(1970) 09 AHC CK 0027

In the Allahabad High Court

Case No : Sales Tax Reference No. 157 of 1969

Chhitarmal Ram Dayal APPELLANT

Vs

The Commissioner, Sales Tax RESPONDENT

Date of Decision : 24-09-1970

Acts Referred:

Citation : (1971) 28 STC 252

Hon'ble Judges : R.S. Pathak, J;R.L. Gulati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

R.S. Pathak, J.—The Additional Judge (Revisions) Sales Tax has referred the following questions :

(1) Whether Rule 20-B of the U.P. Sales Tax Rules published in the Gazette on 6th April, 1957, will apply for an application for exemption made for the year 1957-58, even though the application was made after the rule came into force, or whether the old rule which was in force on 1st April, 1957, would apply ?

(2) Whether the circular No. A-1-101(ii)-Vol-2-3675/ST dated 22nd November, 1958, issued by the Commissioner of Sales Tax asking the Sales Tax Officer to give time to the dealers in general to make up the deficiency in payment of the minimum exemption fee had statutory force in view of Rule 82 of the U.P. Sales Tax Rules and was binding upon the Sales Tax Officer ?

2. The assessee is a dealer carrying on business in foodgrains. It applied for exemption from tax under the U.P. Sales Tax Act for the year 1957-58. The application was purportedly made under Rule 20-B(a) of the U.P. Sales Tax Rules on 30th April, 1957, and a sum of Rs. 18 was deposited with it. The Sales Tax Officer rejected the application on the ground that Rule 20-B(a) required a deposit, within 30 days of the commencement of the year, of one-fourth of the exemption fee calculated on the basis of the turnover of the previous year and the deposit of Rs. 18 fell short of that amount. The dealer contended that Rule

20-B(a) had come into force from 6th April, 1957, only and did not apply to claims for exemption for the year 1957-58, but the contention was rejected. An appeal by the assessee was dismissed by the Assistant Commissioner (Judicial) Sales Tax. The assessee applied in revision. Before the Additional Judge (Revisions) Sales Tax it appears that the assessee admitted that Rule 20-B applied, that, therefore, one-fourth of the exemption fee should have been deposited along with the exemption application and that the amount of Rs. 18 actually deposited was short of that amount. But the assessee pointed out that he had deposited Rs. 3,600 on 5th May, 1958, and Rs. 4,382 on 9th August, 1958, and was entitled to the benefit of the direction contained in a circular issued by the Commissioner of Sales Tax on 22nd November, 1958, directing the Sales Tax Officers to grant extension of time for depositing the exemption fee. The Additional Judge (Revisions) Sales Tax held that the Commissioner of Sales Tax had no power to grant extension of time and so enlarge the period specified in Rule 20-B(a) and accordingly he declined to be bound by the circular. The revision application was rejected. And now, at the instance of the assessee, this reference has been made.

3. In regard to the first question it appears from the order of the Additional Judge (Revisions) disposing of the revision application that it was admitted by the assessee that Rule 20-B would apply and that, therefore, the deposit of Rs. 18 made when the application was filed was insufficient. No dispute appears to have been raised by the assessee on this point. In the circumstances, it is not possible to say that the first question arises out of the order disposing of the revision application. Consequently, I return no answer to it.

4. The second question is whether the circular issued by the Commissioner of Sales Tax has statutory effect and was binding upon the Sales Tax Officer obliging him to extend time to enable a dealer to comply with Rule 20-B(a). It is contended that Rule 20-B(a) itself contemplates that in regard to the period within which its requirements may be fulfilled a different provision can be made and that, it is said, is evident from the words "unless otherwise provided". It is urged that a contrary provision can be made by the Commissioner of Sales Tax under Rule 82 of the U.P. Sales Tax Rules. Rule 82 provides:

Powers of Commissioner to issue instructions.--Consistent with the provisions of the Act and these rules, the Commissioner may issue instructions generally regulating the procedure to be followed in carrying out the provisions of the Act and these Rules.

5. Now, it seems to me that the expression "unless otherwise provided" in Rule-20-B(a) refers to a provision contained in a rule made under the Act and cannot be extended to instructions issued by the Commissioner. It must be a "provision" and not an "instruction". Such a provision is contained in 20-B(b) where an exemption application may be presented within 30 days of the commencement of the business, if the business is commenced after the issue of the notification u/s 4 of the Act or where the dealer has not done business in

foodgrains during the whole of the year 1956-57. There is nothing in Rule 20-B(a) to indicate that a different period for presenting the exemption application can be provided by the Commissioner of Sales Tax.

6. If then we confine ourselves to Rule 82 alone, it is apparent that no instruction inconsistent with the Act and the Rules can be issued under it. A Full Bench of this Court in Sales Tax Commissioner, U.P. v. Behari Lal Ram Krishna and Ors. [1971] 27 S.T.C. 182 (F.B.) has held that an exemption application, which is accompanied by a deposit of deficit fee, and is, therefore, not in accordance with Rule 20-B(a), must be rejected as incompetent. The Full Bench observed that it was incumbent upon the dealer to make the exemption application within 30 days of the commencement of the year and also to deposit within that period one fourth of the exemption fee calculated on the turnover of the previous year. Upon that, it is clear that the instructions issued by the Commissioner extending the period for presenting the exemption application would not be consistent with Rule 20-B. Accordingly, I hold that the circular issued by the Commissioner directing that time be granted to the dealers to make up the deficiency in payment of the exemption fee is without sanction of law and is, therefore, not binding upon the Sales Tax Officers. I answer the second question in the negative. Accordingly, the two questions are disposed of as follows :

Question No. (1)--Does not arise.

Question No. (2)--In the negative.

7. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 100. Counsel''s fee is assessed in the same figure.

R.L. Gulati, J.

8. I agree that question No. (1) does not arise out of the order disposing of the revision application and as such need not be answered.

9. As regards question No. (2), the circular dated 22nd November, 1958, is not covered by the expression "unless otherwise provided" in Rule 20-B(a), but it would be within the powers of the Commissioner conferred upon him under Rule 82. It contains a direction which the Sales Tax Officer is bound to follow, provided Rule 20-B is of a directory nature and not of mandatory nature. In my referring order in Sales Tax Reference No. 387 of 1964, I had expressed the opinion that Rule 20-B is of a directory nature. A Full Bench of this Court in Sales Tax Commissioner, U.P. v. Behari Lal Ram Krishna and Ors. [1971] 27 S.T.C. 182 (F.B.) (S.T.R. No. 387 of 1964 decided on 13th May, 1970) has held the rule to be of mandatory nature. Although the opinion expressed by me has not been referred to in the Full Bench case, yet it is binding. I, therefore, agree that question No. (2) should be answered in the negative. In the end, I agree with the answers proposed to the two questions by brother Pathak, J.

By the Court

10. For the reasons contained in our respective judgments, the two questions are disposed of as follows :

Question No. (1)--Does not arise.

Question No. (2)--In the negative.

11. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 100. Counsel''s fee is assessed in the same figure.

