
(1970) 08 AHC CK 0012
In the Allahabad High Court
Case No : Sales Tax Reference No. 734 of 1969

Commissioner, Sales Tax

APPELLANT

Vs

Bhola Nath Laxmi Narain

RESPONDENT

Date of Decision : 27-08-1970

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(3), 30

Citation : (1972) 29 STC 347

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

Bench : Division Bench

Judgement

R.S. Pathak, J.—I agree that the question should be answered in the affirmative.

2. The assessee alleges that he had made a mistake in setting out the figure of admitted turnover in the application u/s 30 of the U.P. Sales Tax Act. If it is found that it was a bona fide mistake, the sales tax authorities are bound to allow its rectification. It is nothing more than an amendment sought for, and to be granted, in the interests of justice. Such rectification must be considered as reinstating the figure of admitted turnover to its correct position as on the date of making the application u/s 30. The view taken by the Sales Tax Officer and the appellate authority is clearly wrong and I would agree with the order made by the Additional Judge (Revisions). It is not necessary, it seems to me, to decide whether an assessee is entitled, at the time of applying u/s 30, to admit a tax liability different, from that admitted when filing his return.

3. I would answer the question in the affirmative, and grant the assessee his costs which I assess at Rs. 100. Counsel's fee is assessed in the same figure.

R.L. Gulati, J.—At the instance of the Commissioner of Sales Tax, U.P., Lucknow, the Judge (Revisions) Sales Tax, Agra, has submitted this statement of the case u/s 11(3) of the U.P. Sales Tax Act for the opinion of this court on the following question of law:

Whether in the circumstances of this case, a dealer could, later on, get the figure

of admitted tax mentioned in his application u/s 30, U.P. Sales Tax Act, rectified on the ground that there had been a clerical mistake in making such an admission ?

2. The facts briefly stated are these : An ex parte assessment was made against the assessee in respect of the assessment year 1965-66 because of the assessee's failure to appear before the Sales Tax Officer on the appointed date. The assessment order was served upon the assessee on 21st December, 1967. On 15th January, 1968, the assessee moved an application u/s 30 of the Act for setting aside the ex parte assessment order on the ground that he had been prevented by sufficient cause from appearing before the Sales Tax Officer on the appointed date. As required by the proviso to Section 30, the assessee deposited a sum of Rs. 45.86 by way of tax on the admitted turnover of Rs. 3,103.73. At the time of the hearing of this application an objection was raised that there was a deficiency of 70 paise in the payment of the admitted tax inasmuch as on the admitted turnover of Rs. 3,103.73 as shown in the application the tax worked out was Rs. 46.56. Thereupon the assessee moved an application supported by an affidavit that the figure of the admitted turnover as mentioned in the application u/s 30 was wrong, and the actual admitted turnover was Rs. 2,135.41, upon which the tax payable worked out to Rs. 32.00 only. Thus according to the assessee the tax already paid by him was more than the admitted tax required to be paid. This application was moved on 29th January, 1968.

3. The Sales Tax Officer rejected the amendment application on the ground that even in the return filed by the assessee the admitted turnover was the same as shown in the application u/s 30. He accordingly rejected the application u/s 30. The assessee appealed but the appellate authority also dismissed the appeal on the ground that the application for amendment had been moved after the period of limitation prescribed for an application u/s 30. The assessee then applied in revision. The Judge (Revisions) accepted the assessee's contention. He observed that if the assessee had made a mistake in mentioning the admitted turnover, he should have been allowed to correct the mistake. In his opinion, the period of limitation prescribed for filing an application u/s 30 did not apply to an application for amendment, particularly when the assessee was not seeking to make up the deficiency in the payment of the admitted tax beyond the period of limitation prescribed for an application u/s 30. He accordingly set aside the appellate order as also the order of the Sales Tax Officer rejecting the application u/s 30 and remanded the case to the Sales Tax Officer to dispose of the application u/s 30 again after verifying the figure of the admitted turnover. The Commissioner of Sales Tax is aggrieved and has caused this reference to be made to this court.

4. After having heard the learned counsel for the Commissioner, I am satisfied that the stand taken by the department is not only hypertechnical but is also palpably wrong. What the proviso to Section 30 requires is that no application under that section shall be entertained, unless it is accompanied by satisfactory

proof of the payment of the amount of tax admitted by the dealer to be due. It does not prohibit the rectification of a mistake in the contents of the application u/s 30 which has been filed within the prescribed time. The assessee had already furnished proof of the payment of the amount of tax which, according to him, was more than the tax on the admitted turnover. His contention was that the figure of the admitted turnover had been wrongly shown in the application u/s 30. It is difficult to understand as to how an application of this nature is not maintainable beyond the period of limitation prescribed for an application u/s 30. It is open to an assessee to ask for the rectification of a mistake of this nature at any time before the application is taken up for hearing and it matters little that the figure shown by the assessee in his application u/s 30 is the same as shown by him in his return. If in fact that figure was incorrect and had been mentioned by mistake, it did not cease to be a mistake because the same had been repeated more than once.

5. A similar provision with regard to the payment of the admitted tax is contained in the proviso to Section 9 under which appeals are filed. That proviso is in the following words :

Provided that no appeal against an assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due, or of such installment thereof as may have become payable.

6. It is obvious that the two provisos are identically worded. In *Ghanshyam Dass Balmukund v. State of U.P.* [1969] 23 S.T.C. 282 S.C a Division Bench of this court considered the question as to whether it was open to an assessee to mention a different figure of admitted turnover for purposes of an appeal than the one mentioned by him in his return. At page 286 of the report, the court observed:

Now it may also happen that the dealer may have erroneously entered a turnover in the return which in law is not taxable or conceded a rate in the return which is in excess of the true rate. He may do so under a mistaken impression of the law, and consequently concede a higher tax liability than is really due. In the appeal against the assessment order, he may take the position that the true turnover is in reality less than the turnover returned by him or that the rate truly attracted is lower than the rate entered by him in the return. We see no reason why in the appeal against the assessment order he should not be entitled to question the taxable turnover and the rate shown by him in the return if what has been entered in the return is erroneous and due to a mistake of law.

7. In *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur* and *Another*, the Supreme Court also considered the scope of the proviso to Section 9(1). In the case before the Supreme Court the assessee had deposited a part of the admitted tax before filing the appeal and the remaining amount was paid by him afterwards but within the period prescribed for filing the

appeal. A Division Bench of this court had held the appeal to be incompetent because the memorandum of appeal was not accompanied by the proof of the payment of the entire admitted tax. The Supreme Court reversing the decision of this court held that on a proper reading of the proviso to Section 9(1), it was open to the assessee to adduce evidence of the proof of the payment of admitted tax before the appeal was taken up for hearing and that it was not necessary that such proof should be furnished along with the memorandum of appeal. In the opinion of the Supreme Court the entertainment of an appeal was not the same thing as the filing of an appeal. The entertainment of an appeal referred to the stage when the appeal was taken up for hearing.

8. Reading the two cases cited above together it follows :

(1) that so far as the admitted turnover is concerned, the assessee is not bound by the figure shown by him in his return. It can be varied at the time of filing the appeal, and

(2) that the proof of the payment of the admitted tax can be furnished by the assessee at or before the hearing of the appeal.

9. The same principle can be applied to an application u/s 30. In the first place, it is open to an assessee to mention a different figure of admitted turnover in his application u/s 30 than the one mentioned by him in his return, if, according to the assessee, the figure mentioned in the return was incorrect, and secondly the proof of the payment of the admitted tax can be furnished by the assessee before his application u/s 30 is entertained which means before it is taken up for hearing.

10. This is precisely what has happened in the instant case with the only difference that the assessee mentioned a wrong figure of admitted turnover both in his return as well as in his application u/s 30. There is no provision in the Act or the Rules which prevents an assessee from making an application for rectification of a mistake in the contents of his application u/s 30. There is no period of limitation for such an application except that the request for amendment should be made before the application u/s 30 comes to be disposed of. In fact u/s 22 of the Act an application for rectification of a mistake can be made even in an order passed by any of the authorities under the Sales Tax Act within a period of three years from the date of the order. But, for an application for amendment, which is moved before an order is passed, there is no period of limitation and in any case the period of thirty days prescribed for an application u/s 30 is wholly inapplicable. That period may be applicable when an assessee seeks to make up the deficiency in the payment of the admitted tax. But in the instant case such a question does not arise. The assessee merely wanted the figure of the admitted turnover to be corrected. The amendment, if allowed, would not necessitate the payment of any additional tax. In the circumstances the stand taken by the department is wholly unjustified and contrary to the law. The view taken by the Judge (Revisions), in my opinion, was perfectly right. No

fault, therefore, can be found with the order of the Judge (Revisions), remanding the case to the Sales Tax Officer.

11. I accordingly answer the question in the affirmative in favour of the assessee and against the department. The assessee will get his costs which I assess at Rs. 100. Counsel's fee is assessed at the same figure.

By the Court

12. For the reasons stated in our respective judgments, we answer the question in the affirmative in favour of the assessee and against the department. The assessee is entitled to the cost of this reference which we assess at Rs. 100. Counsel's fee is also assessed at the same figure.