(1969) 09 AHC CK 0025

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 282, 283 and 284 of 1966

Commissioner, Sales Tax — APPELLANT

Vs

Shiv Narain Rameshwar Pd. — RESPONDENT

Date of Decision : 11-09-1969

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 10(3)(i)

Citation : (1970) 26 STC 299

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

Bench : Division Bench

Advocate : Ashoke Gupta and B.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The Sales Tax Officer made an assessment order for the assessment year 1957-58 under the Central Sales Tax Act and two assessment orders for the assessment year 1958-59, one under the Central Sales Tax Act and the other under the U.P. Sales Tax Act. The Commissioner of Sales Tax was dissatisfied by the assessment order and filed a revision application against each of them. Admittedly, the three revision applications were filed more than one year after the date on which the assessment orders were made. Before the Judge (Revisions), Sales Tax, an objection was taken by the dealer that the revision applications were barred by time. The objection was upheld and the Judge (Revisions) dismissed the revision applications on that ground. At the instance of the Commissioner of Sales Tax, this and the connected references have been made on the following common question of law:

Whether under the circumstances of the case the limitation started from the date of the assessment and if so, whether the revisions were barred by time or not ?

2. Section 10(3)(i) of the U.P. Sales Tax Act provides :

The revising authority may, for the purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this

Act, in its discretion, call for and examine, either on its own motion or on the application of the Commissioner of Sales Tax or the person aggrieved, the record of such order and pass such order as it may think fit.

3. Section 10(3-B) provides :

The application under Sub-section (3) shall be made within one year from the date of service of the order complained of but the revising authority may on proof of sufficient cause entertain an application within a further period of six months.

4. It is clear that the period of limitation for filing a revision application is one year "from the date of service of the order complained of" subject, however, that the limitation may be enlarged to a further period of six months on proof of sufficient cause.

5. The question is whether the provisions of Section 10(3-B) apply to the revision applications made by the Commissioner of Sales Tax and if so what is the date from which the period must be computed.

6. The revision applications were filed by the Commissioner against assessment orders. As regards assessment orders, there is provision in the U.P. Sales Tax Rules for serving a copy of the assessment order and the consequent notice of demand upon the dealer. That is Rule 45. Therefore, in regard to a dealer it is possible to say that the provisions of Section 10(3-B) can be applied in terms, because the date of service of the order complained of is the date upon which a copy of the assessment order and the notice of demand are served upon him. No provision is made under the rules for serving a copy of the assessment order upon the Commissioner of Sales Tax. Upon this, the contention on behalf of the Commissioner is that the operation of Section 10(3-B) is not envisaged when a revision application by the Commissioner of Sales Tax is contemplated. In our opinion Section 10(3-B) must be construed reasonably and, construed so, it requires that the revision application by the Commissioner of Sales Tax must also be filed within the period of limitation mentioned therein. The expression "from the date of service of the order complained of" means the date upon which the order complained of can be said to have come to the notice of the party by a process contemplated under the statute. So far as the dealer is concerned notice of the order is given in the mode prescribed by Rule 45. As regards the Commissioner of Sales Tax, notice must be inferred by reference to the structure of authority created under the Act. The Commissioner of Sales Tax is the executive head of the sales tax department. In that capacity, he represents the interests of the State in respect of revenue arising under the U.P. Sales Tax Act. The Sales Tax Officer is an officer of the sales tax department of which the Commissioner is the head. Under Rule 3 the Commissioner of Sales Tax has the power to determine the respective jurisdictions of Sales Tax Officers within different circles. Rule 81 empowers the Commissioner to transfer a case from one assessing authority to another. Rule 82 vests in him the power to issue

instructions generally regulating the procedure to be followed in carrying out the provisions of the Act and the Rules. Upon the aforesaid considerations, we are of opinion that when the Sales Tax Officer makes an assessment order, his knowledge of the assessment order must be construed as notice to the Commissioner of Sales Tax of the making of the assessment order. It will be noticed that in those cases where a proceeding is taken by the Sales Tax Officer, no provision has been made under the Act or the Rules for notice of such proceeding to the Commissioner of Sales Tax. We have already seen that there is nothing in Rule 45 or in any other provision expressly providing for giving notice of an assessment order to the Commissioner. That is only because knowledge of the Sales Tax Officer of such proceeding must be construed as notice to the Commissioner. The date on which the order is made must be considered as the date on which the Commissioner receives notice of the order.

7. In our judgment, a revision application filed by the Commissioner of Sales Tax is governed by the period of limitation prescribed u/s 10(3-B) of the Act and the date on which the Sales Tax Officer makes the assessment order must be taken to be the date of service of the order on the Commissioner. The revision applications filed by the Commissioner are, therefore, barred by limitation.

8. In this view we are supported by the decision of another Bench of this court in Commissioner of Sales Tax v. Mangal Sen Shyam Lal Sales Tax Reference No. 361 of 1964.

9. The question referred in each case is answered accordingly.

10. The respondent is entitled to his costs which we assess at Rs. 100 as one set of costs in all three cases. Counsel''s fee is assessed at the same figure.