaning of the expressions apart from others 'assessing authority', the 'Commissioner', 'trade tax', 'dealer', 'turn-over', 'works contract' and 'tax'. The expression "trade tax" means a tax payable under this Act on sales or purchase of goods, as the case may be. The 'Commissioner' means, the Commissioner of Trade Tax appointed by the State Government. The 'assessing authority' means, any person appointed by the State Government or the Commissioner to perform all or any of the functions of the assessing authority under this Act. 'Dealer' means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration. After the introduction of the amended provision the person executing the works contract is also included in the definition of the 'dealer'. The 'turnover' means, the aggregate amount for which goods are supplied or distributed by way of sale or are sold, by a dealer, either directly or through another, on his action or on account of others, whether for cash or deferred payment or other valuable consideration. The expression 'Tax' includes an additional tax and the composition money accepted under

Section 7-D and the State Development Tax. The meaning of the expression 'works contract' includes any agreement for carrying out, for cash, deferred payment or other valuable consideration the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

13. Section 3 of the Act is the charging provision. Section 3-A of the Act provides for rates of tax payable by a dealer under the Act. The said section is as under :-

"3-A. Rate of tax.-(1) Except as provided in Section 3-D, the tax payable by a dealer under this Act shall be levied:-

(a) on the turnover in respect of "declared goods", at the point of sale to the consumer at the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956, or where the State Government, by notification, declares any other single point or a lesser rate, at such other point or at such lesser rate ;

(b) on the turnover in respect of such goods, other than the goods referred to in clause (a), at such point and at such rate, not exceeding fifty per cent, as the State Government may, by notification, declare, and different points and different rates may be declared in respect of different goods.

(c) on the turnover in respect of goods, other than those referred to in clause (a) or clause (b), at the point of sale by manufacturer or importer at the rate of ten percent.

(2) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of its publication in the Gazette subject to such modifications or annulments as the two houses of the legislature may during the said period agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

(3) Where the State Government has declared any point or rate at which the tax payable by a dealer under the Act be levied under clause (b), clause (c), clause(c-1), clause (d) or clause (e) of sub-section (1) as it existed immediately before the commencement of the Uttar Pradesh Trade Tax (Second Amendment) Act, 2000 and such declaration is in force on such commencement, such rate or point of tax shall continue to be in force after such commencement, until modified or rescinded."

14. Section 3-F of the Act provides tax on the right to use any goods or goods involved in the execution of works contract. The said Section reads as under :

"Section 3-F, Tax on the right to use any goods or goods involved in the executed of a works contract.

(1) Notwithstanding anything contained in Section 3-A, or (1) Section 3-AAA or Section 3-D but subject to the provisions of Sections 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall for each assessment year, pay a tax on the net turnover of-

(a) transfer of the right to use any good for

any purpose (whether or not for a specified period) for a specified period for cash, deferred payment of other valuable consideration; or

(b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract,

At such rate not exceeding twenty percentum as the State Government may, by notification, declare and different rates may be declared for different goods or different classes of dealers."

15. Section 3-H of the Act, prior to its amendment, with effect from 01.05.2005, provided for levy of turnover tax at the rate of one per cent on a dealer whose aggregate turnover as referred to in sub-section (2) of Section 3 exceeds more than fifty lakh rupees, in addition to the tax payable under the Act. Such tax requires to be levied and collected notwithstanding any rebate, concession or exemption as provided under the Act. Sub-section (2) of Section 3-H of the Act had authorized the assessing authority to levy and collect turnover tax separately in addition to the money payable by way of composition money under Section 7-D of the Act. The other sub-sections of Section 3-H are not necessary for disposal of these appeals and therefore they are not noticed.

16. The aforesaid section is deleted and a new provision is inserted by the State legislature by U.P.

Act 9 of 2005, dated 24.03.2005 with effect from 01.05.2005. The said section provides for the levy of the State Development Tax. In order to appreciate the contentions canvassed by learned counsel appearing for the parties, it is desirable to extract sub-section 3-H of the Act before and after its amendment. They are as under:

"Section 3-H of the Act prior to 1.5.2005.

Section 3-H, Turnover Tax (1) There shall be levied a turnover tax at the rate of one percent on the dealers of whose aggregate turnover as referred to in sub-section (2) of Section (3) exceeds fifty lakh rupees, in addition to the tax payable under this Act. Such tax shall be levied and collected notwithstanding any rebate, concession or exemption provided under this Act.

(2) In the case of composition of tax liability under Section 7-D, the turnover tax leviable under sub-section (1) shall be calculated separately and be charged in addition to the amount payable as composition.

(3) No tax under sub-section (1) shall be leviable on

(a) the newspapers and other goods or the dealers specified or notified under Section 4;

(b) the declared goods mentioned under Section 14 of the Central Sales Tax Act, 1956;

(c) the goods liable for the payment of additional tax;

(d) sales to, or purchase by, manufactures of such goods as specified in the recognition certificate issued under Section 4-B;

(d) goods on the turnover of which tax is leviable under Section 3-A or 3-D at the rate not

exceeding two percent.

(f) goods exempted under Section 4-C.

Explanation - For the purpose of this section the expression "turnover tax" means the turnover tax on the sale or the purchase of goods as the case may be.

Section 3-H of the Act after 1.5.2005.

Section 3-H, State Development Tax, - (1) There shall be levied a State Development Tax at the rate not exceeding one percent of the taxable turnover as the State Government may by notification specify on the dealers whose aggregate turnover as referred to in sub-section (2) of Section 3, exceeds fifty lakh rupees. The State Development Tax shall be realized in addition to the tax payable under any other provision of this Act. This tax shall cease to be levied after a period of five years from the date of publication of the notification issued by the State Government under this section.

(2) The facility of composition of tax in relation to compoundable goods under Section 7-D shall also be available in respect of State Development Tax.

(3) The State Development Tax shall be adjustable in the monetary limit specified in the eligibility certificate issued under Section 4-A.

(4) No State Development Tax shall be leviable on;-

(a) the newspapers and other goods or the dealers specified or notified under section 4;

(b) declared goods liable for the payment of additional excise duty.

(d) such goods as may be specified by notified by the State Government."

17. The State Legislature by inserting the amended

provisions by the Act 9 of 2005 has introduced the levy and collection of the State Development Tax. Except for some changes, the State Development Tax bears resemblance to the levy and collection of the Turnover Tax. We say so, for the reason that the State Development Tax is levied on a particular class of dealers at a particular rate. What is added in Section 3-H of the Act, after its amendment is that the said section will operate only for a period of five years from the date of issuance of the notification by the State Government.

18. Sub-section (2) of Section 3-H of the Act provides for the compounding facility even in respect of the State Development Tax. This is yet another change that has been brought in by the State Legislature while inserting Section 3-H of the Act with effect from 01.05.2005. The other sub-sections of Section 3-H of the Act are not necessary for the purpose of disposal of these Civil Appeals.

19. Section 7 of the Act provides for determination of turnover and assessment of tax. Section 7-D of the Act commences with a *non-obstante* clause and provides for composition of the tax liability. The said section requires to be extracted and reads as under :

"7-D. Composition of tax liability. Notwithstanding anything contained in this Act, but subject to directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon;

Provided that any change in the rate of tax, which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

Explanation.- For the purpose of this section the assessing authority included an officer not below the rank of Trade Tax Officer posted at a check-post."

20. Taxation is a mode of raising revenue for public purposes. The term is ordinarily used to express the exercise of the sovereign power to raise revenue for the expenses of the government. In modern times, governments have been accustomed to levy a great variety of taxes; sometimes relying upon a single kind for all needs of the state and sometimes levying a number of different kinds with a view to distribute the burden more equally or more to the general acceptance. Taxes are often spoken of as special if levied for a special purpose, and general if levied for some of the ordinary purposes of a government. A 'special' tax as the term

is used in the statutes, is sometimes held to mean an additional tax over and above the general tax. The broad feature of 'taxation' would include, the persons, proper or occupation to be taxed; the amount or rate of the tax; the purposes for which taxes shall be levied; the mode, method or kind of tax; the apportionment of the tax; the situs for taxation of goods; and the method of collection.

Section 3 of the Act is the charging provision under the Act: Section 3-A of the Act provides for rate of tax payable by a dealer under the Act. Section 3-H of the Act which has come into effect from 01.05.2005, the state legislature authorises the State Government to levy State Development Tax not exceeding one percent of the taxable turnover of the dealer by issuing notification. The said section is also a charging provision, since it has all the ingredients of the charging provision as explained by this Court in M/s.Ganga Saran & Sons (Pvt.) Ltd., Calcutta Vs. Income Tax Officer & Ors., reported in (1981) 3 SCC 143. The four components of incidence of tax was explained as, first, the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second, is a clear indication of the person on whom the levy is imposed and who is obliged to

pay the tax, the third, is the rate at which the tax is imposed , and the fourth, is the measure or value to which the rate will be applied for computing the tax liability. The levy would only exist in law when all the aforesaid components are clearly and definitely ascertainable.

21. The power to levy tax is an inherent attribute of sovereign function of the State Government by which the Government under the charging provision has the power to levy tax on the taxable turnover of the dealer at the rate prescribed under the provisions of the Act. The said rate of tax as prescribed by the legislature under the charging section can be altered when the legislature empowers the government to change the rate of tax by issuing notification. In the instant case, the Commissioner has issued the impugned circular on the ground that by the introduction of State Development Tax by Act 9 of 2005, the State Government has effected the change in the rate of tax as envisaged under the proviso to Section 7-D of the Act.

22. As we have already noticed, Section 7-D of the Act provides for composition of amount at an agreed rate on the turnover of the dealer, in lieu of taxes payable

by the dealer under the Act. Firstly, offer would be made by the assessee and the same requires to be accepted by the assessing authority and then only there would be a concluded contract between the dealer and the assessing authority for payment of tax. The proviso, as we have already noticed, comes into play only when there is a change in the rate of tax. It provides, that, when there is any change in the rate of tax on the goods, such increase will proportionately affect the rate of compounding of tax. For the purpose of understanding the meaning of 'change in rate of tax' employed under the proviso to Section 7-D of the Act, the dictionary meaning of 'change' and the 'rate' is required to be set out. The ordinary meaning of change is to become different, to transform or convert and rate is the standard or measure. On a combined reading of both the meanings, the change in the rate of tax would mean any such change in the already existing standard or measure of computing the tax payable but not the introduction of a yet another kind of tax for levy and collection of the tax from the dealers. State Development Tax as introduced by the State Government under Section 3-H of the Act provides for imposition of one percent of State Development Tax separately on the taxable turnover thereby creating an independent charge. The introduction

of State Development Tax has therefore not led to any change in the rate of tax on goods and therefore there is no proportional change in the rate of compounding of tax for the purposes of proviso to Sec 7-D of the Act. By virtue of the circular issued by the Commissioner of Tax, the dealers though have agreed to pay the tax under Section 7-D of the Act are also expected to pay the State Development Tax . This, in our opinion, is fallacious view of the Commissioner. The Commissioner of Commercial Taxes could have issued the circular only if there is a change in the rate of tax. There is difference between the "change in the rate of tax" and introduction of altogether a new provision or new kind of tax for levy and collection from the dealers.

23. In view of the aforesaid discussion, we cannot sustain the circular instructions issued by the Commissioner dated 04.06.2007 and, therefore, the same requires to be set aside. Accordingly, we confirm the judgment and order passed by the High Court for the reasons stated by us.

24. Now, we leave it open to the assessing authorities, whether to demand the State Development Tax from those dealers who had already opted for the composition charges under the composition scheme by way

of issuing appropriate demand notices in accordance with law. If and when such demand notices are issued by the assessing authority/ authorities, the assesseees are at liberty to question the same before the appropriate forum.

25. With these observations and directions, these appeals are disposed of. Parties to bear their respective costs.

Ordered accordingly.



.....J.
(H.L. DATTU)

.....J.
(DIPAK MISRA)

NEW DELHI;
FEBRUARY 26, 2013.

JUDGMENT