
(1982) 02 AHC CK 0029
In the Allahabad High Court
Case No : Sales Tax Revision No. 408 of 1981

Commissioner, Sales Tax

APPELLANT

Vs

Lal Chand

RESPONDENT

Date of Decision : 01-02-1982

Acts Referred:

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

Citation : (1983) 53 STC 257

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : I.C. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—This revision u/s 11(1) of the U.P. Sales Tax Act is by the Commissioner of Sales Tax against an order passed by the Sales Tax Tribunal, Faizabad, on 18th April, 1981. By this order, the Tribunal set aside the order passed by the Assistant Commissioner (Judicial), Sales Tax, Varanasi, remanding the case of the dealer-opposite party for the year 1971-72 for further enquiry to the assessing authority.

2. The case of the dealer was that he had not carried on any business of manufacture and sale of bricks during the year in question. Since the dealer had not appeared before the assessing authority, an ex parte order of assessment was made holding that the dealer had manufactured and sold bricks during the year. The taxable turnover was determined by estimate at Rs. 1,65,000 and a tax liability of Rs. 11,500 was raised. The ex parte assessment order was assailed by the dealer in an appeal u/s 9 of the Act.

3. The Assistant Commissioner (Judicial), Sales Tax, who heard that appeal was of the opinion that proper enquiry should be made about the question whether in fact, the dealer had manufactured bricks and sold them during the year. Some certificates were filed by the dealer who also filed an affidavit stating that he had

not manufactured bricks during the year. A report was called for by the Assistant Commissioner from the assessing authority under Rule 68(8) of the U.P. Sales Tax Rules. The Assistant Commissioner, as is clear from his order dated 27th September, 1978, was of the opinion that proper enquiry had not been made and that on the material on record, it could not be found out with certainty whether bricks were actually manufactured and sold by the dealer during the year in question or not. The Assistant Commissioner noticed the various pieces of evidence on the record. He remanded the case to the assessing authority with the direction to make further enquiry and observed that in case it appeared from that enquiry that the dealer had not manufactured bricks during the year in question, he will have to be declared as non-taxable. The Assistant Commissioner did not record any finding on the merits of the dispute himself. Aggrieved, the dealer took the matter in further appeal to the Tribunal.

4. The Tribunal was of the opinion that the Assistant Commissioner should have decided the matter on merits on the material already on record particularly when he had obtained a report under Rule 68(8). It also was of the opinion that on the material on record, it was clear that the dealer was liable to be declared as not taxable. Allowing the appeal, it held so. Now, the Commissioner of Sales Tax has come to this Court. The first objection to the order taken by the learned standing counsel-appearing for the Commissioner is that the case could not be decided by a Bench of one member of the Tribunal, particularly when the amount of tax in dispute exceeded the sum of Rs. 5,000. There appears to be substance in this objection.

5. Section 10(10)(a) of the Act provides that an appeal against the order of the appellate authority u/s 9 shall also be disposed of :

(i) by a Bench of one member, where such order is passed by an Assistant Commissioner (Judicial) and the amount of tax in dispute does not exceed five thousand rupees ;

(ii) by a Bench of two members, in any other case.

6. In the present case, a tax liability of Rs. 11,500 had been created by the order of the assessing authority against the dealer. In appeal, the Assistant Commissioner directed further enquiry and did not express any opinion about the correctness or otherwise of the liability of the dealer to the aforesaid extent. Clearly, therefore, when the matter reached the Tribunal, the amount of tax in dispute, so far as the dealer is concerned, was in excess of Rs. 5,000. The matter was thus cognisable by a Bench of two members.

7. Learned standing counsel then urged that inasmuch as the Assistant Commissioner had only directed further enquiry on his view that the material on record was not sufficient to arrive at a positive finding on the question whether the dealer had manufactured bricks during the year in question and had not decided the matter on merits himself, it was not open to the Tribunal to do so itself. He has further urged that from the grounds taken by the dealer in the

memorandum of revision against the order passed by the Assistant Commissioner, on the basis whereof the Tribunal dealt with the matter in second appeal, it was clear that the dealer was not seeking any determination of the dispute on merits. He had only paid the minimum court-fee of Rs. 15. It is not necessary for me to express any opinion on these contentions for the order of the Tribunal is liable to be set aside on the ground that it was rendered by a Bench which was not competent to do so.

8. In the result, the revision succeeds and is allowed. The order of the Tribunal is set aside. The matter shall be heard and disposed of in accordance with law. There shall be no order as to costs.