
(2006) 03 UK CK 0013
In the Uttarakhand High Court
Case No : S.T.R. No. 118 of 2003

Parvatiya Sahkari Bhesaj Vikas Evam Kraya Vikraya Samiti
Sangh Ltd.

APPELLANT

Vs

The Commissioner of Sales Tax

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 22

Citation : (2006) 03 UK CK 0013

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; Pitamber Maulekhi, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. This revision, filed u/s 11 of U.P. Sales Tax Act, 1948, is directed against the order dated 29-09-1992, passed on application, moved u/s 22 of the said Act, before the Sales Tax Tribunal, Bench Haldwani, whereby the application was rejected.

3. Brief facts of the case are that revisionist is an agency, which was collecting herbs from the region under the Forest Department. The matter pertains to the assessment year 1986-87. The question of law involved in this revision is as under:

1. Whether the Sales Tax Tribunal erred in law in dismissing the application of the Assessee u/s 22 of the Act, ignoring the fact that the case of the revisionist was similar to that of Kumaun Mandal Vikas Nigam - another Assessee and further ignoring the fact that the tax in respect of the collected herbs had already been realized from Divisional Forest Officer, Pithoragarh?

4. The impugned order shows that the application was rejected on the ground that the mistake alleged in the application is beyond the scope of Section 22 of the U.P. Sales Tax Act, 1948. Section 22 of U.P. Sales Tax Act, 1948, reads as under:

22. Rectification of mistake - (1) Any officer or authority or the Tribunal or the High Court may on its own motion or on the application of the dealer or any other interested person rectify any mistake in any order passed by him or it under this Act apparent on the record within three years from the date of the order sought to be rectified.

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period:

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2) Where such rectification has the effect of enhancing the assessment, the assessing authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the Rules framed thereunder shall apply as if such notice had been served in the first instance.

5. Aforesaid provision only permits to rectify the mistake if it is apparent on the record. However, it does not say that which mistakes are under the ambit of the said Section and which are beyond it. In view of the principle of law laid down in *Daulat Ram v. Commissioner of Sales Tax* 1981 U.P.T.C. 1013, *Commissioner of Sales Tax v. S/S Jain Sons Rubber* 1989 U.P.T.C. 377 *Capor Sons v. Commissioner Sales Tax* 1991 U.P.T.C. 1038 and *Subhas Chandra Paul v. State of Tripura* 1991 STC 82 Pg. 13, it is clear that there is no bar to entertain application to correct clerical omissions or to rectify error of law. Even error of fact, if it is apparent on the face of the record and material to the case, in the opinion of the concerned authority, can be rectified u/s 22 of U.P. Sales Tax Act, 1948.

6. In para-4 and para-5 of the revision, the revisionist has alleged that Divisional Forest Officer, Pithoragarh, was assessed to tax on the herbs by the Assessing Authority for the same assessment year 1986-87 and no tax can be imposed on the Applicant in respect of the same again. He has also alleged that on the similar circumstances, Kumaon Mandal Vikas Nigam was exonerated from the liability to pay tax. The impugned order shows that the said mistake was brought to the notice of the tribunal for being rectified. But tribunal has rejected it only on the ground that it is beyond the scope of Section 22 of U.P. Sales Tax Act, 1948. As discussed above, the view taken by the tribunal cannot be sustained in the eyes of law and if the ground as to the double taxation, raised by the Assessee was ignored by the tribunal and not answered after it is brought to the

notice by filing application u/s 22, the same can be rectified if the tribunal comes to the conclusion that due to the mistake that ground of the dealer was not considered while disposing of the second appeal.

7. In the above circumstances and for the reasons as discussed above, the revision is allowed and the impugned order dated 29-09-1992, passed in Misc. Case No. 13 of 1992 is set aside. The tribunal is directed to pass the order afresh on the application moved u/s 22 by the Assessee regarding rectification of mistake if any (in the order dated 24-12-1991 passed in Second Appeal No. 104 of 1991 Assessment year 1986-87).