(1985) 01 AHC CK 0018

In the Allahabad High Court

Case No : S.T.R. No. 376 of 1984

Padam Chand — APPELLANT

Vs

Commissioner of Sales Tax — RESPONDENT

Date of Decision : 31-01-1985

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1986) 62 STC 195

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This revision has been filed by the assessee u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as the Act) against the order passed by the Sales Tax Tribunal, Aligarh, dated 28th August, 1984, relating to the assessment year 1981-82.

2. The assessee carries on the business of bhang and is a licensed dealer. The assessee had not maintained any cash book or ledger as according to it most of the sales of bhang were below Rs. 5 and it disclosed its sales at Rs. 1,222.80. However, the Sales Tax Officer enhanced the turnover of the assessee and did not accept the disclosed turnover of the assessee and estimated the total turnover at Rs. 65,000 and imposed Rs. 7,800 as sales tax. The assessee feeling aggrieved against the aforesaid order preferred an appeal before the Assistant Commissioner (Judicial) and the Assistant Commissioner (Judicial) confirmed the order of the assessing authority. The assessee feeling aggrieved filed a second appeal before the Sales Tax Tribunal and the Tribunal by its order reduced the turnover. The assessee has come to this Court against the said order in the instant revision.

3. Learned counsel for the assessee has contended that one of the vital and legal

questions raised by the assessee before the Tribunal and the Assistant Commissioner (Judicial) in its appeal was not considered. Copy of the ground of appeal has been filed by the assessee as annexure 2 to this revision and in the said memo ground No. 4 reads as under:

Because while completing the assessment order affidavit filed had been ignored without any valid grounds and the rejection of the turnover without issuing mandatory show cause notice and the Additional Commissioner (Judicial) has ignored these arguments.

4. The counsel has drawn my attention to Rule 41(7), proviso (2), which reads as under :

Provided further that, before determining the turnover of the dealer to the best of his judgment, the Sales Tax Officer shall cause a notice to be served on the dealer, stating the reasons for non-acceptance of the turnover of sales or of purchases or both, as disclosed in the returns, if any, submitted by him, and shall give him a reasonable opportunity of furnishing his reply thereto.

5. The reading of the language of Rule 41(7), proviso (2), clearly indicates that if the turnover disclosed by an assessee is not acceptable to the assessing authority the assessing authority has to issue a notice to that dealer stating the reasons for non-acceptance of the turnover of sales or purchases or both before determining the turnover of the dealer to the best of his judgment. The non-issuance of notice by the assessing authority as contemplated by this proviso will result in vitiating the best judgment assessment. The intention of the rule-making authority was that the assessee must be informed the reasons or the grounds for non-acceptance of the turnover of sales and purchases of the assessee before the best judgment assessment is passed. In the instant case it has not been disputed by the parties that no notice as contemplated under Rule 41(7), proviso (2), was issued to the assessee before fixing its annual turnover. The bare reading of the language of the rules also makes it clear that the provision for issuing a show cause notice in cases where best judgment assessment has to be passed by the assessing authority is mandatory. Since in the instant case no notice was issued to the assessee before determining the turnover the assessment order cannot be maintained. In view of the aforesaid fact it appears expedient that the order of the Tribunal as well as the Assistant Commissioner (Judicial) should be set aside and the matter should be sent back to the Sales Tax Officer for making fresh assessment after complying with the requirement of Rule 41(7), proviso (2).

6. In the result, the revision succeeds and is allowed and the order passed by the authorities below are quashed and the matter is sent back to the Sales Tax Officer with a direction to pass fresh assessment order in the light of the observations made above. Let a copy of this order may be sent to the Sales Tax Officer concerned as contemplated u/s 11(8) of the Act. The parties shall bear their own costs.