
(2000) 07 AHC CK 0135

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1152 of 1995

Ganesh International and Another

APPELLANT

Vs

Assistant Commissioner and Others

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 25, 3A

Citation : (2001) 124 STC 600

Hon'ble Judges : M. Katju, J;A.K. Yog, J

Bench : Division Bench

Advocate : R.R. Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. The controversy in the present case is in a short compass. The petitioners are partnership firms, which deal with non-ferrous metal scraps of various kinds. The liability u/s 3-A of the U.P. Trade Tax Act, 1948, on the sales was 4 per cent in view of the notification dated September 7, 1981 (annexure 1 to the writ petition). Thereafter by a subsequent Notification dated October 1, 1983 there were two categories of goods--for the first, i.e., all kinds of minerals the rate was 4 per cent and for all kinds of metal scraps it was 2 per cent. By another notification dated June 30, 1990 the first category was continued at the rate of 4 per cent, but there was no mention about the rate of tax of the second category. By corrigendum dated October 23, 1990 (annexure 7 to the writ petition) it was provided that the rate of tax on metal scrap will be 4 per cent.

3. The argument of the learned counsel for the petitioners is that the period from July 1, 1990 to October 23, 1990, they had to deposit tax at the rate of 2 per cent. On the other hand the argument of the learned Standing Counsel is that the corrigendum dated October 23, 1990 was issued because there was a

mistake in the notification dated June 30, 1990. Hence, he argued that there may be presumption that the petitioners had to pay tax at the rate of 4 per cent. We cannot accept the argument of learned Standing Counsel. The proviso to Section 25 of the U.P. Trade Tax Act : states "Provided that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section." Even apart from this proviso, the general legal principle is that ordinarily a delegated legislation cannot be made with retrospective unless the statute permits. A notification fixing the rate of tax is a piece of delegated legislation and hence it cannot be with retrospective effect unless there is a clear provision in the statute in this connection.

4. In view of the above this petition is allowed. We direct that the petitioner shall be charged at the rate of 2 per cent and not 4 per cent from July 1, 1990. Corrigendum dated October 23, 1990 will be treated prospective and not retrospective. The assessment order be modified accordingly.