
(1965) 03 AHC CK 0024

In the Allahabad High Court

Case No : Sales Tax Reference No. 1622 of 1956

Modi Sugar Mills Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1965) 16 STC 462

Hon'ble Judges : M.C. Desai, C.J.; S.C. Manchanda, J

Bench : Division Bench

Advocate : S.D. Agarwala and S.N. Kakkar, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, C.J.—This is a statement of a case referred to this Court u/s 11(3) of the U.P. Sales Tax Act, as it was enforced in 1955-56. The facts as they appear from the statement are as under:--

2. The assessee, at whose instance this statement has been submitted, was assessed to sales tax for the assessment year 1949-50 on its turnover for the previous year ending on 31st October, 1948. In the assessment year 1948-49, which is not the assessment year in question, different rates of sales tax were applicable to different commodities on different dates. It is not in dispute that on 1st April, 1949, the first date of the assessment year in question, all the turnover of all those commodities was liable to sales tax at 0-0-6 per rupee which is higher than the rate applicable to them in an earlier part of the previous assessment year 1948-49. The assessee was assessed to the tax in the assessment year in question at the rate of 0-0-6 per rupee. It filed an appeal against the assessment order which was dismissed by the Judge (Appeals) Sales Tax on 5th June, 1960. It was contended before him that the turnover of the commodities for the earlier portion of the previous year ending on 31st October, 1948, should have been assessed at 0-0-3 per rupee instead of at 0-0-6 per

rupee. The argument was that since in the (assessment) year 1948-49 the tax payable on the turnover of these commodities for the period ending on 8th June, 1948, or 30th June, 1948, was 0-0-3 per rupee, the turnover of this period of the commodities should have been assessed at only 0-0-3 per rupee instead of at 0-0-6 per rupee, as done uniformly on the entire turnover. The Judge (Appeals) rejected the argument and dismissed the appeal. The assessee applied in revision against this order of the Judge (Appeals) and the same argument was advanced before the Judge (Revisions); he agreed with the view taken by the Judge (Appeals) and dismissed the revision application on 29th November, 1950. Thereafter (sic) the assessee filed another application before the Judge (Revisions) directed against the order of the assessing authority and on a new ground based upon the provisions of Article 286 of the Constitution. The Judge (Revisions) dismissed this application on 28th November, 1950, not on merits but on the ground that it was not maintainable inasmuch as the order sought to be revised had been confirmed on appeal. The assessee then applied u/s 11(1) to the Judge (Revisions) to refer the case to this Court. That application is full of defects. In the first place it did not specify against which of the two orders passed by the Judge (Revisions) it was directed. According to the questions formulated by it, it could have been directed against both the orders. The order passed on 28th November, 1950, did not deal with the merits of the revision application or the assessment order at all; it was dismissed on a preliminary objection on holding that it was not maintainable at all. Therefore, no question about the merits of the assessment could be said to arise out of that order passed by the Judge (Revisions). If any question of law relating to the assessability could be said to arise, it could be said to arise out of the order dated 29th November, 1950, passed by the Judge (Revisions) refusing to revise the Judge (Appeals) order. Now, one application u/s 11(1) could not be filed against two orders passed u/s 10(3). Further the application not only contained a prayer for reference of the questions of law said to arise out of the revision order but also answers to the questions and the arguments in support of them. We fail to understand why the assessee asked the Judge (Revisions) to state the case to this Court when it furnished the answers to the questions sought to be referred to this Court and the reasons in support of them. An application which supplied the answer and the reasons therefore could hardly be said to be an application contemplated by Section 11(1). It was dismissed by the Judge (Revisions) and then the assessee applied to this Court, which u/s 11(3) called upon him to state the case. This Court in its order stated that two questions arose, one dealing with the effect of Article 286 of the Constitution and the other dealing with the maintainability of an application for revision of an assessment order which had been confirmed on appeal. This Court pointed out that the first question had already been referred to this Court in another sales tax reference. It is admitted that the question has been answered against the assessee by this Court in that reference. It was in compliance with this mandamus issued by this Court that the Judge (Revisions) submitted the instant statement of the case. The question formulated by him is as follows:--

Whether a revision from an assessment order is maintainable if an appeal from the same order has been filed and dismissed?

3. Sri S. D. Agarwal contended that the statement of the case is incomplete inasmuch as it does not contain any facts relating to the first question formulated by this Court in its order made u/s 11(3). It was rightly pointed out by Sri Raja Ram Agarwal that that question does not arise out of the order of the Judge (Revisions) dated 28th November, 1950. It is the case of Sri S.D. Agarwal himself that the application u/s 11(1) was directed against the order of the Judge (Revisions) dated 28th November, 1950, and neither against the other order dated 29th November, 1950, nor against both the orders taken together. As we pointed out the only question of law that could arise out of the order dated 28th November, 1950, was regarding the maintainability of the application for revision of an order confirmed on appeal. The Judge (Revisions) did not decide any other question of law by his order. He was certainly asked to decide the question of law regarding the effect of Article 286 of the Constitution but he refused to decide it on the ground that the revision application itself was not maintainable and that consequently he had no jurisdiction to decide it. We, therefore, disagree with S.D. Agarwal and hold that the statement is complete and that there is no occasion for our exercising the power conferred by Sub-section (4) of Section 11.

4. We have no doubt that the answer to the question must be in the negative. All that was urged by Sri S.D. Agarwal was that there is no prohibition on the maintainability of an application for revision of an assessment order on the ground that it has been maintained on appeal. It is not essential to have a direct prohibition against the maintainability of a revision application; a revision application which is not covered by the provisions also is not maintainable. Section 10(3) lays down that "the Revising Authority may, in its discretion...call for and examine the record of any order made...by any appellate or assessing authority, under this Act for the purpose of satisfying itself as to the legality or propriety of such order." It is only this provision by virtue of which the assessee applied to the Judge (Revisions) to revise the assessment order. The revising authority has jurisdiction over an order made by "any appellate or assessing authority". The word "or" joining "appellate authority" with "assessing authority" is capable of two interpretations and we have to choose one of them. One is that it treats "appellate authority" and "assessing authority" as equals, either of which may be availed of by the applicant for revision at his choice and the other is that they are alternatives, one to be used only when the other is not available. It is obvious that the Legislature intended the word to mean the latter and not the former and that what it meant was that the revising authority has jurisdiction over an order of an appellate authority and if such an order does not exist then over an order of the assessing authority, i.e., an order of an assessing authority is revisable only if there is no order of the appellate authority. Primarily it is an order of an appellate authority that is made revisable and an order of the assessing authority is made revisable only if no appeal has been preferred from it and consequently no order of the appellate authority has been brought into

existence. If a revision application can lie against an order of the appellate authority there is no question of the applicant's availing himself of the other alternative by seeking revision of the order of the assessing authority and the question of reading the words "or assessing" in the provision does not arise.

5. The intention that we attribute to the Legislature is supported by the well-known doctrine of merger; when an appeal from an order is decided the order merges in the appellate order and ceases to have any existence in the eye of law. An appeal is a continuation of the proceeding in the trial court and the final order passed by the appellate authority is the only final order in the whole proceeding. Therefore, when an appeal filed from an assessing authority's order is decided it is the appellate order that is in force and not the assessing authority's order and it is useless to revise the latter. It is evident that an assessing authority's order cannot be revised by a Judge (Revisions) when it has already been confirmed by the Judge (Appeals) over whose judgment he does not profess to exercise jurisdiction. No useful purpose is served by revising the assessing authority's order when the appellate order remains in tact and in force. There cannot be two contradictory orders in the same proceedings.

6. We, therefore, hold that the revision filed by the assessee against the order of the assessing authority, which had merged in the order passed by the Judge (Appeals) and did not exist, was not maintainable under the Section 10(3) and our answer to the question is in the negative.

7. Sri S.D. Agarwal raised a new point and it is that the assessment order was passed before 26th January, 1950, the date on which the Constitution came into force. The appeal was filed subsequently but was pending on 26th January, 1950. On the basis of these facts he contended that the revision application was maintainable. We fail to see the connection between the facts and the conclusion sought to be drawn by him. Whether the revision application was maintainable or not depends solely on the provision of Section 10(3). There is no other provision dealing with this question and Section 10(3) does not take into consideration the facts stated above and applies despite them.

8. We direct that copies of this judgment, under the seal of the Court and the signature of the Registrar, shall be sent to the Judge (Revisions) Sales Tax, U.P., and the Commissioner, Sales Tax, U.P., as required by Section 11(6). We further direct that the assessee shall pay to the Commissioner, Sales Tax, U. P., his costs of this reference which we assess at Rs. 200. Counsel's fee is assessed at Rs. 100.