(1968) 10 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 912 of 1968

Concrete Spun Pipe Works APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 10-10-1968

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

Citation : (1969) 24 STC 48

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

Bench : Division Bench

Advocate : Raja Ram Agarwal and Bharat Ji Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The petitioner is a partnership firm carrying on the business of manufacturing and selling reinforced cement concrete spun pipes. It was assessed for the assessment years 1962-63, 1963-64 and 1964-65 under the U.P. Sales Tax Act in respect of its turnover of those years. The Sales Tax Officer, who made the assessment, applied a rate of 2 per cent, to the turnover for the purposes of determining the tax liability. On 27th February, 1968, a notice under . 22 of the Act was issued by the Sales Tax Officer informing the petitioner that in his view the spun pipes sold by the petitioner fell under the description "sanitary fittings" and that, therefore, instead of the rate of 2 per cent., the turnover attracted the rate of 7 per cent and that be proposed to rectify the assessment for the three assessment years. The petitioner challenges the jurisdiction of the Sales Tax Officer to issue the notice u/s 22 of the Act and to take proceedings consequent thereto.

2. It is clear from the assessment orders that the Sales Tax Officer was conscious of the fact that he was assessing the turnover of cement concrete spun pipes and in his judgment he applied a rate of 2 per cent in order to compute the tax liability on that turnover. When the judgment was exercised as a consequence of conscious deliberation by the Sales Tax Officer, we are unable to see how the

provisions of section 22 of the Act are attracted. Section 22 provides

"The assessing authority may at any time within three years from the date of any order passed by him rectify any mistake apparent on the face of the record of ... assessment ...."

3. The jurisdiction of the assessing authority u/s 22 is confined to the rectification of a mistake apparent on the face of the record of the assessment. It must be a mistake and it must be apparent on the face of the record. Clearly section 22 does not envisage rectification of an error of judgment. The mistake must be apparent on the face of the record. It must be a mistake which will appear upon a glance at the record and not a mistake which emerges after a prolonged debate on the merits of the question. Section 22 was considered by Manchanda, J., in Sarin Textiles Mills v. Sales Tax Officer. (1964 A.L.J. 671.). That decision was affirmed in Special Appeal No. 679 of 1963 decided on 3rd January, 1964, by the Chief Justice and R. S. Pathak, J. Since then the Supreme Court in Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, considering the same point in a similar proceeding under the Orissa Sales Tax Rules, 1947, has observed :"There is another qualification, namely, such an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, elaborate arguments on questions of fact or law."

4. It is not disputed that it will be necessary for the Sales Tax Officer to apply his mind afresh for the purposes of determining whether the cement concrete spun pipes in question can be described as "sanitary fittings" and, therefore, whether the conclusion come to in the assessment order already made in respect of that turnover, is erroneous. We are of the opinion that in the circumstances of the case it cannot be said that what the Sales Tax Officer proposes to do pursuant to the impugned notice amounts to a rectification of a mistake apparent on the face of the record. The Sales Tax Officer has no jurisdiction to take the proceeding u/s 22 of the Act and consequently the proceeding including the notice must he gnashed.

5. The petition is allowed. A writ in the nature of certiorari is issued gnashing the notice dated 27th February, 1968, issued u/s 22 of the U.P. Sales Tax Act. The Sales Tax Officer is restrained from taking proceedings pursuant to that notice. The petitioner is entitled to its costs.

