**(1982) 08 AHC CK 0013**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No''s. 284 and 285 of 1977

Commissioner, Sales Tax — APPELLANT

Vs

General Manager, North Eastern Railway and Another — RESPONDENT

**Date of Decision :** 23-08-1982

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (1983) 53 STC 156

**Hon'ble Judges :** R.B. Lal, J;K.N. Seth, J

**Bench :** Division Bench

**Advocate :** R.R. Agrawal, Senior Advocate and Bharatji Agrawal, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.N. Seth, J.—These two petitions filed by the Commissioner of Sales Tax raise identical questions and may be conveniently decided by a common judgment.

2. The Sales Tax Officer, Gorakhpur, treating the General Manager, North Eastern Railway, Gorakhpur (respondent No. 1), as a dealer, assessed the dealer to sales tax under the U.P. Sales Tax Act for the assessment years 1963-64 and 1964-65. Respondent No. 1 challenged the legality of the assessment orders by way of appeal under the Act on the ground that he was not a dealer and that the Sales Tax Officer, Gorakhpur, had no jurisdiction to pass the assessment orders. The appellate authority remanded the case to the assessing authority with a direction that the assessing authority should re-examine the question of the respondent being a dealer and also to determine which Sales Tax Officer could be the assessing authority. Against the appellate orders respondent No. 1 filed revisions before the revising authority who took the view that since the respondent had not declared Gorakhpur as the principal place of business and the Commissioner of Sales Tax, U.P., had also not determined as to which Sales Tax Officer would be the assessing authority, the order passed by the Sales Tax Officer, Gorakhpur, were without jurisdiction. Aggrieved, the Commissioner of Sales Tax moved an

 

application u/s 11(3) of the Act for referring certain questions of law to this Court for its opinion. The Additional Judge (Revisions), Sales Tax, dismissed the application particularly on the reasoning that the reference applications have remained pending for over 120 days and consequently no reference could be made to the High Court after expiry of the statutory period of limitation contained in Section 11 of the Act. The petitioner thereupon made an application to this Court u/s 11(4) of the Act. A Bench of this Court dismissed the application on the reasoning that Sub-section (4) of Section 11 empowers this Court to require the revising authority to refer any question of law which in the opinion of this Court arises out of the order of the revising authority and which that authority has refused to state on the ground that no question of law arose, but where an application for reference has been dismissed by the revising authority on the ground that the period for making such reference has expired this Court cannot u/s 11 of the Act require the revising authority to refer any question of law to this Court. The court, however, made it clear that the reference applications were being dismissed without prejudice to any remedy which the applicant may have under the law. Thereafter, the present petitions under Article 226 of the Constitution have been filed for quashing the order of the Additional Judge (Revisions), Sales Tax, and for a writ in the nature of mandamus directing the Additional Judge (Revisions), Sales Tax, to decide the reference applications afresh in accordance with law.

3. Learned standing counsel appearing for the petitioner contended that since the application for reference was made within the prescribed period of limitation it should have been decided in accordance with law and could not have been thrown out on the ground that no reference could be made after expiry of the period of 120 days during which the reference applications remained pending. According to the learned counsel the period of 120 days prescribed for making the reference was only directory in nature and the revising authority was under a statutory duty to refer the questions of law to the High Court for its opinion even after expiry of the period of 120 days during which the reference applications remained pending before him.

4. We may assume that the revising authority committed an error in not dealing with the reference applications on merit and wrongly dismissed the applications on the ground of limitation yet we are of the opinion that the petitioner is not entitled to any relief and no useful purpose would be served by interfering in the matter.

5. As noted earlier two questions were raised by the respondent in the appeals preferred against the assessment orders, (1) that he was not a dealer and (2) that the Sales Tax Officer, Gorakhpur, had no jurisdiction to pass the impugned assessment orders. Ultimately, the revising authority by his order dated 19th October, 1972, held that the assessment orders passed by the Sales Tax Officer were without jurisdiction as neither the respondent had declared Gorakhpur as the principal place of business nor any order had been passed by the

Commissioner of Sales Tax, U.P., under Rule 6(b) conferring jurisdiction on the Sales Tax Officer, Gorakhpur. Even if this Court quashes the order of the revising authority dismissing the application for reference the result would be that the reference application would revive and shall now be treated as a revision in view of the amendment in the law. The question whether the Sales Tax Officer, Gorakhpur, had jurisdiction to make the assessment treating the General Manager, North Eastern Railway, Gorakhpur, as a dealer came up for consideration before this Court in Commissioner of Sales Tax, U.P. v. General Manager, North Eastern Railway, Gorakhpur 1979 UPTC 1168. A learned single Judge of this Court took the view that the Sales Tax Officer, Gorakhpur, had no jurisdiction to make the assessment and consequently the revising authority was correct in quashing the order on the reasoning that the General Manager had not declared Gorakhpur to be the principal place of business and there is no order by the Commissioner of Sales Tax, U.P., under Rule 6(b) or Rule 81. This decision was given relating to the assessment year 1965-66. The same position existed during the assessment years 1963-64 and 1964-65. It must, therefore, be held that the assessments made by the Sales Tax Officer, Gorakhpur, in respect of the aforesaid years were rightly quashed by the revising authority.

6. In the result, the petitions fail and are dismissed with costs.

 