
(1971) 08 AHC CK 0005
In the Allahabad High Court
Case No : Sales Tax Reference No. 366 of 1970

Gauri Shanker Prem Prakash

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 26-08-1971

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(4)

Citation : (1972) 29 STC 287

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

Bench : Division Bench

Advocate : V.K. Khare and R.R. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.L. Gulati, J.—In compliance with this court's order dated 6th January, 1970, passed u/s 11(4) of the U.P. Sales Tax Act, the Additional Judge (Revisions) Sales Tax, Gorakhpur, has submitted this statement of the case and has referred for the decision of this court the following two questions of law :

(1) Whether the Notification No. S.T. 2934/X-902(7)-56 dated 1st August, 1958, was a valid notification to begin with and in case it was not whether it has been validated by Act No. 15 of 1964?

(2) In either case, what would be the proper rate of tax on yarn for the year 1958-59 ?

2. It may be stated here that in question No. (1) reference to Act No. 15 of 1964 appears to be a clerical mistake. It has been admitted by the learned counsel of the two sides that it was Act No. 14 of 1964 to which the reference was meant. Hence we shall modify question No. (1) so as to read Act No. 14 in place of Act No. 15 of 1964.

3. The assessee is a dealer in cotton yarn. The assessment year in dispute is 1958-59. The assessee's books of accounts were not accepted and a best judgment assessment was made of the turnover of cotton yarn. The rate of tax

on the turnover of cotton yarn was 6 pies per rupee up to 31st July, 1958, and it was 2 per cent, with effect from 1st August, 1958, as per Notification No. S.T. 2934/X-902(7)-56 dated 1st August, 1958. The revising authority to whom the matter went up in revision finally fixed the turnover and the rate of tax in the following manner :

1. Imported cotton yarn sold Rs. 5,500 taxable at 6 pies up to 31st July, 1958. per rupee. 2. Cotton yarn sold to the Rs. 6,94,500 taxable at consumers from 1st August, 2 per cent. 1958 to 31st March, 1959.

4. The notification of 1st August, 1958, quoted above, purports to have been issued u/s 3-AA of the Act. In *Ram Niwas Sant Lal v. Sales Tax Officer* [1964] 15 S.T.C. 523 this court held that Section 3-AA as it stood at the material time did not authorise the State Government to fix the rate of tax in respect of the turnover of the commodities enumerated in that section including cotton yarn. This led to the passing of Act No. 14 of 1964. Section 3 of that Act purports to validate the previous notifications issued u/s 3-AA as also all actions taken and orders passed in pursuance of these notifications. Section 3 of the Amending Act reads as follows:

3. Validation of certain notifications and actions taken in pursuance thereof.-Any notification declaring the rate of tax issued before the commencement of this Act purporting to be u/s 3-AA of the principal Act shall be deemed to have been issued under that section as amended by this Act, and notwithstanding any judgment, decree or order of any court-

(a) any such notification shall be deemed always to have been valid, and

(b) anything done or any action taken including any order made, proceeding taken, direction issued, jurisdiction exercised, assessment made and tax levied or collected, purporting to have been done or taken in pursuance of any such notification shall be deemed to have been validly and lawfully done or taken.

5. This amendment clearly validates the notification in question which was invalid to begin with in view of the decision of this court in *Ram Niwas Sant Lal* [1964] 15 S.T.C. 523

6. Sri Raja Ram Agarwal, learned counsel for the assessee, however, contends that the notification of 1st August, 1958, was later on superseded by another notification No, S.T, 4921/X-1035(42-60) dated 15th November, 1961, and therefore when the Amending Act of 1964 was passed, the notification of 1st August, 1958, had ceased to exist and the same could not be validated. His argument, is that Section 3 of the Amending Act would validate only such notifications as were alive. We do not agree with this contention. Section 3 of the Amending Act is so widely worded that it cannot be restricted to the existing notifications only. It seeks to validate every notification which was issued u/s 3-AA whether any such notification was still in operation or had ceased to exist. Merely because the notification in question had been superseded by a later

notification, it cannot be said that the first notification could not be or had not been validated by the Amending Act. Moreover, Clause (b) of Section 3 goes on to validate all orders passed and actions taken in pursuance of any notification issued u/s 3-AA. The impugned assessment order was passed in pursuance of the notification dated 1st August, 1958. Clause (b) by its own force would validate that assessment order. It is clear, therefore, that the intention of the Legislature was to validate all notifications issued u/s 3-AA whether they were in force or had lapsed or were superseded.

7. For the reasons stated above, we answer question No. (1) by saying that the notification in question was invalid to begin with, but had been validated by Act No. 14 of 1964.

8. Coming now to question No. (2), it appears that the reference to the entire assessment year 1958-59 is incorrect. The dispute only relates to the turnover of the period 1st August, 1958 to 31st March, 1959, We are not concerned with the rate applicable for the period of assessment year 1958-59 from 1st April, 1958, to 31st July, 1958. We would, therefore, reframe question No. (2) as below :

In either case what would be the rate of tax on yarn for the period 1st August, 1958, to 31st March, 1959, falling in the assessment year 1958-59.

9. The notification of 1st August, 1958, had fixed the rate of tax at 2 per cent. That notification having been validated, the rate of tax for that period would be 2 per cent.

10. We accordingly answer question No. (2) as reframed by us by saying that the proper rate of tax on yarn would be 2 per cent.

11. The Commissioner of Sales Tax is entitled to costs, which we assess at Rs. 100.