
(1979) 04 RAJ CK 0005

In the Rajasthan High Court

Case No : Miscellaneous Sales Tax Reference No's. 234 and 235 of 1975

Commercial Taxes Officer

APPELLANT

Vs

Motilal Omprakash and Another

RESPONDENT

Date of Decision : 11-04-1979

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 12, 15

Citation : (1980) 46 STC 198

Hon'ble Judges : M.B. Sharma, J;D.P. Gupta, J

Bench : Division Bench

Advocate : B.K. Pathak, Additional Government Advocate, for the Appellant;
S.M. Mehta, for non-petitioner No. 1, for the Appearing Parties

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.—These two reference applications can conveniently be disposed of together by a common order.

2. These matters relate to the assessment of sales tax for the assessment years 1966-67 and 1967-68 of M/s. Motilal Omprakash of Jaipur (hereinafter referred to as "the assessee"). The Reference Application No. 234 of 1975 relates to the assessment year 1967-68 and the demand notice, which is in dispute, is for a sum of Rs. 90.72. The Reference Application No. 235 of 1975 relates to the assessment of the assessee for the assessment year 1966-67 and the demand notice for that year is for a sum of Rs. 258.90. It appears that, in both these assessment years, the assessee was assessed to sales tax in respect of the sale of iron buckets and ghamlas at the rate of 6 per cent. However, it was, subsequently, discovered that the assessee should have been assessed to tax in respect of the sale of the aforesaid article at the rate of 7 per cent. As such proceedings u/s 12 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"), were taken against the assessee in respect of both the assessment years referred to above. The demand notices merely relate to the amounts, which the assessing authority thought, should be realised from the assessee by

way of tax on account of difference between the rate of 7 per cent which should have been charged for the sale of the aforesaid articles, and the rate of 6 per cent, which was actually charged in the earlier assessment orders. It is not in dispute that the amount, which forms the subject-matter of these two reference applications, namely, Rs. 90.72 in one case and Rs. 258.90 in another case, is exceedingly small and is almost negligible. But the reference applications arose because of the fact that the assessee filed an appeal against the order passed against him u/s 12 of the Act before the Deputy Commissioner (Appeals), Commercial Taxes, Jaipur, who thought that instead of taking steps u/s 12 of the Act, the assessing authority should have taken recourse to proceedings u/s 17. The order passed by the Deputy Commissioner (Appeals) was confirmed by the Board of Revenue on revision. The question which is sought to be referred, in both the reference applications, is as under :

Whether resort to Section 12 of the Rajasthan Sales Tax Act can be had for reassessing a part of the turnover when such part had been assessed at a rate lower than that prescribed under the Act ?

3. Learned counsel for both the parties are agreed that the question, which is sought to be referred in both the reference applications, stands decided, so far as this Court is concerned, by the decision of a Division Bench of this Court in *Indian Hume Pipe Company Ltd. v. State of Rajasthan* ILR [1968] Raj. 188, wherein an identical question was raised before this Court and it was observed as under :

In view of the considerations that we have pointed out above, we are persuaded to hold that Section 12 of the Act enables the assessing authority to reassess not only when the business or turnover of a dealer has escaped assessment to tax but also when the assessment has been made at too low a rate in any year and the power to reassess on account of too low a rate is not confined merely to the registration fee or exemption fee.

4. Thus, the question which is now sought to be referred stands fully concluded by the aforesaid decision of this Court and if the assessment has been made at a lower rate than that prescribed for the specified commodity, then certainly recourse could be taken to the provisions of Section 12 of the Act. In this view of the matter, we find that the orders passed by the Deputy Commissioner (Appeals), Commercial Taxes, and the Board of Revenue for Rajasthan holding that the proceedings u/s 12 of the Act could not be taken, when the assessment was made at a lower rate than that prescribed under the Act, cannot be sustained, in view of the aforesaid decision of this Court in the *Indian Hume Pipe Co.*'s case ILR [1968] Raj. 188. The orders passed by the Deputy Commissioner and the Board of Revenue are, therefore, erroneous and they do not represent the correct legal position.

5. However, the question, which arises before us in these two reference applications, is as to whether we should call for a reference in matters in which

the law is settled by this Court and the amounts involved are extremely insignificant. As we have pointed out above, the amount demanded in one case from the assessee is Rs. 90.72, while in the other case it is Rs. 258.90 only. The function of this Court u/s 15 of the Act is to lay down or clarify the correct legal position in a reference case, but as the law has already been laid down in this matter in the Indian Hume Pipe Co.'s case ILR [1968] Raj. 188, we do not think it necessary to call for a reference in any of these two matters where the amount involved is altogether insignificant.

6. In the result, although we disapprove of the orders passed by the Deputy Commissioner and the Board of Revenue in these two matters as they do not represent the correct legal position, yet we do not consider it proper and necessary to call for references from the Board of Revenue u/s 15 of the Act. The reference applications are accordingly dismissed, in the light of the observations made above. The parties are left to bear their own costs.