(1992) 07 AHC CK 0060

In the Allahabad High Court

Case No : Sales Tax Revision No. 775 of 1988

Commissioner Sales Tax — APPELLANT

Vs

Sukh Lal Ice and Cold Storage Co. — RESPONDENT

Date of Decision : 10-07-1992

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 22

Citation : (1993) 88 STC 19

Hon'ble Judges : A.N. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.N. Gupta, J.—The assessee-opposite party was manufacturing ice in its cold storage in the assessment year 1979-80. On the sale of ice the assessing authority made assessment vide its order dated May 30, 1981, passed under Rule 41(7) of the U.P. Sales Tax Rules, 1948, imposing tax at the rate of 6 per cent whereas it should have been at the rate of 8 per cent. Subsequently, it issued a notice dated November 2, 1982, u/s 22 of the U.P. Sales Tax Act, 1948 for rectification of the said mistake. The order dated September 4, 1984 was passed correcting the mistake and enhancing the rate of tax from 6 per cent to 8 per cent. The assessee-opposite party filed first appeal against the said order which was dismissed. Thereafter, the assessee approached the Sales Tax Tribunal, who vide its impugned order dated June 6, 1987, has allowed the appeal on the ground that rectification was done after expiry of three years and, therefore, the order could not have been passed. It is against this decision that the Revenue has come up in revision. The opposite party did not appear and, therefore, the learned Standing Counsel was heard.

2. The relevant portion of Sub-section (1) of Section 22 runs as follows :

"(1) Any officer or authority, or the Tribunal or the High Court may, on its own motion or on the application of the dealer or any other interested person rectify any mistake in any order passed by him or it under this Act apparent on the record within three years from the date of the order sought to be rectified :

Provided that where an application under this sub-section has been made within such period, of three years, it may be disposed of even beyond such period :

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement."

3. The matter is covered by two decisions of this Court given in the case of Karam Chand Thapar and Brothers (Coal Sales) Limited v. State of U.P. 1975 UPTC 11 and the Commissioner of Sales Tax v. India Steel Supply Company 1987 UPTC 493 wherein it has been held that in case notice u/s 22 of the Act has been issued, within a period of three years, the order can be passed after the expiry of three years. Since in this case notice u/s 22 had been issued within a period of three years as prescribed under that section, the assessing authority was fully competent in passing the order after expiry of three years. Thus, the Tribunal fell in error in allowing the appeal. The revision succeeds and is allowed. The impugned order dated June 6, 1987 passed by the Sales Tax Tribunal is hereby set aside. The order passed by the assessing authority is restored.

