(1971) 08 AHC CK 0008

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 368 and 396 of 1970

Commissioner, Sales Tax — APPELLANT

Vs

Shambho Saran Naik — RESPONDENT

Date of Decision : 24-08-1971

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

Citation : (1972) 29 STC 326

Hon'ble Judges : S.N. Dwivedi, J;R.L. Gulati, J

Bench : Division Bench

Advocate : S.B.L. Shrivastava, for the Respondent

Judgement

R.L. Gulati, J.—These are two references u/s 11(1) of the U.P. Sales Tax Act. The following question of law has been referred for the opinion of this court :

Whether on the facts and in the circumstances of the case the deposit of Rs. 1,165 by cheque shall be deemed to have been made towards the balance of admitted tax for 1962-63 ?

2. For the assessment year 1962-63, the assessee was assessed to sales tax. The admitted tax for that year was Rs. 1,920. The assessee wanted to file an appeal against this assessment order and had, therefore, to deposit the admitted tax. The assessee deposited a sum of Rs. 815 in cash and for the balance it tendered a cheque. In the challan which accompanied the memorandum of appeal, it was, however, mentioned that the cheque of Rs. 1,103 related to the year 1963-64. At the hearing of the appeal, an objection was raised that the entire admitted tax for the year 1962-63 had not been deposited. The assessee''s contention was that the mention of the year 1963-64 was due to a clerical mistake. The appellate authority did not accept this contention of the assessee and rejected the appeal as incompetent.

3. Before the Judge (Revisions) the assessee filed an affidavit to the effect that the cheque in question had been deposited towards the admitted tax liability for

the year 1962-63 and not for the tax liability for the year 1963-64 and further stated that in fact no tax was due for the year 1963-64. The Judge (Revisions) accepted the explanation of the assessee and held that the admitted tax had been paid before the appeal was filed. Hence he held that the appeal was in order and should not have been rejected as incompetent. Against, this order the Commissioner of Sales Tax has come up in reference.

4. Now, when the Judge (Revisions) had accepted the contention of the assessee that the cheque in question was deposited towards the admitted tax for the year 1962-63, there is no reason why that sum should not be deemed to have been deposited towards the admitted tax for the year 1962-63. It was open to the Judge (Revisions) to have accepted the explanation of the assessee and to have permitted him to rectify the mistake. Learned counsel for the Commissioner has not been able to show us as to why the amount in question could not be deemed to have been deposited towards the year 1962-63,

5. We accordingly answer the question in the affirmative in favour of the assessee and against the department. The assessee is entitled to its costs which we assess at Rs. 100.