
(1972) 01 AHC CK 0004

In the Allahabad High Court

Case No : Sales Tax Reference No's. 546 and 547 of 1970

Gaddar Mal Dau Dayal

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 28-01-1972

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 7(3)

Citation : (1973) 30 STC 384

Hon'ble Judges : S.N. Dwivedi, J; Hari Swarup, J

Bench : Division Bench

Advocate : B.D. Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Judgement

Hari Swarup, J.—These two references u/s 11(1) of the U. P. Sales Tax Act have been made to us at the instance of the assessee, M/s. Gaddar Mai Dau Dayal. The assessment years in respect of which the references have been made are 1962-63 and 1963-64.

2. The questions of law referred to us are as follows:

(1) Whether the applicant was legally estopped from raising a legal plea about the non-taxability of certain commodity, the turnover in respect of which has been admitted and tax paid ?

(2) Whether it is lawful to refuse the relief on admitted turnover only on the ground that the legal plea was not raised before the appellate authority although the plea had been raised and accepted in revision and relief in respect of the enhanced turnover was given ?

3. The assessee is a dealer in foodgrains, cotton, oil-seeds, etc. The turnover relevant for these references is only that of cotton. In the assessment year 1962-63, the assessee admitted its turnover of cotton as of Rs. 6,26,886 and for the assessment year 1963-64, the assessee admitted its turnover to be of Rs. 5,32,000. The assessee paid the tax on these turnovers. The Sales Tax Officer

did not accept the turnovers and for the assessment years 1962-63 and 1963-64 determined the turnovers at Rs. 7,40,000 and Rs. 7,00,000 respectively. The assessee went up in appeal. The appellate authority reduced the turnover for the assessment year 1962-63 to Rs. 7,00,000 and that for the assessment year 1963-64 to Rs. 6,10,000. The assessee filed revisions against the appellate orders. The revising authority confirmed the tax which had been admitted by the assessee. as due and which had been shown to be paid up before the appeal was filed but set aside the disputed tax.

4. The Judge (Revisions), while deciding the revision, held that during the relevant assessment years the turnover of cotton was not taxable, but refused to give relief in respect of the tax already paid by the assessee on the admitted turnover of cotton as the assessee had admitted his liability for that amount when he had filed the appeals. The relevant portion of the judgment is as follows:

However, the applicant had himself admitted and paid tax on the declared turnover of this article, while filing appeals. So, it is not open to him to challenge the payment of tax on. that turnover in revision.

5. The assessee feeling aggrieved, applied u/s 11(1) of the Act and the aforesaid two questions have been referred to us.

6. On the facts and in the circumstances of the case, in our opinion, question No. (1) as it is framed, does not appropriately bring out the real controversy. We, accordingly, reframe the question as follows :

Whether on the facts and in the circumstances of the case, the applicant was barred from raising the plea about the non-taxability of the turnover of cotton in respect of which it had admitted its liability in appeal and had paid tax thereon ?

7. The assessment of tax was made u/s 7(3) of the U. P. Sales Tax Act (hereinafter referred to as the Act), by the Sales Tax Officer. An appeal against the assessment order lies u/s 9 of the Act, which provides that any dealer objecting to an assessment made u/s 7 may, within thirty days from the date of the service of the copy of the notice of assessment, appeal to such authority as may be prescribed. The first proviso to Section 9(1) of the Act reads : "Provided that no appeal against an assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due, or of such installments thereof as may have become payable." Rule 66 of the U. P. Sales Tax Rules provides for the contents of the memorandum of appeal. It requires that the memorandum of appeal shall set forth the relief prayed for and shall be accompanied by a challan showing deposit in the treasury of the tax admitted by the appellant to be due or of such installments thereof as might have become payable. From the provisions of Section 9 read with Rule 66 it is apparent that an assessee can file an appeal only against the disputed tax and not against the admitted tax. A dealer can question in appeal only the tax which he disputed and not the tax which he admits he is liable to pay. In the present case also, therefore, the appeals must

be deemed to be confined to the tax which the assessee was disputing and cannot include the tax which the assessee had admitted to be liable to pay when it filed the appeals.

8. The first proviso to Section 10(3) which provides for revision, runs as follows:

Provided that no such application shall: be entertained in any case where an appeal lay against the order but was not preferred.

9. The revision has thus to be confined only to that part of the order of the Sales Tax Officer in respect of which the appeal had been filed by the assessee.

10. In our opinion, therefore, when an assessee admits his liability to pay tax on the declared turnover of any goods at the time of filing the appeal against the assessment order determining the total tax liability of the assessee, and does not appeal or is deemed not to appeal against the admitted tax, it is not open to him to challenge in revision filed against the appellate order the liability to pay the admitted tax which was not questioned in appeal. The Judge (Revisions) was thus, in the circumstances of the case, right in not permitting the assessee to challenge the liability to tax in respect of the turnover of cotton, the tax liability in respect whereof had been admitted by the assessee when he had filed the appeal. Accordingly, we answer the first question as refrained by us in the affirmative. In view of the answer to the first question, the second question does not arise and it is returned unanswered. The Commissioner, Sales Tax, is entitled to his costs, which we assess at Rs. 100. Counsel's fee is also assessed at the same figure.