

(1978) 11 AHC CK 0060
In the Allahabad High Court
Case No : S.T.R. No. 711 of 1977

Commissioner, Sales Tax

APPELLANT

Vs

Sada Nand Arya

RESPONDENT

Date of Decision : 06-11-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 4, 5, 6, 8, 9
Central Sales Tax Act, 1956 — Section 4, 5, 6, 8, 9
Central Sales Tax Act, 1956 — Section 4, 5, 6, 8, 9

Citation : (1979) 43 STC 396

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.R. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

C.S.P. Singh, J.—The Commissioner of Sales Tax has come up by way of this reference for opinion on the two questions hereinafter set out:

(1) Whether Section 9 of the Central Sales Tax Act, as amended by Amendment Act No. 103 of 1976, validates all the past assessments and reassessments made against the unregistered dealer effecting sales u/s 6 of the Central Sales Tax Act ?

(2) If answer to the above question is in the affirmative, whether the learned additional revising authority was justified to confirm the appellate order dated 1st July, 1975, for the year 1970-71 ?

2. The assessee is a dealer in coal. It used to place orders with collieries in the States of Bengal and Bihar. While the goods were in transit it endorsed the railway receipts in favour of a third party, who took delivery of the goods in the State of U. P. The assessee is an unregistered dealer. The dispute is as to whether the assessee could be taxed by the sales tax authorities in U. P. or in the State where the movement of the goods started. The revising authority has, following the decisions of this Court in the cases of Kasturi Lal Har Lal v.

Commissioner, Sales Tax [1972] 29 S.T.C. 495, Prabhat Coal Traders v. State of U.P. 1974 U.P.T.C. 103 and Raton Trading Company v. State of U.P. 1975 Law Diary, Part I, page 41, held that, as the assesseees were unregistered dealers, tax on the subsequent sale could be imposed only in the State from where the movement of goods started. In view of these decisions, which have consistently held that transactions of this nature by unregistered dealers cannot be taxed in U. P., there was hardly any scope for controversy on the question involved in this reference. Sri V. D. Singh, the standing counsel, however, has tried to take advantage of a fortuitous event that occurred after the expiry of the assessment years involved, viz., the passing of the Central Sales Tax (Amendment) Act, 1976, being Act No. 103 of 1976. This Act by Section 6 substituted the proviso occurring in Section 9(1) and, as a result, the relevant part of the proviso after the amendment reads as under:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale...

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.

3. The contention raised is that as the proceedings came to be finally disposed of after Act No. 103 of 1976 was passed, the assesseees were liable to be taxed in U. P. in view of Clause (b) of the proviso. In case the proviso was intended to apply to the assessment year previous to the year in which it was passed, the assessee would undoubtedly be liable to be assessed in U. P. The question, however, is whether the legislature intended this.

4. There are a number of considerations which impel one to hold that the proviso to Section 9 as inserted by the amending Act cannot be applied to the assessment years previous to that in which it was promulgated. In the first place, there is nothing to indicate such a retrospectively, as Section 6 of the amending Act, which introduces the proviso, discloses no such intention. It is a settled principle of interpretation that unless there is clear indication in the amending statute, amendments in a taxing statute have to be taken to be prospective. When one looks to the amending Act there is clear indication that the amended proviso is undoubtedly prospective. To begin with, reference may be made to Section 3 of the amending Act, which inserts a new sub-section in Section 5 with retrospective effect. Similarly, Section 4 inserts a proviso in Section 6 with retrospective effect. No such words occur in Section 6(a), which introduces the proviso. To a greater > telling effect is Section 6(b), which inserts certain amendments in Section 9(2) with retrospective effect. It requires little imagination to perceive that in case the legislature intended the proviso to Section 6 also to have retrospective effect, it could have done so in the same manner as it expressed itself in the other parts of the amending Act. It is settled that the law applicable in assessment proceedings is normally the law prevailing in the relevant assessment year, unless the statute steps in to alter the situation. There is no indication in the present amending Act to make the proviso

retrospective.

5. It was then contended that the proviso is procedural in nature and, as such, will apply to all pending assessments, whether before the assessing authority or in appeal or revision. The assumption that the provision is procedural in nature is not correct. Section 9 fixes the jurisdiction of the Sales Tax Officer to make the assessment. Before the proviso came into effect the assessment and the levy of tax could be made only in the State from where the movement of goods started. As a result of the newly added proviso, in the case of unregistered dealers an assessment can be made in the State from where the subsequent sale has been effected. The proviso alters the jurisdiction of the Sales Tax Officer to make the assessments and to impose tax. It is undoubtedly true that the tax imposed is a Central tax, whether it be imposed in U. P. or in the State from where the movement of goods started. But this does not alter the character of the proviso, which relates to the jurisdiction to make the assessment. In the case of *S. Natarajan v. D. Samson, Joint Commercial Tax Officer (Central Intelligence Wing)*, Madras-5 [1971] 28 S.T.C. 319 (sic), it has been held that the question of jurisdiction is one relating to power and does not pertain to the domain of procedure. Inasmuch as the proviso to Section 9 relates to jurisdiction of the Sales Tax Officer to make the assessment, it is not procedural. There is another inherent difficulty in treating it as one relating to procedure only. The rate of tax on inter-State sales and purchases in certain cases varies with the State where the assessment is made. u/s 8(2A); in the cases prescribed therein, sale and purchase of goods which are exempt from tax under the sales tax law of that State enjoy exemption and, similarly, goods, which are subjected to tax at a rate lower than four per cent, in the State where the assessment is to be made, have to pay a lower rate of tax. While interpreting the proviso to Section 9 one cannot ignore this, as the immediate result of an assessment being made in one State would affect the tax liability. As the proviso relates to the jurisdiction of the Sales Tax Officer and has a direct relationship with the tax liability of the dealer, it cannot be put in the category of a procedural law. The Judge (Revisions) was right in holding that the assessee could not be assessed by the Sales Tax Officer in U. P.

6. The first question is answered in the negative, in favour of the assessee and against the department. In view of the answer given to the first question, the second question becomes academic and is returned unanswered. The assessee is entitled to its costs, which is assessed at Rs. 200.