(1986) 08 AHC CK 0037

In the Allahabad High Court

Case No : S.T.R. No. 69 of 1983

Batham Sugar Industries APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 30-08-1986

Acts Referred:
Limitation Act, 1963 — Section 6

Citation : (1987) 65 STC 377

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : P. Agrawal, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Misra, J.—Second Appeal No. 296 of 1983 relevant for the assessment year 1975-76 was filed by the dealer before the Sales Tax Tribunal, Lucknow Bench, Lucknow.

2. During the pendency of the aforesaid second appeal a stay application was also moved; but, since there was delay in moving the said application, another application u/s 6 of the Indian Limitation Act for condonation of delay was filed on 7th September, 1983. The said matter regarding condonation of delay in filing stay application came before the Sales Tax Tribunal and vide . the impugned order dated 17th September, 1983, the Tribunal has held that the fact of mistake of the Advocate, if any, has not been brought on record and therefore the Sales Tax Tribunal dismissed the said application and held that the application for stay was time-barred. It is against this order passed on the application for condonation of delay that the present revision has been filed.

3. Learned standing counsel appearing for the State has raised a preliminary objection regarding the maintainability of this revision. His argument is that no such revision is maintainable u/s 11 of the U.P. Sales Tax Act, hereinafter

referred to as "the Act", hence the law does not contemplate the filing of the present revision against an interlocutory order passed by the Sales Tax Tribunal.

4. Learned counsel appearing for the assessee has relied upon the case of Moti Chand and Company, Bhagalpur, District Deoria v. Commissioner of Sales Tax, U.P., Lucknow 1980 UPTC 1183, in which it was held that an appeal lies against an interlocutory order also.

5. Section 10(6) of the U.P. Sales Tax Act lays down that where an appeal has been filed u/s 10 of the U.P. Sales Tax Act, the Tribunal may,...after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of the disputed amount of any tax,...under the order appealed against till the disposal of the appeal.

6. Section 11 of the Act which contemplates filing of revision in the High Court reads as under insofar as it is relevant for the purposes of the present case:

11. (1) Any person aggrieved by an order made under Sub-section (4) or Sub-section (6) of Section 10, other than an order under Sub-section (2) of that Section summarily disposing of the appeal, or by an order passed u/s 22 by the Tribunal may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.

7. A perusal of the above section makes it clear that no revision is contemplated u/s 11 against an order passed under Sub-section (6) of Section 10, i. e., an order on the stay application. If the legislature has not contemplated even the filing of the revision against the order passed on the stay application itself it cannot be held under the law that the said Section 11 contemplates a revision against an order refusing condonation of delay in moving the stay application. The case of Moti Chand and Company v. Commissioner of Sales Tax 1980 UPTC 1183, cited by the learned counsel for the applicant, does not relate to a revision contemplated by Section 11 of the Act where the words used are entirely different than that u/s 9 of the Act.

8. In this view of the matter I am clearly of the opinion that the preliminary objection raised by the standing counsel has got force and no revision u/s 11 of the Act lies in the present case.

9. In the result the revision fails and is dismissed with costs. Stay order dated 31st October, 1983, passed in the case stands automatically vacated.

