
(1962) 09 AHC CK 0007

In the Allahabad High Court

Case No : Sales Tax Application No's. 349 and 350 of 1959

Goel Brothers

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 03-09-1962

Acts Referred:

Citation : (1963) 14 STC 193

Hon'ble Judges : M.C. Desai, C.J;Brijlal Gupta, J

Bench : Division Bench

Advocate : K.B. Garg, Banarsi Das, Rajeshwari Prasad and Devendra Sarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, C.J.—In this application we are concerned with the assessment of the assessee to sales tax under the U. P. Sales Tax Act for the assessment year 1955-56 and in the connected Sales Tax Application No. 350 of 1959 with the assessment for the year 1956-57. The assessee was assessed by the Sales Tax Officer and there were appeals from the two orders to the Judge (Appeals). On the appeals being dismissed the assessee filed two revision applications u/s 10 of the Act in respect of the two orders before the Judge (Revisions) and he disposed of both by a consolidated order and communicated his decision to the assessee on nth September, 1958. Section 11(1) gives the assessee a right to apply in writing to the Judge (Revisions) for referring a question of law arising out of his order passed u/s 10 to this Court for its opinion within 120 days and requires him to deposit a fee of Rs. 100 while making the application. The assessee, in exercise of this right, made one application in writing for the Judge's referring to this Court questions of law said to arise out of both the orders, and deposited a fee of Rs. 100 only, within the time allowed. Subsequently after the expiry of 120 days, he made another application in writing in the supposed exercise of the same right, treating it as an application for reference of questions of law said to arise out of the Judge's order in respect of the assessment year 1956-57 and

deposited an additional fee of Rs. 100. The Judge (Revisions) rejected the second application on the simple ground that it was barred by time. When that application was rejected, there remained only the earlier application, which, though made within the time allowed, suffered from two defects, (1) that it asked for reference of questions of law said to arise out of two orders passed by the Judge in two revision applications, and (2) that it was accompanied by a fee of Rs. 100 only and not Rs. 200. As there were two revision applications before the Judge (Revisions) and he disposed of both u/s 10 and the assessee desired him to refer to this Court questions of law said to arise out of both the orders by him, he should have made two applications u/s 11(1) and deposited Rs. 100 along with each. Since he had not done this the Judge (Revisions) dismissed this application also, but he also went into the question whether any question of law arose at all out of the orders passed by him on the revision applications and held that no question of law arose. He gave this as an additional reason for dismissing the application. Now the assessee has come to this Court u/s 11(4), which is to the effect that

If on any application being made under Sub-Section (1)...the Revising Authority refuses to state the case on the ground that no question of law arises, the person aggrieved,...may...apply to the High Court and the High Court, if it is not satisfied with the correctness of the decision of the Revising Authority may require the Revising Authority to state the case and refer it....

2. When the Revising Authority states the case and the High Court hears it, it is required by Sub-section (6) to decide the question of law raised by the case and deliver its judgment and send a copy of it to the Revising Authority, who is required thereupon to pass such orders as are necessary to dispose of the case in conformity with it. In the instant case the Revising Authority refused to state the case on the ground that the assessee made one application in respect of the two orders and deposited a fee of Rs. 100 for it, which meant that he deposited a fee of Rs. 50 in respect of each order, and on the further ground that no question of law arose but it cannot be said to have done so on the latter ground within the meaning of Sub-section (4) because even if it had found that a question of law did arise it would have still refused to state the case on account of the defects in the application. When an application can be dismissed on ground (a) or ground (b) and is dismissed on both the grounds, it can be said to have been dismissed on both the grounds but, neither can it be said to have been dismissed on ground (a) (because it would have been dismissed even if this ground did not exist) nor can it be said to have been dismissed on ground (b) (because it would have been dismissed even if that ground did not exist). No ground can be said to be a ground for dismissal unless it is the dominating ground. Here both the grounds taken together could be said to be the dominating ground, but not either ground taken individually. The words "the Revising Authority refuses to state the case on the ground that no question of law arises" must mean that it refuses to state the case only or exclusively on this ground and cannot cover a case in which it refuses on this ground and on any other ground. The High Court has

jurisdiction under Sub-section (4) only if the Revising Authority refuses to state the case "on an application being made under Sub-section (1)". If an application is not in writing, or is not made within 120 days, or is not accompanied by a fee of Rs. 100, it is not an application contemplated by Sub-section (1), i.e., it is not "an application... made under Sub-section (1)" and one essential condition for the High Court's exercising the jurisdiction is not fulfilled. If an application does not fulfil all the three conditions prescribed in Sub-section (1), it can be dismissed at once without the Revising Authority's deciding that no question of law arose out of its order u/s 10. If it does so, there will arise no question of the High Court's exercising jurisdiction under Sub-section (4). The position cannot become quite the reverse, and an assessee or the Commissioner, Sales Tax, cannot acquire the right of moving the High Court under Sub-section (4), just because the Revising Authority redundantly decides that no question of law arose and gives that as a further ground for dismissing the application. It is not given to it to confer, or to withhold, this right on or from the assessee or the Commissioner of Sales Tax, according to its sweet will.

3. The interpretation placed by us is borne out by the further provisions in Sub-section (4) and Sub-section (6). The High Court acting under Sub-section (4) can require the Revising Authority to state the case if it is not satisfied with the correctness of the decision of the Revising Authority that no question of law arose. If the Revising Authority refuses to state the case on the ground that no question of law arose and also on the ground that there was no application before it as contemplated by Sub-section (1) and the High Court can still require it to state the case, if it is not satisfied with the correctness of the decision that no question of law arose, it would mean that the High Court is obliged to require it to state the case to it merely on the finding that its decision about no question of law arising was incorrect, even though the application purporting to be made u/s 11(1) was no application in the eye of law and could not have been granted by the Revising Authority. The Legislature could not have contemplated the High Court's requiring the Revising Authority to state the case even if the Revising Authority had good reason, other than that no question of law arose, for rejecting the application made under Sub-section (1). On a reference, the High Court can decide only the question of law arising out of the Revising Authority's order u/s 10, and no other question and only this answer of it is to be sent to the Revising Authority. The Revising Authority is required to pass such orders on the revision application as are necessary to dispose of it in conformity with the opinion of the High Court. The High Court will decide only the question of law arising out of the Revising Authority's order u/s 10 and not the question whether the application under Sub-section (1) was valid or not. When the Revising Authority receives the High Court's judgment to the effect that the question of law should be answered in a different manner it would be bound to pass such orders on the revision application as are necessary to dispose of it in conformity with the opinion of the High Court, even though the application made to it under Sub-section (1) was invalid. In other words, the provision in Sub-section (1)

laying down that an application must be in writing, must be made within a certain time and must be accompanied by a certain deposit would be rendered otiose. The Legislature clearly did not contemplate that a person aggrieved by an order passed u/s 10 can apply at once under Sub-section (4) to the High Court. We have little doubt that the Legislature contemplated that the High Court can call for a statement of the case only when the Revising Authority refused to state the case on the solitary ground that no question of law arose and not when it refused to state the case on any other ground or on any other ground and the ground that no question of law arose. The order refusing to state the case must have been passed on a valid application as required by Sub-section (1).

4. We hold that Section 11(4) does not apply to the present case and we have no jurisdiction to require the Revising Authority to state the case to us.

5. The application is misconceived and is dismissed with costs, which we assess at Rs. 50.