(1977) 04 AHC CK 0044

In the Allahabad High Court

Case No : Sales Tax Application No. 778 of 1974

Commissioner, Sales Tax APPELLANT

Vs

General Manager, Northern Railway RESPONDENT

Date of Decision : 18-04-1977

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(4)

Citation : (1978) 42 STC 407

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : R.R. Agarwal, Bharatji Agarwal, Lalji Sinha and S.N. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

1. This application by the Commissioner of Sales Tax, Uttar Pradesh (hereinafter referred to as "Commissioner"), purports to be under Sub-section (4) of Section 11 of the U. P. Sales Tax Act, 1948 (hereinafter referred to as "Act").

2. The Commissioner had made an application under Sub-section (3) of Section 11 of the Act before the Additional Judge (Revisions), Sales Tax, Gorakhpur, praying that certain questions of law arising out of the order of the Judge (Revisions), Sales Tax, dated 9th October, 1972, be referred to this Court u/s 11 of the Act. The Judge (Revisions), Sales Tax, dismissed that application solely on the ground that the period of 120 days from the receipt of the application of the Commissioner, specified in Sub-section (1) of Section 11 of the Act, had expired and, therefore, he could not refer any question of law to this Court. The application made by the Commissioner was not dismissed on the ground that no question of law arose out of the order of the Judge (Revisions) dated 9th October, 1972.

3. Sub-section (4) of Section 11 of the Act 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 under Sub-section (3) of Section 11 of the Act had 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. Hence, the applicant''s prayer in this application cannot be granted.

4. In the result, we dismiss this application without prejudice to any other remedy which the applicant may have under law. In the circumstances of the case, we direct the parties to bear their own costs.