(1985) 02 AHC CK 0069

In the Allahabad High Court

Case No : S.T.R. No. 462 of 1984

Commissioner of Sales Tax APPELLANT

Vs

Agarwal Silicate Factory RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1986) 61 STC 329

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : R.D. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Anshuman Singh, J.—This revision has been filed by the Commissioner of Sales Tax u/s 11(1) of the U.P. Sales Tax Act against the judgment dated 30th June, 1984, passed by the Sales Tax Tribunal, U.P. Bench-II, Kanpur, relating to the assessment year 1975-76 dismissing his appeal.

2. The assessee-respondent was assessed for the year in question on the sales of manufactured silicate at the rate of 4 per cent. In proceedings u/s 22 of the Act the rate of 4 per cent was corrected to 7 per cent and a further demand of Rs. 2,690 was created and the assessee was also directed to pay interest on the aforesaid sum with effect from 1st June, 1976. In the first appeal filed by the assessee imposition of interest was upheld from 2nd November, 1978, the date on which the original assessment order was passed. The revenue went up in second appeal before the Tribunal which upheld the order passed by the Assistant Commissioner (Judicial).

3. Learned standing counsel appearing for the department has contended that the Tribunal was not justified in upholding the order of the Assistant Commissioner (Judicial). He submits that the interest should have been paid by the assessee from 1st June, 1976, for the year 1976-76 and not from the date of

the original assessment order. After hearing counsel for the parties I am of the opinion that the order passed by the Tribunal does not suffer from any error of law. It has recorded a positive finding that the assessee bona fide believed that the rate of tax on silicate was 4 per cent. It is also relevant to state that no objection was raised by the department and the rate was applied at 4 per cent by the Sales Tax Officer while passing the assessment order. The mistake of believing the rate of tax may be apparent for the purpose of Section 22 of the Act and the mistake could have been rectified; but for the purpose of demanding interest the intention of the assessee has to be judged. Since the Tribunal has by the assessing authority himself, the demand of interest from 1st June, 1976, cannot be justified.

4. In the result the revision fails and is accordingly dismissed. The order passed by the Tribunal dated 30th June, 1984, is confirmed. However, there will be no order as to costs.

