(1973) 03 AHC CK 0005

In the Allahabad High Court

Case No : Misc. S.T.R. No. 355 of 1971

Commissioner, Sales Tax — APPELLANT

Vs

Kapil Deo Kishun Deo — RESPONDENT

Date of Decision : 14-03-1973

Acts Referred:

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

Citation : (1973) 32 STC 621

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

Bench : Division Bench

Advocate : G.K. Gupta, G.P. Bhargava and A.N. Bhargava, for the Respondent

Judgement

R.L. Gulati, J.—This is a reference u/s 11(3) of the U.P. Sales Tax Act at the instance of the Commissioner of Sales Tax, U.P., Lucknow.

2. The assessee deals amongst other things in foodgrains. During the assessment year 1964-65, there was a change in the tax liability on the turnover of foodgrains. For the first six months from 1st April, 1964, to 30th September, 1964, the turnover of foodgrains was liable to sales tax. With effect from 1st October, 1964, foodgrains became liable to purchase tax u/s 3-D. Only the first purchases were so liable. In either case the minimum taxable limit remained at Rs. 25,000. In other words, the sale of foodgrains was liable to tax only if the turnover of sales exceeded Rs. 25,000 and, similarly, the first purchases of food-grains were liable to sales tax, if the turnover of such purchases exceeded Rs. 25,000.

3. The Sales Tax Officer determined the turnover of sales of the assessee for the first six months at Rs. 14,000 and the turnover of the first purchases in the second half of the year at Rs. 13,000. Taking separately, neither sales tax was payable nor purchase tax was leviable as the turnover of sales and purchases for the two periods was below the taxable limit. The Sales Tax Officer, however, aggregated the sales and the purchases and held that the assessee was liable

both to sales tax and purchase tax. The assessee objected to this aggregation and his contention was upheld by the Assistant Commissioner (Judicial). The Commissioner went up in revision against this decision and the Judge (Revisions) agreed with the view of the appellate authority and dismissed the revision. At the instance of the Commissioner, the Judge (Revisions) has referred the following two questions for the opinion of this court :

(1) Whether, for the purposes of determining the liability of tax u/s 3-D of the U.P. Sales Tax Act, the definition of ''turnover'' or the definition of ''turnover of purchases'' shall apply ?

(2) Whether the turnover of sales of foodgrains determined u/s 3 of the U.P. Sales Tax Act and the turnover of purchases of foodgrains determined u/s 3-D of the U.P. Sales Tax Act shall be amalgamated for the purposes of determining the liability of tax ?

4. Section 3 is the charging section for the levy of sales tax, Sub-section (1) whereof provides :

(1) Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rate of 3 paise per rupee on his turnover of such year, which shall be determined in such manner as may be prescribed.

Turnover" has been defined in Section 2(i) (as it stood prior to its amendment in 1971) as follows :

2. (i) ''Turnover'' means the aggregate amount for which goods are supplied or distributed by way of sale or are sold, or the aggregate amount for which goods are bought, whichever is greater, by a dealer either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration.

5. It will be noticed that for the purposes of levy of sales tax, the turn-over of sales or turnover of purchases whichever is greater is to be taken into account. The turnover of sales and purchases cannot be aggregated. Thus, in the instant case, it was open to the Sales Tax Officer either to take the turnover of sales or of purchases for the first six months. There is no finding with regard to the turnover of purchases of that period. The only finding recorded by the Sales Tax Officer is that the turnover of sales for the first six months was Rs. 14,000, which was below the taxable limit and, as such, no tax could be levied on the turnover of sales.

6. Section 3-D is the charging section for the levy of purchase tax, the material portion of which reads:

(1) Except as provided in Sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in such manner as may be prescribed, of first purchases made by a dealer....

7. It is clear that purchase tax can be levied on the first purchases only and in

order to determine the liability to purchase tax the turnover of sales cannot be taken into account at all. In the present case, the first purchases for the second half of the year amounted to Rs. 13,000, which figure is below the minimum taxable limit of Rs. 25,000 and, as such, no purchase tax was leviable on the assessee. Turnover of sales of the first half year and of the first purchases of the second half year could not be aggregated to determine the liability of the assessee either to sales tax or purchase tax.

8. Turning now to the questions framed by the revising authority, the first question indicates that, for the purposes of Section 3-D the turnover as defined in Section 2(i) could be taken into account. Such a question does not appear to have been raised before the Judge (Revisions). All that was contended before him was that the turnover of sales for the first six months and the turnover of first purchases for the second six months of the assessment year in question had to be aggregated in order to determine as to whether the assessee''s turnover exceeded the minimum taxable limit. That controversy is the subject-matter of the second question. Accordingly, we return no answer to question No. (1), as the same does not arise out of the revisional order and answer question No. (2) in the negative in favour of the assessee and against the department.

9. The assessee is entitled to the costs which we assess at Rs. 100.

