(1976) 07 AHC CK 0020

In the Allahabad High Court

Case No : S.T.R. No. 677 of 1973

COMMISSIONER OF SALES TAX, U.P. — APPELLANT

Vs

M/S. SHAHID HUSAIN RAKESH KUMAR. — RESPONDENT

Date of Decision : 09-07-1976

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 15A(1)(b)

Citation : (1976) 5 CTR 276

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 :

"Whether under the facts and circumstances of this case the Additional Judge (Revisions) Sales Tax, Bareilly was legally justified in his view that the provisions of sec. 15-A (1)(b) of the U.P. Sales Tax Act, could not apply unless returns of turnover as required by section 7 of the U.P. Sales Tax Act had been furnished ?

The assessee carried on business of manufacture and sale of bricks. It did not secure any registration nor did it furnish any return to turnover as required under sec. 7 of the Act. It was brought on record as the assessee in consequence of a survey when a large number of books of account for 1967-68 till the date of survey were seized. The Sales Tax Officer on the basis of the survey passed an order to the best of his judgment. Thereafter a notice u/s 15-A (1)(b) of the Act was issued and a penalty was imposed. The assessee filed an appeal which was dismissed against which it filed a revision which was allowed by the Judge Revision on the ground that the provisions of the section under which notice was issued can apply only to cases where a dealer has furnished inaccurate particulars of his return and not to a case where he has not furnished any return at all.

The relevant portion of section 15-A is quoted below.

S. 15-A. PENALTIES IN CERTAIN CASES :-

(1) If the assessing authority is satisfied that any dealer or other person

(a) has, without any reasonable cause, failed to furnish the return of his turnover or to furnish it with in the time allowed and in the manner prescribed or to deposit the tax due under this Act before furnishing the return or alongwith the return, as required under the provisions of this Act, or

(b) has submitted a false return of turnover under this Act"

A perusal of the two parts clearly establishes that section 15-A (1)(b) applies a case where the dealer has failed to furnish the return u/s 7 where as sub-clause (b) applies in a case where the return has been furnished but there is deliberate concealment or the return furnished is inaccurate. The Legislature has in the two sub-clauses mentioned two different categories and has also laid down different penalties in sub-clause (c). They deal with different situations and the Sales Tax Officer in this case proceeded u/s 15-A (a) (b) and from the amount of penalty imposed it is clear that he exercised its jurisdiction u/s 15-A (1)(b) and not u/s 15-A (1)(a). The language of the section clearly indicates that in a case where no return has been filed penal proceedings can be initiated only u/s 15-A (1)(a). There are observations in a decisions of the Supreme Court in Narain Das Suraj Bhan vs. Commissioner of Sales Tax 21 S.T.C. 104 which supports the view that we are taking. In the circumstances the question referred is answered in the affirmative against the Department and in favour of the assessee. There shall be no order as to costs.

