
(1976) 09 AHC CK 0044
In the Allahabad High Court
Case No : S.T.R. No. 524 of 1973

Commissioner of Sales Tax

APPELLANT

Vs

Harish Chandra

RESPONDENT

Date of Decision : 16-09-1976

Acts Referred:

Citation : (1978) 41 STC 221

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—The following question has been referred for the opinion of this court by the revising authority under the U.P. Sales Tax Act (shortly called the Act) :

Whether, on the facts and in the circumstances of the case, the Additional Revising Authority, Sales Tax, Varanasi, was right in holding that the requirements of Section 9 had been complied with by the assessee ?

2. The reference relates to the assessment year 1963-64. The assessee carried on business in imported lubricants and imported kerosene oil. The net turnover of imported kerosene oil, as disclosed by the assessee in his return, was Rs. 93,300 and of imported mobile oil was Rs. 9,070 respectively. The assessing authority rejected the account books of the assessee and fixed the net turnover of imported mobile oil and lubricants at Rs. 12,000 and of kerosene oil at Rs. 1,40,000. The assessee filed an appeal against the order passed by the assessing authority and did not admit that any tax was payable on kerosene oil as, according to, him, it was a petroleum product and as such was not taxable.

3. When the appeal came up for hearing, an objection was raised on behalf of the sales tax department that the assessee had not deposited the admitted amount of tax on kerosene oil and, as such, the appeal was incompetent. The appellate authority accepted the aforesaid objection and rejected the appeal in

limine on the ground of non-deposit of the admitted amount of tax. The assessee filed a revision, which was allowed by the Additional Judge (Revisions), Sales Tax, Varanasi, relying on a decision of this court in Ghanshyam Dass Balmukund v. State of Uttar Pradesh [1969] 23 S.T.C. 282. It was held there that, when computing the admitted amount of tax for the purpose of the proviso to Section 9(1), regard should be had to the position taken by the appealing assessee in his memorandum of appeal and that the appellate authority should not be guided merely by what has been stated in the return filed by the assessee.

4. The learned standing counsel has brought to our notice a decision of the Supreme Court in Kanpur Vanaspati Stores, Kanpur v. Commissioner of Sales Tax, U.P., Lucknow 1973 U.P.T.C. 685 (S.C.), wherein it has been held by their Lordships of the Supreme Court that, for the purposes of determining as to what is the amount of tax admitted, it is not open to the assessee to wriggle out from what was admitted by him when he filed the return before the assessing authority. The Supreme Court overruled Ghanshyam Dass" case¹ and observed :

If we come to the conclusion that the expression "tax admitted" in the proviso to Section 9(1) means that admitted in the memorandum of appeal, Section 9 can be made wholly useless. All that an assessee has to do is not to admit his liability in the memorandum of appeal, whatever his stand might have been before the assessing authority. Ordinarily, no interpretation should be placed on a provision which would have the effect of making the provision either otiose or a dead letter."

5. In view of these observations of the Supreme Court, the view taken by the Judge (Revisions) is clearly unsustainable in law.

6. For the reasons stated above, we answer the question referred to us in the negative, in favour of the Commissioner and against the assessee. Our answer to the question is as follows :

On the facts and in the circumstances of the case, the Additional Revising Authority, Sales Tax, Varanasi, was not right in holding that the requirements of Section 9 had been complied with by the assessee, who had not deposited the tax on the turnover as disclosed by him before the assessing authority.

7. As nobody has appeared for the assessee, there shall be no order as to costs.