(1976) 09 AHC CK 0008

In the Allahabad High Court

Case No : S.T.R. No''s. 430, 431 and 432 of 1973

COMMISSIONER OF SALES TAX — APPELLANT

Vs

M/S. SACHA RAM RAM LAKHAN. — RESPONDENT

Date of Decision : 16-09-1976

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3
Uttar Pradesh Sales Tax Act, 1948 — Section 3
Uttar Pradesh Sales Tax Act, 1948 — Section 3

Citation : (1977) 6 CTR 36

Hon'ble Judges : R. M. Sahai, J

Bench : Division Bench

Judgement

R. M. Sahai, J. - The following question has been referred for the opinion of this court by the Additional Revising Authority, Sales Tax, Varanasi :

"Whether in view of the above facts and in the circumstances of the case the purchases turnover of Gur amounting to Rs. 1000/- would be exempt from tax in view of the provisions of Section 3D(3) even if the total turnover of the dealer is above Rs. 12,000/- ?"

2. The assessee carried on business in Gur, Kirana, foodgrains, Kerosene oil and other allied objects. The assessee did not maintain any account books. The assessment year in dispute is 1964-65. A survey was made on 17th November 1968. The survey is of period subsequent to the assessment year. Normally a survey made after the assessment year is not relevant but the assessee admitted before the Assessing Authority that the stock and business during the year in question has been of the same scale and stature as was found at the time of the survey. The Sales Tax Officer was, therefore, justified in taking into account the survey made on 17th November 1968 and passing an order to the best of judgment. He fixed the turnover of different items as under :

1. Kirana

...

5,000/-

2. Kerosene and Til oil

...

7,000/-

3. Foodgrains

...

30,000/-

4. Gur

...

3,000/-

The assessee filed an appeal which was partly allowed only on the question of quantum. The appellate court maintained the turnover of foodgrains as determined by the Sales Tax Officer but reduced the turnover of Gur By Rs. 2000/-. The assessee filed a revision which has been allowed. The Revising Authority estimated the turnover of foodgrains below Rs. 25,000/- and, therefore, struck it down. The taxability and purchases of Gur was also struck down as it was below Rs. 12000/-, the minimum taxable limit provided u/s. 3-D(3). We are concerned in this reference whether the view taken by the Judge (Revision) on the taxability of Gur is sustainable in law.

3. Section 3 of the U.P. Sales Tax Act created a charge on the turnover of a dealer. The turnover was defined in S. 2(i) as proceeds of sales by a dealer. S. 3-D was added in 1958 and it levied a tax on the turnover of purchases of every dealer in respect of such goods or class of goods as may be notified from time to by the State Government. The addition of S. 3-D necessitated a change in the definition of the word, turnover as the charging section levied a tax on the turnover of first purchase. In 1959 the definition of turnover as amended was and read as the aggregate amount for which goods are supplied or distributed by way of sale, or bought by a dealer ......

4. Section 3-D(1) levies tax on the turnover of first purchases of goods made by a dealer as may be notified from time to time by the State Government. S. 3-D (3) lays down the minimum for purposes of determining the liability to pay the tax. The minimum shall consist of turnover of goods notified under sub-S. (1). Both S. 3-D (1) and S. 3-D (3) read with the definition of the word turnover make it clear that the turnover shall be aggregate of all purchases made of goods and class of goods notified by the State Government. We may illustrate this by taking an example. The purchase effected by a dealer in one year may be taken as under :

(a) Foodgrains ....

20,000/-

(b) Oilseed ....

2,000/-

(c) Gur ....

8,000/-

(d) Dry fruit ....

15,000/-

The aggregate turnover of first purchases for purpose of S. 3-d shall be determined by clubbing together the first three items as they are notified goods. So far as the last item is concerned it being unnotified it cannot be taken into consideration as has been held by a Division Bench of this court in C.S.T. vs. Nand Kishore Gauri Shankar. The payment of tax on each item shall, however, be determined in accordance with the Notifications issued from time to time by the State Government. For instance the turnover of foodgrains being below Rs. 25,000/- shall not be subjected to any tax. See C.S.T. vs. Sita Ram Ayodhya Prasad, Foodgrains Dealer, Moradabad. But there being no specific Notification for oilseed or Gur they shall be liable to tax as the turnover of Notified goods is above the taxable limit. This shall demonstrate that for determining the minimum taxable limit what has to be taken into account is the total of all the purchases of notified goods made by a dealer. For the reasons stated above we are of the opinion that the view taken by the Judge (Revision) is not correct.

5. In view of what we have stated above we answer the question referred to us in the negative in favour of the Commissioner of Sales Tax and against the assessee. The answer to the question referred is as follows :

"In the facts and circumstances of the case the purchases turnover of Gur amounting to Rs. 1,000/- would not be exempt form tax."

As no body has appeared for the assessee there shall be no order as to costs.