(1972) 01 AHC CK 0028

In the Allahabad High Court

Case No : S.T.R. No. 761 of 1970

Mahashakti Oil Mill APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 31-01-1972

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

Citation : (1973) 30 STC 390

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

Bench : Division Bench

Advocate : S.B.L. Srivastava, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a reference u/s 11(1) of the U. P. Sales Tax Act at the instance of the assessee.

2. The assessee runs an oil mill. For the assessment year 1960-61, the assessee filed the quarterly returns and produced books of account in support thereof. The account books were found to be properly maintained and the returns were accepted in toto. Later on, the Sales Tax Officer discovered that the consumption of electricity used in the production of oil as shown by the assessee was disproportionately high. In his opinion, 24 units of electricity should produce one maund of oil and on that basis the production of oil should be higher and consequently, the turnover should have been greater. He reopened the assessment u/s 21 believing that a part of the turnover had escaped assessment and ultimately assessed the escaped turnover at Rs. 44,000.00. On appeal, the turnover was reduced to Rs. 27,660.00. But the assessee''s contention that Section 21 was not applicable was not accepted. Then there was a revision u/s 10. The revising authority further reduced the turnover to Rs. 13,400.00, but did not accept the assessee''s contention that Section 21 was not applicable and its accounts should not have been rejected. At the instance of the assessee, the

revising authority has submitted this statement of the case and has referred as many as seven questions. Most of the questions are merely arguments. In our opinion, only two questions of law arise. They are :

(1) Whether on the facts arid in the circumstances of the case, there was material for initiating proceedings under section. 21 of the Act.

(2) If the answer to the first question is in the affirmative, whether there was material for rejecting the assessee''s books of account.

3. This court in Mahabir Prasad Jagdish Prasad v. Commissioner of Sales Tax, U.P. [1971] 27 S.T.C. 337 has dealt with a similar matter. It has been held there that information with regard to the high consumption of electricity may be a circumstance justifying action u/s 21. But the high consumption of electricity by itself is no material for rejecting the account books of the assessee. Something positive and concrete pertaining to the books of account should be placed on the record before the account books are rejected and a best judgment assessment is made. In the instant case, we find that the sales tax authorities have brought no material on the record to justify the rejection of the books of account which had previously been accepted.

4. In the circumstances, we answer question No. (1) in the affirmative and question No. (2) in the negative.

5. The assessee is entitled to the costs which we assess at Rs. 100.

