
(1975) 11 AHC CK 0052

In the Allahabad High Court

Case No : Sales Tax Reference No. 125 of 1973

Commissioner, Sales Tax

APPELLANT

Vs

Mangala Emporium

RESPONDENT

Date of Decision : 28-11-1975

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 9(1)

Citation : (1976) 38 STC 247

Hon'ble Judges : K.B. Asthana, C.J.; J.M.L. Sinha, J

Bench : Division Bench

Advocate : S.N. Agarwal and P.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Asthana, C.J.—We have heard learned counsel for the parties. On the facts and circumstances of the case, the two questions of law, viz,, "(1) whether, in view of the above facts and in the circumstances of the case, the dealer was not liable to admit any tax on the turnover of goods imported against C form as provided u/s 3(l)(b) ? and (2) whether, in view of the above facts and in the circumstances of the case, the appeal of the dealer was maintainable without the deposit of the admitted tax ?" we answer in favour of the assessee and against the Commissioner of Sales Tax, U. P.

2. The assessee, M/s. Mangala Emporium of Patthar Gali, Varanasi, had filed a return for the assessment year 1967-68, before the Sales Tax Officer, Varanasi. In their return they had shown a figure of Rs. 8,002 representing" the purchases of agate stones under C form. They did not admit that any tax was payable for such purchase before the assessing authority at any stage during the proceedings before him. The Sales Tax Officer, as the assessing authority, did not believe the return and made best judgment assessment and determined the turnover at Rs. .14,000 and levied the tax due on it. Being aggrieved, the assessee went up in appeal. The appellate authority dismissed the appeal as not maintainable on the ground that the admitted tax due was not deposited as

required by Section 9(1) of the IL P. Sales Tax Act as it stood then. The appeal was dismissed on this preliminary finding. The assessee went up in revision. The learned Judge (Revisions) applying the ratio of the case of Ghanshyam Dass Balmukund Vs. The State of Uttar Pradesh and Others, held that as no tax as due was admitted by the assessee at the time of the filing of the appeal, the appeal was maintainable before the appellate authority. It set aside the order of the appellate authority rejecting the appeal as not maintainable and remanded the case for rehearing before the appellate authority. The Sales Tax Commissioner then asked the learned Judge (Revisions) to make a reference of the abovesaid questions for opinion to the High Court.

3. No doubt the learned Judge (Revisions) was not correct in holding that since no tax as due was admitted by the assessee at the time of filing the appeal and thus an inaccuracy occurred in the body of the judgment, but that inaccuracy or error to our mind does not affect the result to which the learned Judge (Revisions) arrived at. It has been held by the Supreme Court in Kanpur Vanaspati Stores, Kanpur v. Commissioner of Sales Tax, U.P. 1973 U.P.T.C. 685 S.C. that the provisions of Section 9(1) envisaged the amount of tax admitted by the assessee before the assessing authority and not before the appellate authority. In view of the above position, we have to find out whether, on the facts of the instant case, the assessee admitted any tax due before the assessing authority or during the proceedings before it. We find from the statement of the case that the assessee neither in his written statement nor at any time during the proceedings before the assessing authority admitted any amount payable as tax. Thus, there was no amount of tax admitted by him before the assessing authority under the proviso to Section 9(1) of the U. P. Sales Tax Act as it stood then.

4. It was, however, contended by the learned counsel for the Sales Tax Commissioner that unless the non-payment of the tax due is bona fide the assessee is bound to deposit the tax due as a condition for maintainability of the appeal against the assessment order. We do not agree with this submission. The proviso to Section 9(1) of the Act, as it stood then, in our judgment, contemplates the factuality, i.e., what happened before the assessing authority, and not the reality, i.e., under the law a certain amount of tax was due. The applicability of the proviso to Section 9(1) of the Act, to our mind, will not depend upon the motive of the assessee or his intention. So long as in the return filed by the assessee or during the proceedings no tax as due is admitted by the assessee that would clinch the matter in his favour in regard to the maintainability of the appeal. This view which we take is fortified by the amendment, which has now been introduced by the U. P. Legislature in Section 9(1) of the U. P. Sales Tax Act. What it lays down under Clause (a) to the proviso therein is that no appeal shall be entertained unless the appellant has furnished satisfactory proof of the payment of not less than...the amount of tax or fee due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any

proceedings under this Act, whichever is greater.

5. For the reasons discussed above, we answer the two questions referred in the affirmative in favour of the assessee and against the Commissioner, Sales Tax, U. P. We assess the costs payable by the Commissioner of Sales Tax, U. P., to the assessee at Rs. 100.