

(1968) 08 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 4167 of 1967

Durga Dutt Chunni Lal

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-08-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 23 STC 432

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

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Pathak, J.—The petitioner is a partnership firm carrying on business as a dealer in cotton yarn. It was assessed to sales tax under the U.P. Sales Tax Act for the assessment years 1959-60, 1960-61 and 1961-62 and for the first quarter of the year 1963-64. The assessment orders were followed by notices of demand. Against the assessments the petitioner preferred four separate appeals. During the pendency of the appeals a single recovery proceeding in respect of the tax liability for all the four years was initiated by the Sales Tax Officer. While the recovery proceeding was still in motion, the appeals filed by the petitioner in respect of the assessment years 1960-61 and 1961-62 were partly allowed resulting in a reduction of the tax liability. The remaining appeals were dismissed. The petitioner challenged the validity of the recovery proceeding by Writ Petition No. 222 of 1966 in this Court. The petition was allowed on 26th July, 1966, and the entire recovery proceeding was quashed on the ground that it was being taken pursuant to assessment orders, two of which had been superseded by appellate orders. Thereafter, it appears, fresh notices of demand were issued by the Sales Tax Officer. The notices of demand were in respect of the tax liability for the assessment years 1959-60, 1960-61, 1961-62 and a quarter of the assessment year 1963-64. Recovery proceedings were then taken upon these notices of demand. While these recovery proceedings were still pending the

petitioner applied in revision against the appellate orders praying for a further reduction of the tax liability. The revision applications were disposed of by the Additional Revising Authority (Sales Tax) by his order dated 25th October, 1967. By that order he reduced the turnover determined for the assessment years 1959-60, 1960-61 and 1961-62 thereby reducing the tax liability in respect of each assessment year. No revision application was filed in respect of the quarter of the assessment year 1963-64. The petitioner objected to the recovery proceedings before the Tahsildar on the ground that the notices of demand issued on the basis of the appellate orders were no longer effective in law as the tax liability had been reduced thereafter by the Additional Revising Authority. The objection was rejected, and the petitioner now prays for relief under Article 226 of the Constitution against the recovery proceedings.

2. There is no dispute before us that the notices of demand issued afresh after the decision in Writ Petition No. 222 of 1966 were issued on the basis of the appellate orders and before the revision applications were decided by the Additional Revising Authority. The Supreme Court has held in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, that when an assessment order is modified or set aside in appeal recovery proceeding taken in consequence of the original assessment order is no longer sustainable and a fresh notice of demand must be issued. The principle applies, in our judgment, also where the recovery proceeding is taken on the basis of an appellate order and the tax liability determined by the appellate order is subsequently reduced in revision. Moreover, to our mind, no distinction in principle obtains whether the proceeding is taken under the Indian Income Tax Act, as was the case before the Supreme Court, or under the U.P. Sales Tax Act. We are of opinion that the notices of demand in respect, of the assessment years 1959-60, 1960-61 and 1961-62 can no longer afford a valid basis for the recovery proceedings taken in respect of the tax liability for those assessment years and those recovery proceedings are, therefore, liable to be quashed. As regards the recovery proceeding for the quarter of the assessment year 1963-64, no revision application having been filed against the appellate order for that year, the notice of demand continues to subsist and is a valid basis for the recovery proceeding now being taken against the petitioner in respect of that period.

3. Mr. V.K. Mehrotra, learned counsel for the respondents, relies upon *The State of Madras Vs. Madurai Mills Co., Ltd.*. In that case the Supreme Court held that the doctrine of merger cannot be applied in every case wherever the appellate order interferes with the original order. There the facts were entirely different. The subject-matter of the appeal against the original assessment was not the subject-matter of the subsequent revisional proceeding taken by the Board of Revenue. In so far as the subject-matter of the revisional proceeding was concerned the original order remained undisturbed by the appellate order. The facts before us are entirely different. The tax liability assessed against the petitioner was modified by the appellate authority and thereafter again reduced by the Additional Revising Authority. The subject-matter continued the same

throughout from assessment to appeal and thereafter from appeal to revision.

4. In the result, the petition is allowed. The recovery proceedings in respect of the assessment years 1959-60, 1960-61 and 1961-62 taken on the basis of the notices of demand issued consequent to the appellate orders for those years are quashed. The remaining relief prayed for is refused. In the circumstances, there is no order as to costs.