(1986) 02 AHC CK 0034

In the Allahabad High Court

Case No : Sales Tax Revision No. 6 of 1986

Mohanlal Chedilal APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 9

Citation : (1986) 62 STC 264

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : V.N. Tandan, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.N. Misra, J.—This revision is directed against order dated 12th September, 1985, passed by the Sales Tax Tribunal, Lucknow Bench, Lucknow. By this order the second appeal filed by the revisionist has been dismissed as time-barred. Briefly stated, the facts of the case are as follows:

2. The revisionist-firm, M/s. Mohanlal Chedilal, Foodgrains Merchants, Maigalganj, Lakhimpur Kheri, which is said to have been dissolved in the month of November, 1979, was carrying on business of foodgrains. In respect of assessment year 1979-80 returns were filed by the said firm (hereinafter referred to as the assessee). The accounted version of the assessee is said to have been accepted by the Sales Tax Officer. However, the Sales Tax Officer had found that in respect of purchase worth Rs. 3,80,385.22 made through commission agent form III-C(3) was not submitted; hence he found these to be taxable in the hands of the assessee. Thus, after including the said turnover in the declared turnover by the assessee, the Sales Tax Officer determined the taxable turnover of foodgrains at Rs. 4,45,494.00 and levied tax of Rs. 17,819.76. A true copy of the assessment order dated 29th November, 1982, passed by the Sales Tax Officer, Kheri, is annexed as annexure No. 1 to this

revision. Feeling aggrieved by this order, the assessee preferred appeal No. 79 of 1983 u/s 9 of the U.P. Sales Tax Act (for short the Act). This appeal was heard and dismissed by the Assistant Commissioner (Judicial), Sales Tax, Sitapur, vide judgment and order dated 22nd October, 1983. Still feeling aggrieved by this order, the assessee-firm preferred second appeal u/s 10 of the Act before the Sales Tax Tribunal, Lucknow Bench, Lucknow. This appeal against the order dated 22nd October, 1983, was filed on 21st June, 1984. There was, thus, a delay of fifty-two days in filing the said appeal. An application for condonation of delay was moved by the assessee and along with it medical certificate was also enclosed. It was asserted that since the firm was dissolved, and as such, Sri Chedi Lal, one of the partners, who was residing at Maigalganj, District Kheri, was doing Pairvi of the case. He could not prefer appeal as he was confined to bed being chronic case of tuberculosis. It was stated that he was under treatment of a local doctor at Maigalganj from 20th April, 1984, to 18th June, 1984. The Tribunal did not accept said application and held that medical certificate dated 18th June, 1984, does not inspire confidence, and, as such, refused to condone the delay and dismissed the appeal as time-barred. This order has been challenged in this revision.

3. I have heard learned counsel for the revisionist, Sri V.N. Tandan and the learned standing counsel appearing for the opposite party.

4. It has been urged by the learned counsel for the revisionist that after dissolution of the firm Sri Chedi Lal was looking after this case. He had fallen ill and was confined to bed being chronic patient of tuberculosis. He could not move about and was treated by a local doctor at Maigalganj, District Kheri. Learned counsel further urged that no counter-affidavit was filed on behalf of the department to controvert the facts alleged in the application, and, as such, the Tribunal, in the absence of any evidence to the contrary, erred in rejecting the medical certificate filed by Sri Chedi Lal. It was urged that in the absence of anything contrary on the record, the learned members of the Tribunal should have condoned the delay and decided the appeal on merits, instead of rejecting it as time-barred on mere conjecture and surmises while rejecting the medical certificate.

5. In reply learned standing counsel urged that the delay in filing the appeal could not be condoned unless sufficient cause was shown explaining the delay in presenting the appeal. Learned counsel urged that since the medical certificate did not inspire confidence for reasons indicated in the order, and, as such, the Tribunal cannot be said to have committed any error in not condoning the delay.

6. I have carefully perused the impugned order passed by the Tribunal and to me it appears that when no counter-affidavit was filed controverting the facts stated in the affidavit accompanying the application for condonation of delay the learned members of the Tribunal could not reject the medical certificate filed by the assessee. There was also nothing on record to disbelieve the affidavit filed by Sri Chedi Lal wherein he had stated that he was suffering from fever and weakness

and was under treatment of local doctor at Maigalganj, District Kheri. There was nothing on record to controvert the fact that Sri Chedi Lal was not a chronic patient of tuberculosis. The medical certificate has been rejected merely on the ground that at the end of the certificate, it has been written in different ink that the patient was under treatment of the doctor during the period from 20th April, 1984, to 18th June, 1984. The said writing in the certificate with different pen and ink could alone be not a ground for rejecting the medical certificate. The said writing with different pen cannot mean that it was added subsequently at a later date and not at the time when the medical certificate was issued by the doctor. Sometimes it so happens that the ink of the pen gets exhausted and some other pen is used for completing rest of the writing.. Thus, writing in different pens in the said medical certificate could not be a ground for saying that it does not inspire confidence as there was no evidence in rebuttal to doubt the genuineness of the medical certificate issued by the physician attending Sri Chedi Lal, the same could not be rejected as has been done by the Tribunal.

7. It is well-settled that the words "sufficient cause" should receive liberal construction so as to advance substantial justice (see Dinbandhu Sahu v. Jadu-moni Mangaraj AIR 1954 SC 411). In Ramji Dass v. Mohan Singh 1978 All. R C 496 (1) (SC), it was observed by the Honourable Supreme Court that "court''s discretion should be exercised in favour of hearing and not to shut out hearing".

8. Thus, in view of the above I find that the Tribunal has erred in not condoning the delay in filing the appeal especially when no lack of bona fides on the part of the revisionist could be attributed in presenting the appeal. In my opinion, sufficient cause was shown in not preferring the appeal within limitation as after dissolution of the firm, Sri Chedi Lal alone was looking after the case and he could not prefer the appeal as he was confined to bed being chronic patient of tuberculosis and was advised complete rest.

9. In the result, this revision succeeds and is hereby allowed and the order dated 12th September, 1985, passed by the Sales Tax Tribunal, Lucknow Bench, Lucknow, is set aside and the Tribunal is directed to restore the revision and decide it on merits treating the delay to be condoned. No order as to costs.