

(1981) 07 AHC CK 0018
In the Allahabad High Court
Case No : S.T.R. No. 791 of 1980

Commissioner of Sales Tax

APPELLANT

Vs

Romills Garrage

RESPONDENT

Date of Decision : 06-07-1981

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 15A(qq)

Citation : (1982) 49 STC 226

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—By way of this revision the Commissioner of Sales Tax seeks setting aside of the revising authority's order by which he set aside the penalty order passed under Sub-section (qq) of Section 15-A of the Sales Tax Act which runs as under:

If the assessing authority is satisfied that any dealer or other person realises any amount as sales tax or purchase tax, where no sales tax or purchase tax is legally payable or in excess of the amount of tax legally payable under this Act.

2. Penalty was levied as the assessee had realised additional tax u/s 3-F although its turnover did not exceed Rs. 2,00,000. It is not disputed that in the earlier year the assessee's turnover exceeded the prescribed limit and it realised and deposited additional tax on it. It is further not disputed that in the assessment year in dispute, that is, 1974-75, the assessee deposited additional tax realised by it along with quarterly returns. But the proceedings were initiated as the total turnover in the end of year did not exceed Rs. 2,00,000. As the conduct of the assessee appeared to be reasonable to the revising authority he set aside the penalty order.

3. It has been argued by the learned standing counsel that as the words "reasonable or probable" have not been used in this Sub-clause, the revising

authority was not justified in importing the concept and knocking off the penalty on this ground. According to him the mere realising of any sales tax or purchase tax in excess of the amount which was leviable the assessee was liable to be penalised u/s 15-A. The submission appears to be devoid of any force. The action of the assessee has to be judged in light of facts of the case. The liability to pay additional tax arises only when the turnover exceeds Rs. 2,00,000. It being admitted that the turnover of the assessee reached beyond the prescribed limit in the earlier year the assessee could very well hope it to cross this year as well. If in this expectation he went on realising, then he could not be penalised only because the turnover fell short by nearly six thousand. The assessee could not be expected to wait till the end of year, because in that case he would be required to pay from his own pocket. The finding therefore that there was reasonable cause for realising the additional tax and no penalty could be levied on the assessee appears to be well-founded.

4. Nor is there any merit in the submission of the learned standing counsel that the concept of bona fide was inapplicable to Sub-clause (qq). It is true that unlike other Sub-clauses this clause does not use the word "reasonable", etc. But the penalty proceedings under tax statutes are quasi-criminal in nature. Then the opening words of the section empower the assessing authority to levy penalty only if he is "satisfied" about the breach committed in various Sub-clauses.

5. In the circumstances, the revision fails and is dismissed. As nobody appeared on behalf of the opposite party, there shall be no order as to costs.