
(1968) 08 AHC CK 0026
In the Allahabad High Court
Case No : Misc. (S.T.R.) No. 649 of 1965

Commissioner, Sales Tax

APPELLANT

Vs

Badri Prasad Vishwanath

RESPONDENT

Date of Decision : 02-08-1968

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 29

Citation : (1969) 24 STC 364

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : Ashok Gupta and M.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The respondent is a dealer carrying on business Kanpur. He was assessed under the U.P. Sales Tax Act for the assessme year 1953-54 and paid the sales tax assessed. He appealed against the assessment. The appeal was allowed by the Judge (Appeals) Sales Tax by an order dated 11th May, 1959, and the tax liability was reduced. On 7th June, 1960, the respondent applied for refund of the amount paid in excess of the tax liability determined in appeal and in the alternative prayed that the excess may be set off against the tax liability of subsequent years. The Sales Tax Officer rejected the application on the ground that it was filed more than twelve months after the date of the appellate order and was, therefore, barred by limitation u/s 29 of the U.P. Sales Tax Act. The respondent applied in revision and the Judge (Revisions) Sales Tax held that although the prayer for refund was barred by the limitation prescribed by Section 29, the prayer for adjustment of the excess against the tax liability of subsequent years was wrongly refused as barred by time. At the instance of the Commissioner of Sales Tax, the Judge (Revisions) has made the instant reference on the following question:

Whether under the circumstances of this case the limitation period for refund also governs an application for adjustment of such dues towards the outstanding

dues of the department for subsequent years?

2. Section 29 was introduced in the Sales Tax Act with effect from 1st April, 1959. It provides :

The assessing authority shall, in the manner prescribed, refund to a dealer applying in this behalf any amount of tax, fees or other dues, paid in excess of the amount due from him under this Act except to the extent the dealer is liable to deposit it under Sub-section (4) or Sub-section (5), as the case may be, of Section 8-A :

Provided that no claim to the refund of any tax or other amount paid under this Act shall be allowed unless it is made within twenty-four months from the date on which the order of assessment was passed or within twelve months of the final order passed in appeal, revision or reference in respect of the order of assessment, whichever period is later:

Provided further that the assessing authority shall first apply the amount found to be refundable towards the amount of tax, penalty or fee outstanding against the dealer and shall then refund the balance, if any.

3. Section 29 is a summary remedy available to the assessee for claiming the refund of tax found to have been paid in excess of the true tax liability. The provision enables the assessee to make an application for such refund and to obtain a repayment of the money. The first proviso to Section 29 prescribes the period of limitation for making such application for refund, and the period is twenty-four months from the date on which the relevant assessment order was passed. That would be a case where a claim for refund is made and it is found upon assessment that the dealer has already deposited in advance an amount in excess of the tax liability found due upon assessment. Where the tax liability is found in appeal, reference or revision to be less than the amount assessed and the dealer is, therefore, entitled to a refund, the period of limitation for making an application for refund is twelve months of the final order passed in appeal, revision or reference.

4. There is no doubt that in the case before us the application for refund having been made more than twelve months after the appellate order was barred by the period of limitation. The question arises whether the prayer for adjustment of the excess amount against, the liability for subsequent years could also be refused on the ground that it was made beyond twelve months of the date of the appellate order. The contention of the Commissioner is that the period of limitation controls the second proviso under which a dealer is entitled to an adjustment of the excess towards other tax liabilities outstanding against him. Now, the right recognised by Section 29 is a right to a refund. The summary remedy provided by Section 29 enables a dealer to apply for and obtain a refund. The second proviso casts an obligation upon the assessing authority to ascertain before making such refund whether any amount is due from the dealer towards tax, penalty or fee in some other proceeding under the Act and, if so, to apply

the amount found to be refundable towards such tax, penalty or fee. This obligation to adjust against an outstanding liability is quite distinct from the right to refund which is the subject-matter of Section 29. The period of limitation prescribed by the first proviso to Section 29 controls the application for refund u/s 29. It has no reference to a prayer for adjustment of the refundable amount against an outstanding liability, of the dealer. We are unable to equate the refund of an amount payable to a dealer with the adjustment of such an amount towards a liability outstanding against him. In the one case the dealer applies for the repayment of the money into his hands. In the other, he applies that the amount instead of being repaid to him be credited towards the liability outstanding against him. We are of opinion that the subject-matter of the first proviso cannot be confused with what is contemplated within the second proviso. The two matters are distinct and separate and, therefore, the period of limitation prescribed under the first proviso cannot govern the matter of adjustment contemplated by the second proviso.

5. We, therefore, answer the question referred to this court in the negative. The respondent is entitled to his costs which we assess at Rs. 200. Counsel's fee is also assessed in the same figure.