(1975) 02 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 72 of 1975

Kaushal Kishore Khuller — APPELLANT

Vs

The State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 24-02-1975

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1976) 38 STC 72

Hon'ble Judges : R.L. Gulati, J;Gopi Nath, J

Bench : Division Bench

Advocate : G.K. Sahai and S.N. Sahai, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—In this petition the petitioner has challenged the recovery proceedings of sales tax on the ground that he is not a partner in the firm against which the assessment has been made. His name appears in form 14, but he says that his name was inserted without his knowledge and consent. He also says that he never knew of the levy of the tax until the recovery proceedings were taken against him. He has filed objection denying his status of a partner before the Recovery Officer.

2. Whether the petitioner is a partner or not is a question of fact which we cannot undertake to decide under Article 226 of the Constitution. However, if an objection has been filed by him denying his status as a partner in the assessee-firm, it is the duty of the authority concerned to decide it before taking further proceedings.

3. We, accordingly, direct the 3rd respondent, the Deputy Collector, Sales Tax (Collection), Betia Hata, Gorakhpur, to decide the petitioner''s objection after giving him due opportunity to lead evidence and until then he shall not proceed with the recovery proceedings.

4. With the above observations, we dismiss the writ petition. A copy of this order may be given to the learned counsel for the petitioner today on payment of usual charges.

