(1980) 02 AHC CK 0012

In the Allahabad High Court

Case No : Sales Tax Revision No. 818 of 1979

Commissioner, Sales Tax — APPELLANT

Vs

Chand Stores — RESPONDENT

Date of Decision : 18-02-1980

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1981) 48 STC 417

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : A.N. Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

R.R. Rastogi, J.—This is the Commissioner''s application in revision u/s 11(1) of the U. P. Sales Tax Act. For the assessment year 1969-70 the assessment was made under Rule 41(5) of the U. P. Sales Tax Rules on 25th March, 1975. The turnover of pullovers, cardigans, etc., was taxed at 3 per cent. Subsequently it was found that the turnover of these goods was taxable at 6 per cent and hence proceedings were taken u/s 21 of the Act. A notice was issued to the assessee as required and after affording an opportunity to him the turnover of woollen goods was subjected to tax at 6 per cent. The assessee''s appeal having failed, he filed a revision before the Additional Judge (Revisions), Sales Tax, Kanpur Range I, Kanpur. The learned revising authority has taken the view that action u/s 21(1) could not be taken if assessment had been made at a rate lower than that at which the turnover was assessable prior to 1st March, 1973, and hence he quashed the reassessment. Being aggrieved the Commissioner has filed the present revision.

2. Sub-section (1) of Section 21 has been substituted with full retrospective effect by the U.P. Sales Tax (Amendment) Act, 1973 (U. P. Act 1 of 1973). It now

reads:

(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer or tax according to law:

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment, or full assessment, as the case may be.

Explanation.-Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment or full assessment to the best of its judgment.

3. A plain reading of this provision would now go to show that action can be taken under it in case the turnover has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act or any deductions or exemptions have been wrongly allowed. Now, so far as this Court is concerned it is settled view that woollen cardigans and woollen pullovers are woollen goods and not woollen hosiery as laid down in Ram Lal & Bros. v. Commissioner of Sales Tax 1979 A.T.J. 41. Therefore, in respect of woollen cardigans and woollen pullovers tax was leviable at 6 per cent and not at 3 per cent. In other words, the out-turn of the assessee in respect of these commodities had been assessed to tax at a rate lower than that at which it is a assessable under the Act. That being so action could have been taken under this provision and the view taken by the revising authority is erroneous in law.

4. The revision is hence allowed. In the circumstances there shall be no order as to costs.