(1986) 02 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 355 of 1985

Munni Lal Vinod Kumar APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:
Allahabad High Court Rules, 1952 — Rule 2

Citation : (1987) 65 STC 13

Hon'ble Judges : A.P. Misra, J;A. Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A. Banerji, J.—We propose to dispose of this writ petition at the admission stage, as parties have filed counter and rejoinder affidavits and final orders at this stage would advance the cause of justice and not hold up proceedings indefinitely before the sales tax authority. Since no other party than the State is contesting this petition we can pass final orders in this case at this stage, under the provisions of Chapter XXII, Rule 2 of the Rules of the Court.

2. The petitioner-firm, a registered dealer, deals in grains, tilhan rice, mahuwa flowers, etc. For the year 1981-82 the petitioner claimed exemption of tax in the return re. mahuwa flowers, as it was exempted from sales tax vide notification dated 7th September, 1981. This was allowed by the Sales Tax Officer, Sector 3, Gorakhpur, respondent. The petitioner, however, appealed to the Appellate Commissioner, on other matters, including the enhanced turnover assessed by the respondent-Sales Tax Officer. The petitioner has stated that the appeal was allowed and the respondent was directed to decide the matters in appeal afresh keeping in view the observations made in the appellate order. The petitioner further states that by a notification dated 31st January, 1976, sale of mahuwa flower was made taxable. However by a subsequent notification dated 7th September, 1981, it was laid down that the sale and purchase of mahuwa flowers, seed, etc., was not liable to tax. The Sales Tax Officer during the Course

of hearing the case for the year 1918-82. issued a show cause notice the petitioner, as to why sales tax be not imposed on the petitioner in respect of the sale of mahuwa flowers for the year 1981-82.

3. In this notice reference was made to an order passed b Commissioner of Sales Tax, dated 29th May, 1984 in a sales tax revision, of some other party, where it was held that the sale of mahuwa flowers was liable to sales tax, The petitioner has some other party, where it was held that the sale of mahuwa flowers was liable to sales tax. The petitioner has come to this Court praying that the proceedings in regard to the show cause notice be quashed as it is wholly without jurisdiction.

4. One behalf of the respondent, the standis that the order of assessment made by the sales tax Offer dated 14th April, 1983, having been set aside by the Assistant Commissioner (Judicial) by his order dated 30th October, 1984, there was no bar for the Sales Tax officer to issue show cause notice re. The imposition of tax on the sale of mahuwa flower. Hence the proceedings on a show cause notice were not without jurisdiction. It was also urged that all that the petitioner contends in this petition can also be said in reply to the show cause notice and the matter can be argued before the Sales Tax Officer and the writ petition was not maintainable in this Court.

5. We have heard learned counsel for the parties. We find the following facts to be beyond dispute. The Sales Tax Officer gave benefit of the notification dated 7th September, 1981, to the petitioner in the matter of sale of mahuwa flowers and held the same to be exempted from sales tax. There was no appeal against this part of the order. There is nothing in the appellate order indicating that this part was also challenged or set aside. Admittedly, the appeal pertained to the question of turnover and exclusion of some evidence, re. Books of accounts. This part of the order of the Sales Tax Officer was set aside and the case sent back to the Sales Tax Officer with certain observations for a fresh assessment. The show cause notice dated 30th April, 1985, gives two reasons: there was a turnover by sale of mahuwa flowers for the period 7th September, 1981, to 31st March, 1982, to the extent of Rs. 15, 37, 870.03, for which there was no proof of payment of tax and secondly, the Commissioner of Sales Tax by an order dated 29th May, 1984, u/s 35 of the Act had held that sale of mahuwa flower was taxable.

6. Firstly, having held that the sale of mahuwa flowers was not liable to tax from 7th September, 1981, it was not open to the Sales Tax Officer to issue a show case notice to the petitioner, for the period 7th September, 1981, to 31st March, 1982, unless reference could be made to the setting aside of the above order allowing exemption. If there was a subsequent decision by the Commissioner of Sales Tax in a revision of some other dealer would not be relevant for the purposes of this case. Reference may be made to the provision of Sub-section (3) of Section 35 of the Act, which specifically states that no decision of the Commissioner of Salex Tax u/s 35 shall affect the validity or operation of any

order passed earlier by any assessing, appellate or revising authority for the Tribunal. Consequently, the show cause notice could not be issued on the basis of Commissioner''s decision on the taxability of mahuwa flowers in the revision application of some other dealer. As seen above, the Commissioner of Sales Tax Tax did not file any appeal against the assessment order of the Sales Tax Officer dated 14th April, 1983, it did not challenge the order granting exemption. That order became final. Consequently, it was not within the competence of the Sales Tax Officer to re-adjudicate on the mater upon remand. In this case the order of remand neither gives any direction nor any observation regarding the taxability of mahuwa flowers with effect from 7th September, 1981, to 31st March, 1982. Hence, it could not be a subject-matter of a show cause notice to the petitioner for the assessment year in question.

7. It is thus apparent from the above that the Sales Tax Officer had no jurisdiction to issue a show cause notice to the petitioner in the present case on the two grounds taken in the notice dated 30th April, 1982, annexure 5 to the writ petition. Since the show cause notice was without jurisdiction any proceedings to be commenced upon such a notice would also be illegal and abuse of the process of law. For the above reasons the write petition must succeed and is allowed. The impugned show cause notice dated 30th April, 1985, is quashed. The Sales Tax Officer is directed to proceed with the case before him upon remand in accordance with law. Costs will be easy in this case.

