

(1995) 03 AHC CK 0010

In the Allahabad High Court

Case No : C.M.W.P. No's. 1530 of 1989 and 1531 of 1991

Kheria Brothers

APPELLANT

Vs

Asstt. Commissioner and Another

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Constitution of India, 1950 — Article 132, 133, 136, 137, 226
Uttar Pradesh Sales Tax Act, 1948 — Section 10, 22, 29, 29(1), 29(2)

Citation : (1996) AWC 126 Supp

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant;

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—These two writ petitions raise identical issues. They were heard together and are being disposed of by this common order.

2. I have heard the learned Counsel for the Petitioners Sri Rajesh Kumar and the learned standing counsel and the learned Additional Advocate General Sri Rakesh Dwivedi on behalf of the Respondents.

3. The Petitioner in Civil Misc. Writ No. 1530 of 1989, M/s Kheria Brothers, was assessed to sales tax for the assessment year 1981-82, by order dated 7th March, 1986. It preferred an appeal before the Assistant Commissioner (Judicial), Sales Tax, which was partly allowed and the tax demand was reduced by Rs. 1,09,517. In the appellate order dated 26th August, 1986, the learned Assistant Commissioner (Judicial) Sales Tax, ordered that in case the Appellant had deposited any tax in compliance with the assessment order, the same be refunded according to law. The assessment order mentions that out of Rs. 2,99,613.58 p. levied as tax by the Assessing Officer, a sum of Rs. 2,93,660. lip. had already been deposited by the Assessee leaving a balance of Rs. 5,953.47 p. only which alone was required to be deposited in compliance with the

assessment order. Against the order passed by the Assistant Commissioner (Judicial), Sales Tax, granting relief as aforesaid to the dealer the Commissioner of Sales Tax preferred an appeal to the Sales Tax Tribunal, which was dismissed by order dated 23rd August, 1989.

4. For the assessment year 1982-83, the Assessing Officer taxed this Petitioner for a sum of Rs. 5,39,498.54 p. by an order dated 28th March, 1987, out of which, as the assessment order shows, a sum of Rs. 5,34,973.30 p. had been deposited by the dealer along with the returns and only a balance of Rs. 4,225.15 p. was payable in compliance with the assessment order and the notice of demand that would follow. The dealer filed an appeal before the Assistant Commissioner (Judicial), Sales Tax, who, vide order dated 29th June, 1987, partly allowed the same granting a relief of Rs. 98,897.27 p. in this order again, the Assistant Commissioner (Judicial), Sales Tax, ordered that the same be refunded according to the provisions of Section 29 of the U.P. Sales Tax Act.

5. Thereafter, the Assessing Officer moved an application before the Assistant Commissioner (Judicial), Sales Tax, praying that the validity of Section 29-A of the U.P. Sales Tax Act has been upheld by the Hon''ble Supreme Court and the tax that was realised by the Assessee from the customers could not be refunded to them. Therefore, the direction for refund of the tax was wrong and be rectified. The Assistant Commissioner (Judicial), Sales Tax, then passed a consolidated order dated 30th September, 1989, withdrawing the aforesaid direction for refund of tax according to law and ordering that since the dealer had recovered the tax from the customers, therefore, by virtue of the judgment of the Hon''ble Supreme Court in the case of Kasturi Lal Har Lal v. The State of U.P. and Ors. 1987 UPTC 135, the same will be refunded to the customers in accordance with law and that in case it has been refunded to the dealer, the same be got deposited back by the Assessee. It is this order which is challenged in the aforesaid writ petition.

6. The Petitioner's contention is that whether the Petitioner was entitled to the refund of the amount was a highly debatable point and, therefore, the direction given by the Assistant Commissioner (Judicial) Sales Tax, could not be said to suffer from a mistake apparent from the record. It is contended that there was no dispute in the appeal before the Assistant Commissioner (Judicial), Sales Tax, as to whether the tax had been realised from the customers or not and this fact was not borne out from the record. It is further contended that Section 29-A of the U.P. Sales Tax Act (hereinafter referred to as "the Act"), as Incorporated in the said Act, had been declared ultra vires by this Court and this Court's judgment was affirmed by the Hon''ble Supreme Court in the case of State of Uttar Pradesh v. Annapurna Biscuits Manufacturing Company and, therefore, that provision could not be invoked to withhold the refund. It is also contended that the direction of the Assistant Commissioner (Judicial), Sales Tax, that the amount be realised back from the dealer was beyond his jurisdiction and for the assessment year 1981-82. the Assistant Commissioner's order having merged

with the order of the Sales Tax Tribunal, he was left with no power to rectify the same.

7. In their counter-affidavit, the Respondents have contended that the validity of Section 29A of the Act has been upheld by the Hon''ble Supreme Court in *Kasturi Lal Har Lal v. State of Uttar Pradesh* (supra) and that in its judgment, the Hon''ble Supreme Court had quoted Section 29A of the Act, as enacted by U.P. Ordinance No. 14 of 1971 and U.P. Act No. 20 of 1971, and that this being a judgment of a larger Bench would override any other decision on the subject. It is further contended that Section 29-A of the Act has been acted upon by this Court in several cases. It is contended that since in the appeal before the Sales Tax Tribunal, the question of refund was not involved, the order passed by the Assistant Commissioner (Judicial), Sales Tax, did not merge in the Tribunal's order. It is contended that the mistake in the orders passed by the Assistant Commissioner (Judicial), Sales Tax, was a mistake apparent on the record and could be rectified u/s 22 of the Act. It is contended that the dealer had realised the tax from the customers and hence having paid the same to the Government, it was not entitled to its refund. It was also contended that the order u/s 22 of the Act was appealable to the Sales Tax Tribunal u/s 10 of the Act and hence the writ petition was not maintainable.

8. In Civil Misc. Writ No. 1531 of 1989, the Petitioner is M/s. Rameshwar Das Kedar Nath and the impugned order is dated 30th September, 1989, and relates to the assessment years 1976-77, 1977-78 and 1979-80 for which years, the Assistant Commissioner (Judicial), Sales Tax, had disposed of the dealer's appeals by a common order dated 18th February, 1987, granting relief and reducing the tax demand by Rs. 1,04,643.17 p. for the assessment year 1976-77, by Rs. 96,411.62 p. for the assessment year 1977-78 and by Rs. 27,389.50 p. for the assessment year 1979-80. While disposing of the appeals, the Assistant Commissioner (Judicial), Sales Tax, ordered that in case the aforesaid amounts had been deposited by the dealer, the same be refunded according to law. By the impugned order, the Assistant Commissioner (Judicial), Sales; Tax, modified the aforesaid direction of refund ordering that since the dealer had realised the amount of tax from the customers, the same will be refunded to those customers on their applications in accordance with the judgment of the Hon''ble Supreme Court in the case of *Kasturi Lal Har Lal v. State of U.P.* (supra) and that if it has been wrongly refunded to the dealer, it be got deposited back. This order is challenged on grounds similar to those in the petition of M/s. Kheria Brothers, discussed above, and the defence of the Respondents is also identical.

9. As already stated, the Respondents have pleaded that against the impugned order, the Petitioner could appeal to the Tribunal u/s 10 of the Act and, therefore, the Petitioner having an alternative remedy, the writ petition is not maintainable. The existence of an alternative remedy by way of appeal is not denied. The existence of an alternative remedy is not an absolute bar to the exercise of

Jurisdiction by the High Court under Article 226 of the Constitution of India. The writ petitions have remained pending in this Court for more than five years and a pure question of law is involved and. therefore, it would not be proper to relegate the Petitioner to the alternative remedy of an appeal before the Sales Tax Tribunal.

10. As regards the assessment year 1981-82, in the case of M/s. Kheria Brothers, one of the pleas raised by the Petitioner is that the: Commissioner of Sales Tax had filed an appeal before the Sales Tax Tribunal, which was dismissed and, therefore, the Assistant Commissioner (Judicial), Sales Tax's order had merged in the order of the Sales Tax Tribunal and, therefore, the Assistant Commissioner (Judicial), Sales Tax, had no Jurisdiction to rectify the same. On this point, reliance has been placed on a judgment of a learned Single Judge of this Court in Krishna Rice and Oil Mills v. Commissioner of Sales Tax 1986 UPTC 323, in which it was held that where the revenue had filed an appeal before the Sales Tax Tribunal against the order of the Assistant Commissioner (Judicial), Sales Tax, and the Sales Tax Tribunal confirmed the order of the Assistant Commissioner (Judicial), Sales Tax, the same stood merged in the order of the Sales Tax Tribunal and it was not open to the Assistant Commissioner (Judicial), Sales Tax, to have rectified his order.

11. Reliance is also placed on two Division Bench judgments of this Court in M. R. Soap (P.) Limited, Modinagar v. Assistant Commissioner 1991 UPTC 517 and Ram Das Gupta & Company v. Sales Tax Officer 1992 UPTC 281. In both these cases, it was held that where an appeal has been preferred and disposed of, the order of the lower authority stands merged in the appellate order and after the decision of the appeal, the lower authority is left with no Jurisdiction to rectify its order.

12. In the present case, the Assistant Commissioner (Judicial), Sales Tax, had granted relief to the Petitioner and had also directed the refund of tax according to law. Against this order, the Commissioner of Sales Tax preferred an appeal before the Sales Tax Tribunal. Appeal is also a procedure for the rectification of mistakes. Any error that can be rectified u/s 22 of the Act can also be rectified by the appellate authority in exercise of its appellate Jurisdiction. in case the aforesaid direction of the Assistant Commissioner (Judicial), Sales Tax, to refund the tax according to law was considered erroneous and prejudicial, the Commissioner of Sales Tax should have challenged this direction in the appeal that it, admittedly, preferred before the Sales Tax Tribunal. The Sales Tax Tribunal having disposed of the appeal, the Assistant Commissioner's order stood merged in the order of the Sales Tax Tribunal in its entirety even though this point was not raised before the Tribunal and in view of the law, as laid down by this Court in the aforesaid cases, the Assistant Commissioner (Judicial), Sales Tax, could not rectify the alleged mistake. Further, the application of the Sales Tax Officer u/s 22 of the Act for this year was also barred by the principles of constructive res judicata because the Commissioner having opportunity of

challenging the aforesaid direction of the Assistant Commissioner (Judicial), Sales Tax, and having failed to avail that opportunity in the appeal before the Sales Tax Tribunal, cannot, after the dismissal of the appeal, revert back to Section 22 of the Act for the rectification of a mistake which could have been rectified in the exercise of appellate powers. Thus, for the assessment year 1981-82, the impugned order passed by the Assistant Commissioner (Judicial), Sales Tax, was without Jurisdiction and deserves to be quashed.

13. As regards the impugned order for the assessment year 1982-83 in Civil Misc. Writ No. 1530 of 1989 and for the assessment years 1976-77, 1977-78 and 1979-80 in Civil Misc. Writ No. 1531 of 1989, the contention of the Petitioners is that there was no mistake apparent from the record and whether there was mistake was highly debatable point and, therefore, the alleged mistake could not be rectified in exercise of powers u/s 22 of the Act.

14. u/s 22 of the Act, the assessing, appellate or the revising authority or the Tribunal has the power to rectify any mistake in its order which is apparent on the record. What is a mistake apparent from record was explained by the Hon"ble Supreme Court in the case of T.S. Balaram, ITO v. Volkat Brothers 82 ITR 50. The Hon"ble Supreme Court observed that a mistake apparent on record must be obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from record.

15. Let us first see whether there was any mistake in the aforesaid orders of the Assistant Commissioner (Judicial), Sales Tax. Section 29 of the Act deals with refund. Sub-section (1) of Section 29 of the Act obliges the assessing authority to refund to a dealer in the manner prescribed any amount of tax, fees or other dues paid in excess of the amount due from him under this Act. The proviso to Sub-section (1) says that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956 and only the balance. If any, shall be refunded. Sub-section (2) provides for grant of interest if the refund is not made within three months. Sub-section (3) then says that notwithstanding any judgment, decree or order of any court or authority, no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the return filed by him or at any stage in any proceedings under the Act. Section 29A of the Act, the very existence of which is disputed by the Petitioners, also places restriction on the right of a dealer to claim refund of tax. Sub-section (1) of Section 29A of the Act provides that where any amount is realised from any person by any dealer purporting to do so by way of realisation of tax on the sale of any goods to such person, such dealer shall deposit the entire amount so realised into the Government treasury...notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from him as tax under this Act. Sub-

section (2) of Section 29A of the Act says that any amount deposited by any dealer to the extent it is not due as tax shall be held by the State Government in trust for the person from whom it was realised. Sub-section (3) then provides that such amount shall be refunded in the manner prescribed to the person from whom such dealer had actually realised such amount or part or to his legal representative and to no other person. Thus, Sections 29 and 29A of the Act place restrictions on the right of a dealer to claim refund of tax deposited by him and the right is not absolute merely on the reduction of the demand by the appellate authority.

16. Section 7 of the Act requires the Assessing Officer to determine the tax payable by a dealer by making an assessment. Section 9 which deals with appeals also provides for the confirmation or annulment of the assessment of tax or penalty or the reducing or enhancing the amount of assessment or penalty. What is clear, therefore, is that the Assessing Officer as well as the appellate authority have only to determine the amount of tax payable by a dealer and there is no necessity in the normal course of determining the amount of refund, which, in terms of Section 29 of the Act, is automatically the difference between the tax assessed and the tax paid. Therefore, unless there is dispute between the Assessing Officer and the dealer about the quantum of refund and the Assessing Officer determines the same by some order and the dealer is aggrieved and prefers an appeal challenging the quantum of refund or the Assessing Officer declines to grant refund in terms of Section 29 or 29A of the Act and the dealer prefers an appeal, the appellate authority is not required to pass any order for refund of the tax. The manner of refund is provided in Sections 29 and 29A of the Act and in an appeal in which only the quantum of tax payable by a dealer is in dispute, there is no occasion for the appellate authority to direct the grant of refund. It is in this view of the law that we have to view the direction, as made by the Assistant Commissioner (Judicial), Sales Tax, in his orders, referred to above. As already stated, in the case of M/s Kheria Brothers, the direction was that in case the Appellant had deposited the sum of Rs. 98,897.20 P. by which the Assistant Commissioner (Judicial), Sales Tax, had reduced the tax demand, the same be refunded according to the provisions of Section 29 of the Act.

17. In the case of M/s Rameshwar Das Kedar Nath, the Petitioner in Civil Misc. Writ No. 1531 of 1989, the direction was that if the amounts by which the demand was reduced had been deposited by the Appellant, then the same be refunded according to law. What is evident is that in none of these orders, the question of refund was agitated between the parties and the Assistant Commissioner (Judicial), Sales Tax, was not required to record any finding whether the dealers concerned were entitled to get back the aforesaid amounts nor did the Assistant Commissioner (Judicial), Sales Tax, actually record any such finding. The orders do not say that the amounts in question were to be refunded to the Appellants. What the orders state was merely that the amounts be refunded according to law. the direction, though unnecessary, cannot be said to be erroneous inasmuch as the direction placed an obligation on the Assessing

Officer to examine the law on the point and refund the amount only in accordance with law. Such a direction was not erroneous in the sense in which it was projected by the Sales Tax Officer after blindly refunding the amounts to the dealer and then probably on second thought shifting the burden of his mistake to the Assistant Commissioner (Judicial), Sales Tax, by claiming that there was a mistake in the Assistant Commissioner's order. The Assistant Commissioner (Judicial), Sales Tax, having not debarred the Sales Tax Officer from looking to the provisions of Sections 29 and 29A of the Act and specifically ordered that the refund is to be made according to law and having also not directed that the refund was to be made to the dealer Appellants did not make any mistake which required rectification u/s 22 of the Act. If at all there was any mistake, it was in the sense that the direction was unnecessary, the question of actual refund not being involved in the appeal and not having been decided by him.

18. The next point raised on behalf of the Petitioners is that Section 29A of the Act, which debarred refund to a dealer if the amount in question had been realised as tax from a customer, is no longer on the statute book, the same having been declared invalid by this Court and affirmed by the Hon''ble Supreme Court.

19. A new Section 29A of the Act was, for the first time, enacted by the Taxation Laws (Amendment) Act (U.P. Act No. 11 of 1969) with effect from 1st October, 1969. It read as under:

29A. Notwithstanding anything contained in this Act or in any other law for the time being in force or any judgment, decree or order of any court, where any amount is either deposited or paid by any dealer or other person under Sub-section (4) or Sub-section (5) of Section 8A, such amount or any part thereof shall, on a claim being made in that behalf in such form and within such period as may be prescribed be refunded to the person from whom such dealer or the person had actually realised such amount or part, and to no other person.

20. The validity of the aforesaid provision was challenged before this Court and this Court held the provision to be constitutionally valid in *Kasturi Lal Har Lal v. State of Uttar Pradesh* (supra) (Civil Misc. Writ No. 848 of 1970, decided on 17th July, 1970). The dealer M/s. Kasturi Lal Har Lal carried the matter to the Hon''ble Supreme Court in Civil Appeal No. 1862 (NT) of 1971. The judgment of the Hon''ble Supreme Court is dated 29th October, 1986, and is reported in 1987 UPTC 135.

21. Section 29A of the Act, as reproduced above, was substituted by the U.P. Sales Tax (Amendment and Validation) Ordinance (U.P. Ordinance No. 14 of 1971) and, ultimately, by the U.P. Sales Tax (Amendment and Validation) Act, 1971 (U.P. Act No. 20 of 1971). The following was substituted for Section 29A of the Act:

29A Procedure for disbursement of amount wrongly realised by dealer as tax:

(1) Where any amount is realised from any person by any dealer purporting to do so by way of realisation of tax on the sale of any goods to such person, such dealer shall deposit the entire amount so realised into the Government Treasury, within such period as may be prescribed, notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from him as tax under this Act.

(2) Any amount deposited by any dealer under Sub-section (1) shall to the extent it is not due as tax, be held by the State Government in trust for the person from whom it was realised by the dealer, or for his legal representatives, and the deposit shall discharge such dealer of the liability in respect thereof to the extent of the deposit.

(3) Where any amount is deposited by any dealer under Sub-section (1) such amount or any part thereof shall, on a claim being made in that behalf in such form as may be prescribed, be refunded in the manner prescribed, to the person from whom such dealer had actually realised such amount or part, or to his legal representative, and to no other person:

Provided that no such claim shall be entertained after the expiry of three years from the date of the order of assessment or one year from the date of the final order on appeal, revision or reference. If any, in respect thereof, whichever is later.

Explanation.--The expression final order on appeal, revision or reference, includes an order passed by the Supreme Court under Article 32, Article 132, Article 133, Article 136 or Article 137 or by the High Court under Article 226 or Article 227 of the Constitution.

22. The validity of the substituted Section 29A of the Act was challenged before this Court and a Full Bench of this Court Annapurna Biscuits Manufacturing Company and Another Vs. The State of Uttar Pradesh and Another, , declared the same to be invalid being beyond the legislative competence of the State of Uttar Pradesh. In taking this view, the Full Bench followed a judgment of the Hon''ble Supreme Court in Ashoka Marketing Ltd. Vs. State of Bihar and Another, . This judgment of this Court was challenged before the Hon''ble Supreme Court which, in its judgment dated 16th April, 1973, in State of Uttar Pradesh and Another Vs. Annapurna Biscuit Mfg. Company, , upheld the same.

23. The appeal preferred by M/s Kasturi Lal Har Lal remained pending in the Supreme Court and came to be decided on 29th October, 1986.

24. A similar provision in the Bombay Sales Tax Act came for consideration before the Hon''ble Supreme Court in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, , in which a Constitution Bench of the Supreme Court upheld the validity of a provision denying refund to a dealer of the amount realised from customers as sales tax was upheld. The Hon''ble Supreme Court held that such power was ancillary to Entry 54 of List II of the

Seventh Schedule to the Constitution of India. Following its judgment in R.S. Joshi's case, the Hon''ble Supreme Court dismissed the appeal of M/s Kasturi Lal Har Lal thereby upholding the validity of Section 29A of the Act. In the judgment of the Supreme Court, Section 29A of the Act has been reproduced and the reproduction is of Section 29A, as enacted by the U.P. Sales Tax (Amendment and Validation) Act, 1971, as reproduced above, and not of Section 29A of the Act, as it was introduced by the U.P. Taxation Laws (Amendment) Act, 1969.

25. The contention of the learned Counsel for the Petitioners is that Section 29A of the Act, as introduced by the 1969 Act, and that was the subject matter of consideration before the Hon''ble Supreme Court had been dropped by the Legislature itself by the U.P. Sales Tax (Amendment and Validation) Ordinance, 1971 (U.P. Ordinance No. 14 of 1971) and thereafter by U.P. Act No. 20 of 1971 and, therefore, the judgment of the Hon''ble Supreme Court in *Kasturi Lal Har Lal v. State of Uttar Pradesh* (supra) is of no consequence for the purposes of the present matters and that Section 29A of the Act, as it was introduced by U.P. Act No. 20 of the 1971, was held to be constitutionally invalid by this Court and this Court's view was upheld by the Hon''ble Supreme Court in *M/s. Annapurna Biscuits Manufacturing Company's* case (supra) and, therefore. Section 29A of the Act as introduced by U.P. Act No. 20 of 1971, having been declared to be unconstitutional, is non-existent and the provisions of this section could not have been invoked to withhold the Petitioners' refund. It was also contended that by some mistake, the provisions of Section 29A of the Act were wrongly incorporated in the judgment of the Hon''ble Supreme Court and the provisions of Section 29A of the Act introduced by U.P. Act No. 20 of 1971 not being under challenge before the Hon''ble Supreme Court, the reproduction of these provisions in the judgment of the Hon''ble Supreme Court will not validate them when these provisions had already been declared unconstitutional by the Hon''ble Supreme Court of India.

26. On the other hand, the learned Advocate General contended that the judgment in the case of *M/s. Annapurna Biscuits Manufacturing Company* (supra) is no longer a good law because of the judgment of the Hon''ble Supreme Court in the case of *R.S. Joshi v. Ajit Mills* (supra) and that by the subsequent judgment of the Supreme Court, the view taken in the case of *Annapurna Biscuits Manufacturing Company* (supra) stands overruled by *R.S. Joshi v. Ajit Mills* (supra) and this will have retrospective effect. According to him, the view taken in the case of *Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh* (supra) becomes a still-born judgment and the position is as if the case of *Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh* (supra) was never decided.

27. When one legal view is overruled in a subsequent judgment, what is overruled is the ratio of the case and the legal view taken therein and not the judgment itself which regulates the rights of the parties. The learned Additional Advocate General did not refer to any authority to the effect that by the

subsequent judgment of the Hon''ble Supreme Court in the case of R.S. Joshi v. Ajit Mills (supra), the judgment finally made in the case of Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh (supra) stood vacated. in my view, once the Hon''ble Supreme Court declared the provisions of Section 29A of the Act, as introduced by the U.P. Act No. 20 of 1971 invalid, the same could not be revived by a subsequent judgment taking a different view in another case and the only way out would be to get the judgment of the Hon''ble Supreme Court reviewed or to reenact the same provision. The judgment of the Hon''ble Supreme Court in Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another, , relied upon by the learned Advocate General renders no help on this point. What was stated therein is that there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by the Supreme Court applies to all pending proceedings. The judgement in the case of Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh (supra) had already been pronounced by the Hon''ble Supreme Court and if the arguments of the learned Additional Advocate General is accepted, there will be no finality in the state of law and any subsequent judgment of the Supreme Court taking a different view would reopen all cases that have already been decided and unsettle the rights of the parties. This is not the philosophy of law. Even a judgment rendered by a Court or even by the Supreme Court in ignorance of the law, as declared by the Supreme Court, would be binding on the parties unless reversed in accordance with law. It cannot therefore, be said that the judgment in the case of Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh (supra) was rendered ineffective by the subsequent decision of the Supreme Court in the case of M/s Kasturi Lal Har Lal v. State of Uttar Pradesh (suppa)

28. It was also contended that in the case of M/s Kasturi Lal Har Lal v. State of Uttar Pradesh (supra), the Hon''ble Supreme Court has referred to the provisions of Section 29A of the Act, as introduced by U.P. Act No. 20 of 1971 and, therefore, it should be deemed that the Supreme Court has reviewed its judgment in the case of Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh (supra). It was further contended that this Court has, in several cases, applied Section 29A of the Act taking the same to be on the statute book and, therefore, it cannot be said now that because of the judgment of the Supreme Court in the case of Annapurna Biscuits Manufacturing Company v. State of Uttar Pradesh (supra). Section 29A of the Act is not at all on the statute book.

29. As already stated, a mistake which can be corrected u/s 22 of the Act, has to be a mistake apparent on record and must be an obvious and patent mistake. The order passed by the Assistant Commissioner (Judicial), Sales Tax, on the application u/s 22 of the Act proceeds on the provisions of Section 29A of the Act and the above discussion would show that at least it is highly debatable whether the provisions of Section 29A of the Act, as Introduced by U.P. Act No. 20 of 1971, continued to be valid on the statute book. Therefore, in the circumstances

of the case, it cannot be Said that there was any apparent mistake in the order passed earlier by the Assistant Commissioner (Judicial), Sales Tax, and the impugned orders passed by the Assistant Commissioner (Judicial), Sales Tax, therefore, cannot be sustained.

30. For the above reasons. Writ Petition No. 1530 of 1989, is allowed and the impugned order dated 30th September, 1989, passed by the Assistant Commissioner (Judicial). Sales Tax, Jhansi, in Appeal No. 292 of 1986, for the assessment year 1981-82 and Appeal No. 530 of 1987 for the assessment year 1982-83 is hereby quashed. The Petitioner will get his costs of this writ petition from the Respondents.

31. Civil Misc. Writ Petition No. 1531 of 1989 is also allowed and the impugned order dated 30th September, 1989, passed by the Assistant Commissioner (Judicial), Sales Tax, Jhansi, in Appeal Nos. 839 of 1986, 841 of 1986, and 119 of 1987 for the assessment years 1976-77, 1977-78 and 1979-80 respectively is hereby quashed. The Petitioner will get his costs of this writ petition from the Respondents.