(1979) 09 AHC CK 0012

In the Allahabad High Court

Case No : S.T.R. No. 582 of 1978

Modi Industries Ltd. APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 06-09-1979

Acts Referred:
Central Sales Tax Act, 1956 — Section 9

Citation : (1980) 45 STC 423

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The brief facts giving rise to this revision u/s 11(1) are as under:

2. The assessee carried on the business of vegetable ghee, spirit, torch, iron, gas and washing soap, etc. For the assessment year 1968-69, the order dated 27th March, 1973, was passed u/s 9(3) of the Central Sales Tax Act. On 28th March, 1973, notice under, Section 21 was issued and assessment order was passed on 28th March, 1974. Against this order the assessee filed an appeal, which was allowed on 13th September, 1974, and the case was remanded to the assessing authority with direction that the assessment order shall be passed only if the assessment order in original proceedings, that is proceeding u/s 9(3), which also, it appears, had been remanded and was pending before the assessing authority, had been passed. Against this order the assessee filed revision and a prayer was made for annulment of proceedings on a number of. grounds. The Additional judge (Revisions) observed:

The regular assessment order for the year in question has been set aside in appeal and the case has been remanded to the assessing officer for assessment.

The position therefore is that the entire case of the assessee is open before the assessing officer. It shall therefore be quite reasonable and proper that the true nature of the transactions in question may be inquired into afresh by the assessing officer. He shall therefore see whether the transactions in question were inter-State sales or transfers to the depots.

3. He however dismissed the revision. The assessee filed an application u/s 11(1) of the U.P. Sales Tax Act, as it stood before amendment and raised a number of questions but before the application could be heard the law was amended and the reference application was sent to this Court for deciding it u/s 11.

4. The learned counsel for the assessee has raised three questions and has urged that notice u/s 21 was issued by the Sales Tax Officer, Sector II, who had no jurisdiction as the assessee was in Sector I, that proceedings were initiated for verification of certain information received from the excise department and, therefore, the enquiry, being roving in nature, was without jurisdiction and, lastly, even if initiation of proceedings was proper, its continuance was rendered illegal after original proceedings were remanded, as proceedings both for escaped assessment and assessment under, Section 7(3) could not go on together. It is not necessary to consider the first two arguments as the last argument appears to have substance. In Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, , it has been held:

that a turnover cannot, however, be said to escape assessment if proceedings in respect of the first assessment are pending and no final order of assessment is made thereon.

5. This decision of the Supreme Court was followed by a Division Bench in Sales Tax Officer v. Firm Ram Dass 1973 U.P.T.C.20. It is therefore clear that proceedings of escaped assessment could not go on simultaneously along with proceedings of regular assessment. It has been argued by the learned standing counsel that in remanded proceedings the information received by the Sales Tax Officer could not be utilised as in the appellate order dated 13th September, 1974, the jurisdiction of the assessing authority was circumscribed and it was directed that no order should be passed so long as proceedings u/s 9(3) do not come to an end. The argument has no merit. In Ram Dayal Harbilas Prabhu Dayal v. Commissioner of Sales Tax 1979 U.P.T.C. 999 (F.B.), it has been held by a Full Bench that once proceedings are remanded by the appellate authority the entire matter is at large.

6. In the result, this revision succeeds and is allowed. The order passed by the Additional Judge (Revisions) is set aside. The question of law raised by the assessee is decided in its favour by saying that once proceedings in original assessment have been remanded the proceedings u/s 21 could not go on. The assessee shall be entitled to its cost which is assessed at Rs. 300. The fee of the standing counsel is assessed at Rs. 100.

