

(1968) 12 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2453 of 1968

Laxminarain Gauri Shanker and Another

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 04-12-1968

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 22

Citation : (1969) 24 STC 77

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

Bench : Division Bench

Advocate : Gyan Prakash, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—Assessment proceedings for the assessment years 1956-57 and 1957-58 were taken against the petitioner under the U.P. Sales Tax Act. Assessment orders were made against the petitioner, but the assessments were set aside in appeal and the case was remanded. In the assessment proceedings taken on remand, the Sales Tax Officer noted the statement of the petitioner that it had supplied goods to U.P. dealers in 1956-57 worth Rs. 3,39,045.06 and in 1957-58 goods worth Rs. 4,07,603.50, and the material on which the petitioner submitted that it was not liable to tax in respect of those sales. The Sales Tax Officer found that the turnover had already been assessed in the hands of the importers who had paid tax and that it was not liable to tax in the hands of the petitioner and accordingly declared the petitioner non-assessable. Subsequently, however, the Sales Tax Officer issued a notice u/s 22 of the U.P. Sales Tax Act for the two assessment years. On 27th September, 1967, he made an order u/s 22 for each assessment year holding that in not taxing the turnover in the hands of the petitioner and exempting the said turnover a mistake apparent on the face of the record had been committed. Accordingly purporting to rectify the assessment, he taxed the turnover in the hands of the petitioner. Aggrieved by

the orders u/s 22, the petitioner has filed this and the connected petition.

2. It is clear from the original orders concluding the assessment proceedings on remand that the Sales Tax Officer applied his mind to the material on the record before him and after a process of careful deliberation came to the conclusion that the petitioner was not liable to tax in respect of the turnover in question. The considerations to which he had adverted in the assessment orders and the reasons stated by him there provide ample proof that his finding that the petitioner was not taxable was not the result of inadvertent error or mistake. To justify interference u/s 22 of the U.P. Sales Tax Act it is not sufficient that the order is vitiated by a mistake. It must be a mistake apparent on the face of the record. In other words, it must be a mistake which must be patent on the face of the record and does not call for a detailed investigation of the facts or law or require an elaborate argument to establish it. We are not satisfied that the error which the Sales Tax Officer sought to correct here was such an error. We hold that the Sales Tax Officer acted without jurisdiction in resorting to Section 22.

3. The petition is allowed. The orders made u/s 22 of the U.P. Sales Tax Act in respect of the assessment years 1956-57 and 1957-58 are quashed. The petitioners are entitled to their costs in each case.