(1969) 09 AHC CK 0006

In the Allahabad High Court

Case No : Writ Petition No. 4360 of 1968

Jafar A. Majeed — APPELLANT

Vs

Sales Tax Officer — RESPONDENT

Date of Decision : 17-09-1969

Acts Referred:

Citation : (1970) 25 STC 95

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

Bench : Division Bench

Advocate : S.B.L. Srivastava and K.L. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The petitioner is a partnership firm carrying on business in handspun woollen yarn. For the first quarter of the assessment year 1968-69 it filed a return under the U.P. Sales Tax Act of its turnover of such yarn but claimed that it was exempt from sales tax. The petitioner did not deposit any tax in respect of the turnover. The Sales Tax Officer served a notice on the petitioner calling upon it to show cause why an assessment should not be made under Rule 41(3) of the U. P. Sales Tax Rules on account of the failure of the petitioner to deposit the tax.

2. The petitioner took the position that the sales were exempt from sales tax and no tax was payable. The Sales Tax Officer, however, made an assessment order under Rule 41(3) assessing the disclosed sales of handspun woollen yarn to sales tax. Aggrieved by that assessment, the petitioner now prays for certiorari.

3. It is not disputed that in the return filed by the petitioner while it disclosed the sales of handspun woollen yarn it maintained that they were exempt from sales tax. On that, it is clear that it was not obliged to pay the tax as required by Rule 41(2), which declares that before submitting the return the dealer shall deposit in the treasury the amount of tax calculated by him on the turnover, shown in

such return. That being so, there was no jurisdiction in the Sales Tax Officer to make an assessment order under Rule 41(3) in respect of those sales. Rule 41(3) empowers the Sales Tax Officer to make an assessment either when no return has been submitted or if the return is submitted without payment of tax. The latter case arises only when tax is payable on the turnover disclosed in the return and the assessee does not claim that the turnover is exempt from sales tax. As the petitioner claimed in his return that the turnover of handspun woollen yarn was exempt from tax there was no jurisdiction in the Sales Tax Officer to make the impugned assessment order. The assessment order is liable to be quashed.

4. In the circumstances, it is not necessary to consider the other grounds raised in the writ petition.

5. The petition is allowed. A writ in the nature of certiorari shall issue quashing the assessment order made against the petitioner for the first quarter of the assessment year 1968-69. There is no order as to costs.