(1997) 01 SC CK 0016

In the Supreme Court Of India

Case No : SLP (C) No''s. 5800-01 of 1996

Asstt. Commr. (Judl.) and Others — APPELLANT

Vs

Kheria Bros. and Another — RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 29A

Citation : (1998) 9 JT 479 : (1997) 11 SCC 268

Hon'ble Judges : Sujata V. Manohar, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The question arising herein arises in rather peculiar circumstances.

2. The U.P. Legislature inserted Section 29-A by way of an amendment in 1969 in the U.P. Sales Tax Act. Section 29-A in substance, provided that no refund shall be given to a dealer under the U.P. Sales Tax Act in case he has passed on the burden to the purchaser. The validity of this provision was questioned before the Allahabad High Court but was upheld in Kasturi Lal Harlal WP No. 849 of 1970, decided on 13-7-1970 (High Court, Allahabad, Lucknow Bench). The matter was brought in appeal to this Court, by the dealer and was pending.

3. During the pendency of the above proceedings, Section 29-A was amended by the U.P. Legislature in the year 1971. The amended Section 29-A was also challenged by a dealer in Annapurna Biscuits Manufacturing Company and Another Vs. The State of Uttar Pradesh and Another, The Full Bench of the Allahabad High Court struck down the provision. The State preferred an appeal against the said decision which was dismissed by this Court in State of Uttar Pradesh and Another Vs. Annapurna Biscuit Mfg. Company, following the earlier decisions of this Court in R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad, and Ashoka Marketing Ltd. Vs. State of Bihar and Another, It is thereafter that the appeal preferred by the dealer Kasturi Lal Harlal with respect

to the validity of original Section 29-A came up for hearing and the Constitution Bench upheld the constitutionality of Section 29-A (as originally introduced in 1969). The judgment of this Court in Kasturi Lal Harlal v. State of U.P. JT 1986 SC 749 does not refer to the decision in Annapurna Biscuit Mfg. Co. (Supra). The decision in Ashoka Marketing (Supra) has later been disapproved in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, by a seven-Judge Bench.

4. When the present SLP came up for hearing, this Court thought it appropriate that the question whether Section 29-A as amended in 1971 is valid and effective or not is a question which ought to be considered and decided by this Court.

5. The learned Additional Advocate General, for the State of U.P., urged two main contentions :

(1) The decision in Annapurna Biscuit Mfg. Co. (Supra) is erroneous in the light of the ratio of the decision of the Constitution Bench in Kasturi Lal Harlal v. State of U.P. (Supra) and the later decisions of this Court and this requires to be reconsidered. He submits that Section 29-A both before and after its amendment in 1971 provides for one and the same issue; the 1971 amendment is not in material respects;

(2) Alternately, he submits that even if the decision in Annapurna Biscuit Mfg. Co. (Supra) is good, the position in law would be that Section 29-A, as originally introduced in 1969, will continue to be valid and effective because it must be deemed in law that the amendment of 1971 had never taken place.

6. In our opinion, this is an appropriate case which should be heard and decided by a three-Judge Bench. It is for that Bench to decide whether reference to a larger Bench is called for.

7. Accordingly, these papers are directed to be placed before the Hon'ble Chief Justice for placing this matter before a larger Bench.

8. We may add that since the question arising herein is of general and common application, the matter deserves expeditious hearing.