(1973) 03 AHC CK 0006

In the Allahabad High Court

Case No : Sales Tax Reference No. 695 of 1971

Commissioner, Sales Tax — APPELLANT

Vs

Dhani Ram Bali Ram — RESPONDENT

Date of Decision : 16-03-1973

Acts Referred:

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

Citation : (1973) 32 STC 610

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Judgement

R.L. Gulati, J.—In compliance with the order of this court the Additional Judge (Revisions), Sales Tax, Bareilly, has submitted this statement of the case and has referred the following question for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Judge (Revisions) had jurisdiction to entertain a revision against the. issue of notice u/s 15-A(c) of the U. P. Sales Tax Act by the Sales Tax Officer ?

2. The assessee was assessed to tax under the U.P. Sales Tax Act for the year 1966-67. He filed an appeal against the assessment order and applied to the Judge (Revisions) for stay of realisation of tax during the pendency of the appeal. The application was allowed and the order granting stay was communicated to the Sales Tax Officer. It is said that in spite of the stay order, the Sales Tax Officer issued a notice u/s 15-A(c) of the Act calling upon the assessee to show cause why penalty should not be levied for non-payment of tax. The assessee applied in revision to the Judge (Revisions), Sales Tax, against the notice. The Judge (Revisions), Sales Tax, quashed the notice after rejecting the objection of the department that the revision was not maintainable.

3. Section 15-A provides for penalties. Under Clause (c) the assessing authority can impose penalty if an assessee has without any reasonable cause failed to pay within the time allowed the tax assessed on him. There is a proviso attached to

this section which says that no penalty shall be imposed except after notice to the dealer. The notice to the assessee was obviously issued in compliance with this proviso. We have seen the notice. It states that the assessee has not paid the tax and calls upon him to show cause on a specified date why penalty should not be imposed. It further states that in case the assessee does not comply with the notice, proceedings shall be taken ex parte against him. The main question for consideration is as to whether revision would lie against such a notice.

4. u/s 10 of the Act the power of revision has been conferred upon a revising authority. Sub-section (3) of that section is relevant and it reads:

The revising authority may, for the purposes of satisfying itself, as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion, call for and examine, either on its own motion or on the application of the Commissioner of Sales Tax or the person aggrieved, the record of such order and pass such order as it may think fit....

5. It is clear that the revising authority can entertain a revision against an order. A show cause notice issued u/s 15-A cannot be said to be an order. A notice is merely an intimation while an order is in the nature of a command. A perusal of Section 15-A itself shows that there is a distinction between a notice and an order. An order imposing penalty is passed after the issue of a show cause notice. The two are not synonymous. It will be open to the Sales Tax Officer not to pass penalty order if the assessee is able to show an appropriate cause against the imposition of penalty. It is only the final order passed by the assessing authority imposing penalty which can be the subject-matter of a revision. The revising authority has no jurisdiction to entertain it at an earlier stage. The revising authority is a creature of the U.P. Sales Tax Act and it has no inherent jurisdiction to intervene and correct the proceedings before the interior officers except to the extent that it has been authorised to do by the statute itself. Section 10 clearly limits the powers of the revising authority to revise an order. A notice of the type involved in this case is clearly not an order.

6. We, accordingly, answer the question in the negative in favour of the department and against the assessee. As no one appears on behalf of the assessee there will be no order as to costs.