(1985) 07 RAJ CK 0045

In the Rajasthan High Court

Case No : Sales Tax Reference Case No. 182 of 1980

Assistant Commercial Taxes Officer APPELLANT

Vs

N.L. Singhal and Sons and Another RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 15(3A), 17

Citation : (1987) 64 STC 176

Hon'ble Judges : Pana Chand Jain, J;D.P. Gupta, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; V.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.—This application under Sub-section (3A) of Section 16 of the Rajasthan Sales Tax Act, 1954 (hereinafter called "the Act"), can be disposed of on the short ground that the application is incompetent as an appeal was not maintainable before the Division Bench of the Board of Revenue tinder Sub-section (4A) of Section 14 of the Act, against the order passed by the single Member of the Board of Revenue on an application for rectification u/s 17 of the Act.

2. A single Member of the Board of Revenue by his order dated 1st January, 1976, allowed the application for rectification presented u/s 17 of the Act. The Assistant Commercial Taxes Officer, Ward I ''A'', Circle ''F'', Jaipur (hereinafter referred to as "the assessing authority"), filed an appeal before the Division Bench of the Board of Revenue under Sub-section (4A) of Section 14 of the Act, which was dismissed by the order dated 11th August, 1978. An application for making a reference was filed by the assessing authority before the Board of Revenue u/s 15(1) of the Act seeking that a question of law arising out of order of the Division Bench of the Board of Revenue dated 11th August, 1978, be referred to this Court for its decision. As the application for making a reference was not disposed of by the Board of Revenue within a period of 180 days, an

application u/s 15(3) of the Act was filed by the assessing authority before this Court on 17th October, 1979.

3. Under the provisions of Sub-section (10) of Section 13 of the Rajasthan Sales Tax (Amendment) Act, 1984, this application would have been deemed to be an application for revision u/s 15, as amended by the amending Act of 1984, if the application would have been proper and valid application under Sub-section (3A) of Section 15, as it stood prior to the amendment.

4. It may be observed that under Sub-section (4A) of Section 14 of the Act, an appeal to a Division Bench of the Board of Revenue could be filed against an order passed by a single Member of the Board under Sub-section (2) or (3) of Section 14 of the Act, but no appeal has been provided to the Division Bench of the Board of Revenue against the order passed by a single Member of the Board u/s 17 of the Act, on an application for rectification. In this view of the matter the appeal filed by the assessing authority before the Division Bench of the Board against the order passed by the single Member of the Board of Revenue dated 1st January, 1976, was not maintainable. However, even if the appeal was entertained by the Division Bench of the Board of Revenue erroneously, in respect of an order passed by a single Member of the Board on a rectification application filed before the Board of Revenue itself u/s 17 of the Act, then also the order of the Division Bench dismissing such an appeal or allowing the same would be considered to be an order passed by the Board in relation to the proceedings for rectification u/s 17 of the Act. As such, no application for reference u/s 15 is competent in respect of such an order passed by the Board in the proceedings for rectification u/s 17 or in relation to such proceedings u/s 17 initiated before the Board of Revenue itself. This view was taken by a Division Bench of this Court in the case of Commercial Taxes Officer, Circle II, Jaipur v. Sambar Salts Ltd. (D. B. Sales Tax Reference Case No 40 of 1978 decided on 16th July, 1979) following an earlier decision of this Court in Commercial Taxes Officer v. Radha Ballabh & Sons (Sales Tax Case No. 18 of 1977 decided on 18th July, 1977). It was held in the aforesaid decisions that an order passed by the single Bench of the Board of Revenue u/s 17 of the Act on an application for rectification could not be considered as an order passed under Sub-section (2) or (3) of Section 14 of the Act and as such no appeal lay before the Division Bench of the Board of Revenue against an order passed on a rectification application made u/s 17 of the Act before the Board of Revenue.

5. Similar view was also taken by a Division Bench of the Bombay High Court in Commissioner of Sales Tax v. S.K. Manekia [1975] 36 STC 249. It was held in that case that an order passed by the Sales Tax Tribunal on a rectification application u/s 23A cannot be made subject-matter of a reference to the High Court and that a reference on questions arising out of an order passed by the Tribunal on a rectification application is incompetent and the High Court has no jurisdiction to entertain such an application for reference.

6. We are in agreement with the two earlier decisions of this Court referred to

above and as the reference application in the present case arises out of an application for rectification filed before the Board of Revenue u/s 17 of the Act, the same was not maintainable u/s 15(3A) of the Act, as they existed prior to the amendment of 1984. Therefore, the application filed in the present case by the assessing authority cannot be treated as a revision petition u/s 15(1) of the amended provisions of the Act.

7. The reference application is consequently dismissed as not maintainable.