(1987) 01 AHC CK 0047

In the Allahabad High Court

Case No : Sales Tax Revision No. 496 of 1986

Commissioner of Sales Tax APPELLANT

Vs

Premier Precision Tools Manufacturers Ltd. RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 22

Citation : (1988) 68 STC 151

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : S.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, J.—Raising a small point, this revision is filed by the Revenue for the assessment year 1975-76 against the order of the Tribunal dated 28th September, 1985, arising under the Central Sales Tax Act.

2. On the inter-State sales effected by the assessee, the tax was imposed at the rate of 10 per cent by the assessing officer. The dispute went up right up to the stage of the Tribunal against the order of the assessment, but the rate of tax was not disputed at any stage. The Deputy Commissioner, Sales Tax, then made an application u/s 22 of the U. P. Sales Tax Act, 1948, to the Tribunal on 25th November, 1981 (annexure 5). The order of the Tribunal in second appeal against the assessment order is dated 28th March, 1980 (annexure 4). The application u/s 22 was disposed of by the Tribunal by the impugned order dated 28th September, 1985 (annexure 6). The Tribunal rejected the application of the Revenue saying that there was no mistake apparent from the record and, therefore, no rectification could be made u/s 22.

3. The point for consideration is whether there was any mistake apparent from the record within the meaning of Section 22 of the Act, 1948. The assessment was made by the assessing officer levying the tax at the rate of 10 per cent and,

therefore, if there was any mistake in the rate of tax that might be in the order of the assessing officer and not in the order of the Tribunal.

4. Learned Standing Counsel argues that the order of the assessing officer stood merged in the order of the Tribunal, dated 28th March, 1980 (annexure 4). May be. that the order of the assessing officer stood merged in the order of the Tribunal, but the effect of the merger is that the order of the assessing officer cannot be challenged. Because the order of the assessing officer cannot be challenged, that does not mean that the mistake having arisen in the order of the assessing officer could be attributed to the order of the Tribunal. On account of merger, the mistake arising in the order of the assessing officer cannot be shifted to the order of the Tribunal.

5. I, therefore, agree with the Tribunal that there was no mistake in the Tribunal''s order dated 28th March, 1980. The matter can be seen from another angle also. Section 21 of the. Act, 1948, enables the assessing authority to reopen the assessment if the assessing authority has reason to believe, inter alia, that the assessment has been assessed to tax at a rate lower than that at which it is assessable under this Act. So, the remedy is embedded in Section 21 of the Act. It furnishes a clue that in the circumstances of the case no application can be made u/s 22 to make the assessment at a higher rate.

6. For the reasons, the revision is dismissed. No order as to costs.