(1977) 01 RAJ CK 0001

In the Rajasthan High Court

Case No : Sales Tax Reference No''s. 31 and 169 of 1976

Commercial Taxes Officer APPELLANT

Vs

Sushilkumar Kamalkant and Another RESPONDENT

Date of Decision : 13-01-1977

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 15, 17

Citation : (1977) WLN 93

Hon'ble Judges : Rajinder Sachar, J;M.L. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajindar Sachar, J.—This order will dispose of Sales Tax References Nos. 31/76 and 168/76.

2. The Commercial Taxes Officer by an order of 16-9-65 made an assessment of the firm Messrs. Sushil Kumar Kamal Kant, Bhadra for the years 1961-62, 1962-63, 1963 64 under the Central Sales Tax Act and the Rajasthan Sales Tax Act, hereinafter to be called "the Act". B) the said assessments a demand of Rs. 24,739.58 was created on the firm. The lax now having been paid recovery proceedings were started against the petitioner Gulabchand Malpani, one of the partners of the said firm. In pursuance of the recovery proceedings the petitioner''s property was attached. The petitioner appeared before the Commercial Taxes Officer and prayed that as the firm had been dissolved recovery proceedings should be dropped. This plea however was rejected by the Commercial Taxes Officer by his order dated 2-12-72 on the ground that no appeal or revision had been filed against the earlier assessment orders. The petitioner was aggrieved and filed a revision against the said order of 2-12-72 before the Board of Revenue along with a stay application. An ad interim stay order was given on 15-1-73. This ad interim stay was however vacated by the learned Member of the Board on 15-2-73 and the stay application was dismissed. A special appeal No. 40/73 u/s 14(4A) of the Act was filed by the petitioner but

the same was rejected by a Division Bench of the Board by their order of 16-10-73, which affirmed the order of the single Member. The petitioner resisted and filed a rectification application u/s 17 of the Act. In this he met with success and the Division Bench allowed the rectification application by its order dated 4-10-74 and set aside its earlier order of 16-10-73 and directed that the special Appeal No. 49/73 by restored to its original number and listed for regular hearing before the Division Bench. The Department apparently was dissatisfied with this order of 4-10-74 and filed an application u/s 15(1) of the Act on 5-3-75 requiring the Board of Revenue to refer the following question of law to the High Court:

Whether in the facts and circumstances of the case, the Board was justified in holding on an application u/s 17 that the question of dissolution of firm can be considered even in recovery proceedings where no appeal or revision was filed against the assessment order?

3. The Board having failed to dispose of the reference within Sub-section (1) within the time prescribed the Commercial Taxes Officer has moved an application u/s 15(3A) of the Act being Reference No. 31/76 praying that the Board be directed to refer the above said question of law to this Court.

4. Later on the Special Appeal No. 40/73 came up for hearing before this Division Bench which allowed it on 11-8-75. By the said order the Division Bench of the Board set aside the order dated 15-2-73 of the single Member and gave directions to the assessing authority that he will make an inquiry as to whether the firm has been dissolved and, if so, proceedings u/s 9(3)(b) of the Act. The Commercial Taxes Officer again aggrieved moved an application u/s 15(1) on 5-12-75 asking the Board to refer the following questions of law to this Court:

Whether under the facts and circumstances of the case the Board of Revenue was justified in remanding the cases for re-assessment under provisions of Section 9(3)(b) of the Rajasthan Sales Tax Act specially when the non-applicant assessee did not prefer any appeal or revision against the assessment orders dated 16-9-1966?

5. The Board again having failed to pass any order in the prescribed lime, the Commercial Taxes Officer has filed application u/s 15(3A) being a Reference No. 169/76 praying that the Board be directed to refer the above said question of law to this Court.

6. It is apparent that the questions of law raised by the Department do arise out of the orders passed by the Board. Mr. P.C. Bhandari, the learned Counsel for the assessee, however, judges that no reference can be directed in Reference No. 31/76 because the said question, if any, has arisen out of an order passed on an application u/s 17 of the Act. The argument is that Section 15 of the Act permits the statement of the case to be forwarded to the High Court on a question of law where the Board of Revenue had passed an order u/s 14; but as the order of 4-10-74 to which reference No, 31/76 elates to rectification application u/s 17, it is incompetent Mr. S.C. Bhai dari, learned Counsel for the Department, on the

other hand, sought to contend that the order dated 4-10-74 on rectification application merely amends the earlier order of 16-10-73 which undoubtedly was passed u/s 14 of the Act and therefore the order on the rectification application must also be deemed to be an order u/s 14 of the Act and a reference would therefore be competent. In the view that we are going to take in the second reference application No. 169/76 we feel it is unnecessary to give any opinion on these respective contentions because the question of law that is sought to be raised in Reference No. 31/76 also falls to be considered in the second reference No. 169/76 and therefore it is not necessary that the same question be directed to be referred in the earlier reference No. 31/76.

7. So far as Reference No. 169/76 is concerned Mr. P.C. Bhandari also sought to raise the point that the order of 11-8-75 was an interim order and reference in such a case was not competent. This argument however ignores the fact that the Special Appeal No. 40/73 has itself been considered by the Board as an appeal u/s 14 as is clear from the order. Mr. Bhandari seeks to reopen the nature of the appeal which respondent himself considered to be u/s 14 and has also been accepted by the Board as an appeal u/s 14 of the Act. It is apparent that this argument which seeks to reopen the competency of the appeal No. 40/73 cannot be urged at this stage. We must therefore proceed on the basis that the order of 11-8-75 is an order pissed u/s 14 in Special Appeal No. 40/73 by the Board and on that basis a reference u/s 15 of the Act is obvious maintainable. We are further satisfied that the questions that had been raised are questions of law and arise out of the order dated 11-8-75 and the Board should therefore have referred it. As the Board had failed to dispose of the application filed before it the only course left is to direct the Board to refer the case and the question to this Court. We would however like to reframe the question from the one which has been suggested by the Department. We may mention that counsel for the parties have no objection to the question being so re-framed.-

8. The question of law which arises out of the order of 11-8-75 is as under:

Whether under the facts and circumstances of the case, and, while dealing with rectification matter, the Board of Revenue was justified in demanding the cases for re-assessment under the provisions of Section 9(3)(b) of the Rajasthan Sales Tax Act, and also when the not applicant assessee had not preferred any appeal or revision against the assessment orders dated 16th September, 1976?

9. The above question covers the question which was so right to be referred in Reference No. 31/76, has now been directed to be referred in Reference No. 169/76 we feel., that it is not necessary to give any separate direction in D.B. Civil Sales Tax Case No. 31/76 which is therefore hereby dismissed as infructuous.

10. We would therefore allow the application in Reference No, 169/ 76 and direct the Board of Revenue to refer and state the case and the follow big question of law arising out of its order:

Whether under the facts and circumstances of the case, and, while dealing with rectification matter, the Board of Revenue was justified in remanding the cases for re-assessment under the provisions of Section 9(3)(b) of the Rajasthan Sales Tax Act, and also when the non applicant assessee had not preferred any appeal or revision against the assessment orders dated 16th September, 1976?

11. There will be no order as to costs.

