
(1986) 07 AHC CK 0030

In the Allahabad High Court

Case No : Sales Tax Revision No's. 23 and 24 of 1981

Lalman Industries

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:

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

Citation : (1987) 66 STC 342

Hon'ble Judges : H.N. Seth, C.J

Bench : Single Bench

Advocate : P.P. Gupta, for the Appellant; Standing Counsel, for the Respondent

Judgement

H.N. Seth, C.J.—These two revisions u/s 11(1) of the U.P. Sales Tax Act, by the dealer, M/s. Lalman Industries, Sitapur are directed against the order of the Additional Judge (Revisions), Sales Tax, Lucknow dated 20th March, 1980, dismissing Revision Applications Nos. 699 of 1977 and 700 of 1977.

2. The applicant dealt in manufacture and sale of groundnut oil. In due course it filed returns for the years 1972-73 (U.P.) and 1973-74 (Central). In those returns it disclosed its net purchase of oil-seed at Rs. 3,81,904.61. Sale of self manufactured oil in the course of inter-State sale was disclosed at Rs. 18,944 on which tax liability was admitted at 1 per cent only. Inter-State sale of oil was disclosed at Rs. 3,24,410.45 claiming exemption on sale worth Rs. 74,961.95 on the ground that it was made to vegetable oil manufactured against Kha forms, net turnover was disclosed at Rs. 2,49,448.50. However, at the time of assessment the assessee neither produced any Kha form nor any C form with the result the exemption claimed in the case and the benefit of reduced rate of tax in the case relating to inter-State sale was denied to the assessee. The assessing officer rejected the disclosed turnover in both the proceedings (U.P. as well as Central) and resorted to best judgment assessment and fixed the net purchase of

oil-seed at Rs. 4,25,000 and net sale of self manufactured oil in U.P. at Rs. 3,50,000 and that in the course of inter-State sale at Rs. 22,000. The turnover of the inter-State sale was taxed at the rate of 10 per cent.

3. Aggrieved by the assessment order the assessee filed two appeals before the Assistant Commissioner (Judicial), Sales Tax. After filing the said appeals he made an application before the assessing authority u/s 22 of the Sales Tax Act for rectification of the assessment order on the ground that he was furnishing 7 Kha forms and one C form before that authority. The assessee claimed that the assessment order should be rectified after taking into account the said forms. It appears that the Sales Tax Officer did not pass any order on the said application for rectification. However, when the appeals came up for hearing before the Assistant Commissioner (Judicial), Sales Tax, the assessee again claimed that he should be given the benefit of forms Kha and C filed by it before the assessing authority and the appellate authority should modify the assessment order accordingly. The appellate authority vide its order dated 25th June, 1977, dismissed the two appeals. It affirmed the action of the assessing authority in making the best judgment assessment and also held that the quantum fixed in each, case was not such which deserved to be interfered with. The assessee then took the matter before the Judge (Revisions), Sales Tax [Revision Application No. 699 of 1977 (1972-73) U.P. and Revision Application No. 700 of 1977 (1973-74) Central]. In both the cases it claimed the rejection of the account books by the assessing authority was not justified and questioned the correctness of the quantum of turnover determined by those authorities. Before the Judge (Revisions) the assessee also claimed that, it should have been given the benefit of forms Kha and C which he had filed with his application u/s 22 of the U.P. Sales Tax Act before the sales tax authorities and that the tax should have been calculated after taking into account those forms.

4. The Judge (Revisions), Sales Tax, dismissed the two revisions filed by the assessee vide a common order dated 20th March, 1980. He held that as the assessee did not produce any account books, the Sales Tax Officer was quite justified in making the best judgment assessment. So far as the quantum of the turnover determined by the sales tax authorities was concerned, he held that no interference was called for in that regard. Regarding assessee's claim for being given the benefit of Kha and C forms filed after the conclusion of the assessment proceedings was concerned, he observed that the assessment orders were framed on 28th. February, 1977. The assessee had filed appeals before the Assistant Commissioner (Judicial) on 12th April, 1977. Even at that stage it did not file the said forms before the appellate authority. The said forms were filed before the assessing officer only on 6th May, 1977. The Judge (Revisions) further observed that a perusal of the C form indicated that it has been issued to the purchasing dealer on 25th June, 1973, 14th September, 1973 and 19th September, 1973. No explanation was forthcoming on the part of the assessee for not producing those forms and claiming benefit on that account before the assessing authority which made the assessment on 28th February, 1977. In

these circumstances, he did not think it apt to take into consideration the Kha and C forms relied upon by the assessee.

5. Being aggrieved by the aforesaid order passed by the Additional Judge (Revisions), Sales Tax, Lucknow, the assessee has now approached this Court by way of these two revision applications u/s 11(1) of the U.P. Sales Tax Act [whereas Sales Tax Revision No. 23 of 1981 pertains to assessment proceedings in respect of the assessee (U.P. assessment) for the year 1972-73 Sales Tax Revision No. 24 of 1981 is in respect of the assessee (Central assessment) for the year 1973-74]. These revision applications were filed on 2nd February, 1981. On behalf of the respondent an objection has been raised that these applications are barred by time and should be dismissed as such. The period of limitation prescribed for the purpose, u/s 11(1) read with Section 11(2) of the U.P. Sales Tax Act, is 90 days from the date of service of the order on the assessee. The assessee has filed an affidavit explaining that after the Judge (Revisions) dismissed his revision applications on 20th March, 1980, the copies of the order made by him were not served upon it. However, after it came to know about the order passed by the Judge (Revisions) an application for certified copy of the order was made on 23rd September, 1980. This application was defective but the defect was subsequently removed on 9th October, 1980 and the certified copy of the order which was ready on 15th October, 1980, was sent to the assessee by registered post on 4th November, 1980. It is obvious that the copy must have been delivered to the assessee some time after 4th November, 1980.

6. On behalf of the respondent it has been contended that copy of the revisional order dated 20th March, 1980, was despatched to the assessee by registered post on 2nd April, 1980 and the acknowledgment due receipt indicates that it was delivered to the assessee on 5th April, 1980. Accordingly the revision which was filed before this Court on 2nd February, 1981, is belated by about eight months. In the rejoinder affidavit, the assessee alleged that the said registered post was never delivered to it. It asserted the acknowledgment receipt relied upon by the respondent neither bore the signature of any of its partners nor that of any other person who had been authorised by it to receive the registered letters on its behalf. The respondent did not produce any material before the court to indicate that the said acknowledgment receipt bore the signature of any person who was either a partner of the assessee's firm or its agent. There is no reason to disbelieve the applicant when it says that the registered cover dated 2nd April, 1980, containing a copy of the revisional order dated 20th March, 1980, was not delivered to it or its authorised agent. The presumption that a registered article sent by registered post had been duly delivered to the addressee, therefore, stands rebutted and the period of limitation for filing the revision application cannot be computed with reference to the date 6th April, 1980.

7. Learned counsel appearing for the respondent then contended that even if the said date is ignored, the certified copy of the order dated 20th March, 1980,

which admittedly has been received by the assessee was ready on 15th October, 1980. Even if the period of limitation is computed with effect from 15th October, 1980 the revision filed on 2nd February, 1981, beyond the period of 90 days of that date must be held to be barred by time. I am unable to accept this submission. The period of limitation for filing the revision u/s 11 of the U.P. Sales Tax Act starts running only from the date on which the copy of the impugned order is delivered to the assessee. It does not commence or start running with effect from the date on which the said copy became ready. In this context the time requisite for obtaining the certified copy of the impugned order is quite irrelevant. In the instant case it is not disputed that the certified copy of the order applied for by the assessee was delivered to it some time after 4th November, 1980. The present revision application filed on 2nd February, 1981, has undoubtedly been filed within 90 days of the date on which the copy was received by the assessee and is, therefore, not barred by the limitation prescribed for the purpose by Section 11 of the U.P. Sales Tax Act. In the result I find no merit in the preliminary objection raised by the respondent.

8. Coming now to the merit of the revision application I find that the Judge (Revisions) has given cogent reason for not accepting the turnover as disclosed by the assessee in its returns and for upholding the assessment made by the sales tax authorities. The assessee in this case did not produce its account books before the sales tax authorities. In the circumstances the assessing authority was quite justified in making the best judgment assessment and no interference in the assessment order by this Court is on the record called for.

9. Learned counsel for the applicant next contended that the Sales Tax Officer had enhanced the turnover disclosed by the assessee in respect of inter-State sale of groundnut oil from Rs. 18,944 to Rs. 22,000 and had applied the rate of 10 per cent instead of 1 per cent as claimed by it. He urged that at the relevant time such turnover could be taxed only at the rate of 3 per cent and not at the rate of 10 per cent. Learned counsel for the respondent accepts this position. In the result, without making any further comments on the said argument I accept the submission made on behalf of the assessee and direct the assessing authority to revise the assessment order to the extent that tax payable by the assessee on the turnover of Rs. 22,000 with respect to the inter-State sale as determined by the sales tax authority shall be calculated at 3 per cent and not at 10 per cent.

10. In the result, Sales Tax Revision No. 23 of 1981 fails and is dismissed. Sales Tax Revision No. 24 of 1981 is allowed in part while upholding the taxable turnover determined by the sales tax authorities. I direct the revising authority to revise the assessment order for the year 1973-74 (Central) to the extent the tax payable by the assessee on the turnover of Rs. 22,000 in respect of valuable sales shall be calculated at 3 per cent and not 10 per cent. In both the cases parties are directed to bear their own costs.