
(1986) 08 AHC CK 0031
In the Allahabad High Court
Case No : Sales Tax Revision No. 459 of 1986

Gramin Bhatta Udyog Sangh

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 18-08-1986

Acts Referred:

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

Citation : (1986) 63 STC 465

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar Agarwal, for the Appellant; V.M. Sahai, for the Respondent

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This revision u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as the Act) has been preferred by the assessee against the judgment dated 28th February, 1986, passed by the Sales Tax Tribunal, Meerut, relating to assessment year 1977-78 arising out of proceeding u/s 21 of the Act.

2. Assessee is a society which used to receive coal for supply to its members. On the basis of the information received from the Director of Movement that the assessee had received coal against the allotment of 2,700 tons proceedings u/s 21 of the Act were initiated and they were assessed on a turnover of Rs. 3,00,000 and to a tax of Rs. 12,000. In first appeal filed by the assessee u/s 9 of the Act the Assistant Commissioner (Judicial) held that proper enquiries were not made by the assessing authority in order to ascertain that the coal was actually received by the assessee and as such the case was remanded back. Assessee feeling aggrieved against the order passed by the first appellate court preferred an appeal u/s 10 of the Act. The said appeal has been allowed and the first appellate court has been directed to decide the appeal after making enquiries from the Director of Movement.

3. Sri Rajesh Kumar Agarwal, learned Counsel for the assessee, contended that the Tribunal committed an error in directing the first appellate court to make further enquiries. He submitted that the first appellate court should have decided the cases on the basis of the material on the record for the purpose of determining as to whether notice u/s 21 of the Act was valid or not. Sri Agarwal further urged that in view of the finding of the Tribunal as well as the Assistant Commissioner (Judicial), it is abundantly clear that there was no sufficient material for justifying the issuance of the notice u/s 21 of the Act. He also urged that the assessment proceeding under Rule 41(7) of the U.P. Sales Tax Rules and proceeding u/s 21 of the Act are different in nature and cannot be treated at par so far as the question of burden of proof is concerned. I find sufficient force in the said contention. It is well-settled that in proceeding u/s 21 of the Act the burden is on the Revenue to prove that certain turnover had escaped assessment or the turnover has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under the Act or any deduction or exemption have been wrongly allowed in respect thereof. A careful reading of the orders of the Tribunal and the Assistant Commissioner (Judicial) indicate that the material which was available on the record was not sufficient for initiating proceeding u/s 21 of the Act and as such the matter was sent back for making certain enquiries. Learned Counsel for the assessee has also urged that making of further enquiries by the appellate court would amount to a second inning to the department which is not the purport of Section 21 of the Act. There can be no dispute that before initiating proceeding u/s 21 of the Act the assessing authority should have reason to believe that on the basis of the material available on the record issuance of notice u/s 21 of the Act is warranted. But if the material on the record at the time of issuance of notice u/s 21 of the Act, does not appear to be sufficient which may justify the issuance of notice u/s 21 of the Act in my opinion the Revenue should not be given a latitude of having a second inning but the authorities should record a finding on the basis of the material available on the record. The Tribunal under the Act is the last fact finding authority and in my opinion the Tribunal should record its own finding on the basis of the material on record as to whether there was sufficient material for issuance of notice u/s 21 of the Act or not. The Tribunal in the instant case instead of deciding the case on merit, on the basis of the material on the record, has on the contrary directed the first appellate court to make further enquiries which in my opinion is not permissible, in view of the finding recorded by the Tribunal and the first appellate court. Sri V.M. Sahai, learned Counsel appearing on behalf of the Revenue, has tried to support the order passed by the Tribunal but has not been successful in repelling the contention raised on behalf of the assessee.

4. In the result the revision succeeds and is allowed. The order passed by the Tribunal is set aside and it is directed to decide the appeal afresh in the light of the observations made above. However, parties shall bear their own costs.

5. Let a copy of this order be sent to the Tribunal concerned for passing suitable

order u/s 11(8) of the Act.