(1977) 10 AHC CK 0036

In the Allahabad High Court

Case No : C.M.W. No. 454 of 1977

NATIONAL OVERSEAS CORPN. — APPELLANT

Vs

ADDL. JUDGE (REVISIONS) and Another — RESPONDENT

Date of Decision : 10-10-1977

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 10(4)

Citation : (1978) 7 CTR 18

Hon'ble Judges : C. S. P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C. S. P. Singh, J. - The petitioner has filed the present petition challenging the order of the Additional Judge (Revisions) on a stay application, by which he directed that fifty per cent. of the tax shall remain stayed. Counsel contended that such a condition could not be imposed. S. 10(4) of the U.P. Sales Tax Act may be referred in order to appreciate this contention. This provision runs as under :-

"10(4) REVISION - The Revising Authority or any Additional Revising Authority, on an application of the dealer, may after giving the Commissioner of Sales Tax an opportunity of being heard, stay the realization of any amount of tax fee or penalty payable by him under an order against which an appeal or revision is pending :

Provided that no such application shall be entertained unless the dealer has furnished satisfactory proof of the payment of not less than one third of the disputed amount of tax, fee or penalty in addition to the amount of tax or fee required to be deposited by him under S. 9 :

Provided further that the Revising Authority or Additional Revising Authority, as the case may be, may, for special and adequate reason to be recorded in writing, waive or relax the requirements of the preceding proviso in respect of the disputed amount of tax, fee or penalty :

Provided also that no stay order under this sub-section shall remain in force for more than sixty days after the making thereof unless in the meantime the applicant has furnished security to the satisfaction of the assessing authority for payment of the amount the realisation whereof has been stayed."

It is apparent that the power of staying the realisation of the tax is to be found in the first part of this sub-section. In exercise of this power, the revising authority can stay realisation of "any amount of tax fee etc. This means that the revising authority can either stay the realisation of the entire amount of disputed tax or a part thereof. The word "any" is clearly indicative of this result. Thus the revising authority committed no error of law, and did not act without jurisdiction in directing stay of only 50% of the tax. Counsel also contended that as the revising authority had waived the deposit required of a dealer under the first proviso to S. 10(4) of the Act, it was inconsistent on his part to have passed an order directing stay of only fifty per cent of the disputed tax. We are unable to accept this contention.

2. So far as the power of waiver is concerned, that is contained in second proviso. This proviso is addressed to the deposit that has to be made by the dealer before his stay application can be entertained. But for an order under the second proviso, the stay application cannot be entertained till one third of the disputed amount is deposited by the dealer. This, however, does not lead to the result that as soon as an order is passed under the first proviso it is incumbent on the Judge (Revisions) to stay the entire tax. It may be that while considering the amount of tax to be stayed under the first part, the Judge (Revisions) may take into account the circumstances that weighed with him while waiving the deposit, and in certain circumstances it may be inconsistent on his part to pass an order refusing to grant any stay at all. Such however, is not the case here, as a portion of the tax has been stayed. Thus, there is no inconsistency or invalidity in the order passed by the Revising Authority.

The petition fails and is dismissed.

