(1976) 04 AHC CK 0042

In the Allahabad High Court

Case No : S.T.R. No. 602 of 1971

COMMISSIONER SALES-TAX, U.P., LUCKNOW — APPELLANT

Vs

M/S. MEHBOOBA BEGAM. — RESPONDENT

Date of Decision : 02-04-1976

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(5)

Citation : (1976) 5 CTR 166(1)

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

Bench : Division Bench

Judgement

C. S. P. Singh, J. - The Additional Judge (Revisions) Sales Tax, Bareilly has in compliance with orders under sec. 11(5) of the U.P. Sales Tax Act by this Court, referred the following questions for our opinion :-

1. Whether on the facts and in the circumstances of the case, the order of the Judge (Revisions), Sales tax, Bareilly, is proper and valid ?

2. Whether under Rule 41(3) of the Sales Tax Rules, one provisional assessment order can be passed against the assessee in respect of more than one quarter ?

The dealer is the owner of brick kiln. In respect of the first three quarters of the assessment year 1966-67, no return was filed. The Sale Tax Officer gave notice to the dealer for making assessment in respect of the turn for these three quarters. In spite of notice being given; the dealer did not file any return over .He accordingly passed a composite assessment order in respect of the three quarters and determine the turnover for these quarters at Rs. 60,000/- and imposed a tax of Rs. 42,000/-. A demand was also issued in respect of the tax so imposed.

2. An appeal filed before the Appellate Assistant Commissioner failed. Thereafter the dealer filed a revision before the revising authority. The revising authority allowed the revision on the ground that Rule 41(3) of the Rules framed under the U.P. Sale Tax Act do not contemplate a composite assessment for all the three

quarters. Rule 41(3) of the Rules as it then stood ran as under :-

"41.(3) If no return is submitted in respect of any quarter of month, as the case may be, within the period or if the return is submitted without payment of tax in the manner prescribed in Rule 48 the Sales Tax Officer shall, after making such enquires as he considers necessary, determine the turnover to the best of his judgment provisionally assess the tax payable for the quarter or the month, as the case may be and serve upon the dealer a notice in Form XI and the dealer shall pay the sum demanded within the time and in the manner specified in the notice."

It is amply clear from a persual of this Rule 41(3) that the assessment can be only made for a quarter or a month at a time. The power does not extend to making a composite best judgment assessment for more than a quarter or a month by a single order, for that is the effect of the words "determine the turnover to the best of his judgment, provisionally assess the tax payable for the quarter or the month". Any other interpretation would do violence to the language of the Rule. It appears that realising this difficulty, Rule 41(B) has now been suitably amended with effect from 19th April, 1972, so as to enable assessment for more than a quarter.

3. We accordingly, answer the questions referred in affirmative, against the Department and in favour of the assessee. As none has appeared in opposition, there will be no order as to costs.

