(2002) 12 AHC CK 0161

In the Allahabad High Court

Case No : Sales Tax Revision No. 21 of 1991

Commissioner of Sales Tax APPELLANT

Vs

Prakash Chandra Narendra Kumar RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1987 — Section 11
Uttar Pradesh Sales Tax Act, 1948 — Section 10, 22, 3D(1), 9

Citation : (2006) 144 STC 125

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—The present revision has been filed by the Commissioner of Sales Tax, U.P., Lucknow, against the judgment and order dated August 30, 1990 passed by the Sales Tax Tribunal, Meerut Bench-I, Meerut in Miscellaneous Appeal No. 17 of 1987 (1982-83) by which the application filed u/s 22 of the U.P. Sales Tax Act hereinafter referred as the Act has been rejected.

2. Briefly stated the facts giving rise to the present revision are as follows :

The assessee-opposite party is a registered dealer under the provisions of the U.P. Sales Tax Act and is engaged in the business of sale of jewellery and silver ornaments. For the assessment year 1982-83 the assessee-opposite party disclosed its gross turnover at Rs. 6,79,954.21 and net taxable turnover at Rs. 1,35,209.61. It also disclosed taxable purchase at Rs. 16,470.14. The assessing authority did not accept the assessee''s books of account and the disclosed turnover and made best judgment assessment determining the taxable purchase at Rs. 3,54,864.92 and taxable sales at Rs. 1,35,209.61.

3. Feeling aggrieved by the said order the assessee-opposite party preferred an appeal u/s 9 of the Act before the Assistant Commissioner (Judicial), Sales Tax, Meerut who vide order dated January 8, 1986 allowed the appeal and remanded

the matter back to the assessing authority for fresh assessment. The assessee-opposite party preferred a second appeal u/s 10 of the Act before the Sales Tax Tribunal, Meerut. The Sales Tax Tribunal, Meerut vide order dated April 30, 1986 allowed the appeal and accepted the books of accounts and the disclosed turnover. It may be mentioned here that the assessee-opposite party had sold old ornaments worth Rs. 3,38,394.78, which it had purchased from unregistered dealers in the same form and conditions. Vide Notification No. ST-II-5787/X-10(l)80-U.P.Act-15/48-Order-81, dated September 7, 1981 issued u/s 3-D(l)(b) of the Act bullion and specie including old ornaments meant for melting were liable to tax at the point of first purchase. The aforesaid notification was amended by Section 11 of the U.P. Sales Tax (Amendment and Validation) Ordinance, 1987 (U.P. Ordinance No. 8 of 1987) in which the entry relating to bullion and specie was amended. The amended entry read as follows :

Bullion and specie, including old ornaments, old wares and other old articles made from gold or silver or any alloy thereof.

4. The result of the substitution was that earlier old ornaments which were meant for melting alone was taxable at the rate of one per cent at the point of first purchase whereas this requirement of melting had been done away with by the U.P. Ordinance No. 8 of 1987 and now all old ornaments are liable to tax at the point of first purchase with effect from September 7, 1981. The Commissioner of Sales Tax filed an application u/s 22 of the Act for rectification of the order of the Tribunal in view of the provisions of Ordinance No. 8 of 1987 which had amended the notification with effect from September 7, 1981. The said application has been rejected.

5. I have heard Shri M.R. Jaiswal, learned Standing Counsel appearing for the Commissioner of Sales Tax. Nobody has appeared on behalf of the assessee-opposite party. The learned Standing Counsel submitted that in view of the amendment in the notification dated September 7, 1981 by the U.P. Ordinance No. 8 of 1987, with effect from September 7, 1981 all types of old ornaments whether they are meant for melting or meant for resale in the same form and condition is liable to be taxed at the rate of one per cent at the point of first purchase and therefore the exemption granted by the Tribunal on the sale of old ornaments by the assessee-opposite party was contrary to the provisions of said notification and thus, there was an error apparent on the record which was liable to be rectified.

6. It is not in dispute that the entry bullion and specie including old ornaments meant for melting as provided in the notification dated September 7, 1981 was substituted retrospectively with effect from September 7, 1981 by Section 11 of the U.P. Ordinance No. 8 of 1987 and the qualifying words "meant for melting" was omitted. Thus, all old ornaments were made liable to tax at the point of first purchase. Thus, a mistake which is apparent on the record in the order of the Tribunal has crept in view of the retrospective amendment in law. It is well-settled that if any amendment is made which has retrospective effect, the order

passed by the authority on the basis of pre-existing law is liable to be rectified and is to be made in conformity with the law as it stands after retrospective amendment. In this view of the matter the order dated August 30, 1990 passed by the Tribunal cannot be sustained and is hereby set aside.

7. The Tribunal is directed to decide the application afresh. The revision succeeds and is allowed.

