(1982) 01 AHC CK 0006

In the Allahabad High Court

Case No : Sales Tax Revision No. 367 of 1981

Commissioner of Sales Tax — APPELLANT

Vs

Kumar Brothers — RESPONDENT

Date of Decision : 27-01-1982

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

Citation : (1983) 52 STC 340

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : R.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—The question raised by the Commissioner of Sales Tax in this revision u/s 11(1) of the U. P. Sales Tax Act is whether an order which has been affirmed on merits by the revising authority under the Act can, in effect, be set aside by recourse to proceedings u/s 30 of the Act. First, the facts :

2. Sarvasri Kumar Brothers, the dealer-opposite party in this revision, makes supplies to Government department. For the year 1975-76, it furnished three quarterly returns but failed to pay the tax on the basis thereof. It did not appear before the assessing authority during the assessment proceedings so that an ex parte assessment had to be made. The taxable turnover was determined at Rs. 80,000 by an order dated 8th July, 1976. The dealer filed an appeal against this order u/s 9 as well as an application for setting aside the ex parte order u/s 30 of the Act. Allowing the appeal partly, the Assistant Commissioner (Judicial), Sales Tax, reduced the taxable turnover to Rs. 70,000 by order dated 4th August, 1977. The dealer''s revision was partly allowed by the revising authority by order dated 24th January, 1979, and the taxable turnover reduced to Rs. 60,000.

3. Meanwhile on 12th December, 1978, the assessing authority disposed of the application of the dealer u/s 30 rejecting it. The dealer filed an appeal against

this order which was disposed of by the Assistant Commissioner (Judicial), Sales Tax, on 8th May, 1979, i.e., after the decision of the revising authority dated 24th January, 1979, affirming the ex parte assessment order though reducing the taxable turnover. The order of assessment dated 8th July, 1976 was set aside. The Commissioner, Sales Tax, then assailed this order in a revision which ultimately came to be disposed of by the Sales Tax Tribunal, which had in the meantime replaced the revising authority due to amendment in the Act. The Tribunal dismissed the Commissioner''s revision, which was treated as a second appeal, by an order dated 17th February, 1981. It held that the dealer having invoked the jurisdiction of the authority u/s 30, was entitled to the relief granted to it by setting aside the order of assessment in spite of the fact that on merits the order of assessment had been affirmed by the revising authority. It purported to rely upon the decision of this Court in the case of the Commissioner of Sales Tax Vs. Agrimal Raja Ram, . The Commissioner has now come to this Court assailing the view of law taken by the Tribunal.

4. Now, the legal position :

The Act has created a hierarchy under which the order of assessment made u/s 7 can be assailed in appeal by the dealer u/s 3. The appellate order was open to revision u/s 10 by the revising authority. Now it is subject to scrutiny by the Sales Tax Tribunal u/s 10 of the Act. The appellate authority u/s 9 could confirm, set aside or modify the assessment order. It still has jurisdiction to do so. The revising authority could look into the order passed by the appellate authority for the purpose of satisfying itself as to the legality or propriety of the order and pass such order as it thought fit. The jurisdiction of the Tribunal under the Section 10 extends inter alia, to the confirmation, cancellation or variance of the order in appeal. It is clear that the revising authority like the Tribunal, had competence to go into the various aspects of the order challenged before it and arrived at a decision on the merits of the dispute. It is obvious that when these authorities chose to do so, the order of authorities subordinate to them would merge with the order passed by the revising authority and now, the Sales Tax Tribunal.

5. Section 30 permits the assessing authority to set aside an order passed ex parte. The order so passed is now subject to an appeal u/s 9 as well as u/s 10. The scope of proceedings under this provision was explained by this Court in its decision in Commissioner of Sales Tax Vs. Agrimal Raja Ram, . In that case, in fact, an appeal against an order u/s 30 was not entertained and had been dismissed for want of payment of admitted tax.

6. The conferment of power u/s 30 to set aside an ex parte order carries with it the inherent limitation that where that order has already been affirmed on merits by a superior authority contemplated under the Act, it would not be permissible for the inferior authority, nevertheless, to set it aside. Any other construction of the provision would lead to undesirable results. The conferment of concurrent jurisdiction cannot be said to mean that the inferior authority would be able to

take a view different from the one taken by the superior authority in respect of the same order unless there is a specific provision enabling it to do so. The Uttar Pradesh Sales Tax Act, as its stands today, does not contain a provision permitting an inferior authority to set aside an order which has, on merits, been affirmed by the superior authority.

7. In Santoshi Tel Utpadak Kendra Vs. Deputy Commissioner of Sales Tax and another, , Pathak, J., speaking for the court, said :

Now it seems to us past question that when the appellate jurisdiction of a superior authority is invoked against an order and that authority is seized of the case it is inconceivable for a subordinate authority to claim to exercise jurisdiction to revise that very order. The Tribunal is the supreme appellate and revisional authority under the statute. It cannot be divested of its jurisdiction to decide on the correctness of an order ; it cannot be frustrated in the exercise of that jurisdiction, merely because a subordinate authority, the Commissioner, has also been vested with jurisdiction over that order. Unless the statute plainly provides to the contrary, that appears to us to be incontrovertible. It is not open to the Commissioner to invoke his power under Clause (a) of Sub-section (1) of Section 57 and summon the record of an order over which the Tribunal has already assumed appellate jurisdiction. The subordinate status of the Commissioner precludes that.

8. That was a case under the Bombay Sales Tax Act wherein the Tribunal was an appellate as well as revisional authority over the Commissioner of Sales Tax and was the apex authority. The Commissioner could enhance an assessment in exercise of revisional jurisdiction. The question was whether it was open to the Commissioner of Sales Tax to revise an appellate order passed by the Assistant Commissioner when the dealer''s second appeal against that order was pending before the Tribunal. The Supreme Court took the view that it could not be done.

9. The present is the case at a higher pedestal. Here, the order of assessment was affirmed by the revising authority, the supreme authority at the relevant time, on merits. It was not open to the Assistant Commissioner (Judicial) to have set it aside subsequently while dealing with an appeal against the order of the assessing authority made u/s 30. The order passed by the Assistant Commissioner was clearly illegal. The Tribunal erred in affirming it by its impugned order.

10. The revision succeeds and is allowed. The order of the Tribunal dated 17th February, 1981, and that of the Assistant Commissioner (Judicial) dated 8th May, 1979, are set aside.

11. The parties shall bear their own costs.

