
(1976) 05 AHC CK 0018
In the Allahabad High Court
Case No : S.T.R. No. 720 of 1973

Achal Singh

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 17-05-1976

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 9

Citation : (1977) 39 STC 173

Hon'ble Judges : R.M. Sahai, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.C. Sharma, for the Appellant; The Standing Counsel, for the Respondent

Judgement

R.M. Sahai, J.—The Additional Judge (Revisions), Sales Tax, Kanpur, submitted the following two questions for the opinion of this court :

(1) Whether, under the facts and circumstances of the case, the order of the revising authority in dismissing the revision application and in holding that the admitted tax has not been deposited, is valid and proper in law ?

(2) Whether, on the facts and in the circumstances of the case, it was open for the revising authority to dismiss the revision application and confirm the order of A.C.(J.) ?

2. The assessee, a firm, carried on business in timber and firewood, etc., as a commission agent. No return was filed nor any tax was deposited. Sri Achal Singh, one of the partners of the firm, appeared before the Sales Tax Officer on 18th March, 1976. His statement was recorded on oath wherein he stated that the firm worked as selling agent in which capacity they sold timber and firewood, etc., of their constituents and charged their commission, etc. By means of an application it was admitted that it sold timber of their ex-U.P. principals. The assessee regarded himself as a commission agent as is apparent from form No. 14 and never disputed his capacity as a commission agent even at the time of

survey and inquiry. After examining the rokar, khata bijak, purchase bahi and considering Achal Singh's statement, the Sales Tax Officer recorded a finding that the assessee was a dealer and determined its turnover. The assessee filed an appeal and reiterated its plea that as it was not carrying on the business of buying and selling goods in U.P., it was not a dealer and was not liable to sales tax. As the liability to tax was disputed it did not deposit any tax. Later on it appears that the assessee realised the difficulty in view of the admission made by it in the application moved by it admitting its liability on a turnover of Rs. 26,646 and, therefore, it moved an application for adding certain grounds, mainly challenging the liability to sales tax on the sales of Rs. 26,646.04. The Assistant Commissioner (Judicial) did not permit the addition of grounds of appeal as he was of the opinion that this was being done only to cover up the difficulty which the assessee visualised may arise due to its non-payment of any tax even on the admitted liability. The appellate court further found that as the assessee failed to comply with the requirements of law inasmuch as it did not deposit the admitted tax as is contemplated in the proviso to Section 9 of the U. P. Sales Tax Act, the appeal was incompetent and he dismissed the appeal. The assessee was unsuccessful in revision as well.

3. We have heard the learned counsel for the parties. Mr. Sharma has urged that the admission of the assessee regarding Rs. 26,646.04 was on a question of law and, as such, it was not binding. According to him, the question whether the assessee was a dealer liable to sales tax or not was a question, which was to be determined on the facts of each case and the mere admission of the assessee that he was liable to pay sales tax will not make him a dealer and the appellate court in dismissing his appeal committed an error of law. He has relied on a decision reported in *Banarsi Das Vs. Seth Kanshi Ram and Others*, . The principle that admission on a question of law does not operate as estopped needs no discussion. The question however in every case is whether the admission is such as would constitute an admission on a question of law or on a question of fact. The assessee in this case had effected sales and he admitted its liability before the Sales Tax Officer. It has been found after examining the account books that he had the authority to conclude sales on behalf of ex-U.P. principals. The assessing authority found that the assessee issued bijaks of sales both to the purchasers and the sellers. Privity of contract between the assessee and the purchaser was found to exist in view of the custom of the market. It would thus appear that it was because of these facts that the assessee admitted its liability. It was not an admission on a question of law but an admission. In the circumstances, in our opinion, the principle laid down in the Supreme Court decision will not apply to the facts of the present case. He has further relied on a decision reported in *State of Orissa v. Babu Lal Chappolia* [1966] 18 S.T.C. 17 (S.C) for the proposition that the powers of the appellate court are co-extensive with the powers of the assessing authority. The point was elaborated by saying that the filing of the additional grounds of appeal amounted to filing of a revised return and the appellate court should have permitted the assessee to amend the

grounds of appeal. The case does not help the assessee at all. It was not a case where the assessee desired to file a revised return but as has been found by the appellate court it tried to wriggle out of the difficulty with which he was faced due to deposit of tax on the admitted liability. Moreover, the appellate court had a discretion to permit the assessee to add the grounds of appeal and after considering the facts of the case it might refuse to exercise its discretion in favour of the assessee. Mr. V.D. Singh, appearing on behalf of the Commissioner, Sales Tax, had placed reliance on a decision reported in Kanpur Vanaspati Stores, Kanpur Vs. The Commissioner of Sales Tax, U.P., Lucknow, . It has been observed by their Lordships of the Supreme Court :

What is urged by the learned counsel is that whatever might be the facts admitted in the return and whatever might be the admissions made before the assessing authority it was open to the assessee to take a different stand in its memorandum of appeal and what is relevant for the purpose of Section 9 is the stand taken by the assessee in the memorandum of appeal. In support of that contention two decisions, one of the Allahabad High Court in Ghanshyam Dass Balmukund v. State of Uttar Pradesh [1969] 23 S.T.C. 282 and the other of the Kerala High Court in United Timber and Cashew Products (P.) Ltd. v. Sales Tax Officer, Cannanore [1971] 28 S.T.C. 526, were cited. Those decision undoubtedly support the contention of the appellant, but we find it difficult to accept the conclusions reached by the Allahabad High Court and the Kerala High Court. In his decision the learned single Judge of the Kerala High Court has merely followed the Allahabad High Court's decision. If we come to the conclusion that the expression "tax admitted" in the proviso to Section 9(1) means that admitted in the memorandum of appeal, Section 9 can be made wholly useless. All that an assessee has to do is not to admit his liability in the memorandum of appeal, whatever his stand might have been before the assessing authority. Ordinarily no interpretation should be placed on a provision which would have the effect of making the provision either otiose or a dead letter. Further to find out the true meaning of the expression "tax admitted" we must take into consideration the remaining words of the proviso, namely, "or such instalments thereof as may become payable". Those words furnish a key to the interpretation. If one of the conditions for maintainability of the appeal is payment of the instalments which have become payable under Rule 41(2), it means that the admission that has got to be taken into consideration is that made before the assessing authority and not before the appellate authority. That apart, we do not think that the stand taken by the appellant before the appellate authority can be considered as a bona fide stand. We are of the opinion that the contention taken by the appellant before the appellate authority that it cannot be brought within the scope of Section 3-A of the Act was an afterthought. No such contention was taken before the assessing authority. If the assessee believed that contention to be true it would not have collected from its purchasers the tax at the rate of one anna per rupee.

4. This decision settles the controversy raised in this reference. The argument

advanced in that case that whatever might be the facts admitted in the return or whatever might be the admission before the assessing authority the assessee could take a different stand before the appellate court was negated. In this case we find that the assessee had admitted before the assessing authority its liability on a sale of Rs. 26,646.04 and it was not open to take a different stand before the appellate court. Moreover, the finding in this case is that the assessee had collected the tax and his attempt to amend the grounds of appeal was not bona fide. The question in the circumstances of the case appears to be squarely covered by this decision.

5. In view of what we have stated above, we answer both the questions in the affirmative against the assessee and in favour of the department. The department shall be entitled to its costs which we assess at Rs. 100.