

(1987) 07 AHC CK 0035
In the Allahabad High Court
Case No : Sales Tax Revision No. 672 of 1986

Pyarelal Hari Dass

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1988) 69 STC 183

Hon'ble Judges : R.K. Gulati, J

Bench : Single Bench

Advocate : R. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This sales tax revision u/s 11 of the U. P. Sales Tax Act" (hereinafter to be referred as "the Act") is directed against an order dated 29th January, 1986 passed by the Sales Tax Tribunal, Meerut Bench.

2. The only question raised in this revision is whether, on the facts and circumstances of the case, the Tribunal was right in remanding the case of the applicant to the assessing authority to make a fresh assessment ?

3. The assessee runs a brick kiln. For the assessment year 1982-83, its account books were rejected by the Sales Tax Officer and it was assessed to tax on an estimated turnover of Rs. 1,78,120 against the disclosed turnover of Rs. 55,400. On appeal the Assistant Commissioner, Sales Tax (Judicial), accepted the book version of the assessee. Being aggrieved, the Revenue took the matter further in appeal before the Sales Tax Tribunal. On consideration of the assessment order and that of the first appellate authority the Sales Tax Tribunal came to the conclusion that orders of both the lower authorities were liable to be set aside. The assessing authority was directed to make a further enquiry and thereafter pass a fresh assessment order.

4. The Tribunal has taken the view that the assessing officer as well as the

Assistant Commissioner (Judicial) have passed their respective orders without making proper investigation which was necessary in the case. The average selling rates of bricks as per assessee's accounts worked out to Rs. 177 per thousand. It appears, that before the first appellate authority, some sort of chart was filed by the assessee which was not there before the assessing officer. No opportunity was afforded to the assessing officer to verify the correctness of that chart. At the assessment stage no details giving classwise bricks sold, namely, first class, second class and of their categories were filed by the assessee nor any such details were obtained by the assessing officer. The appellate authority itself did not go into the question as to how much classwise stock was held by the assessee as opening and closing stock of bricks. In the immediately preceding year, i.e., 1981-82, the assessee had himself shown Rs. 222 as an average selling rate per thousand bricks. The Tribunal has observed that during the year at the place where the assessee carried on its business the average selling rate was between Rs. 240 to Rs. 260. It has referred to a comparable case of that place where the Tribunal itself confirmed a rate of Rs. 330 for the year in dispute. The Tribunal also observed that without making any proper enquiry, the assessee's book version has been accepted by the Assistant Commissioner (Judicial). In these circumstances, the Tribunal took the view that it was necessary for the lower authorities to enquire as to how much bricks of the first, second and of other categories were sold by the assessee during the year. It held, as the average selling rate shown by the assessee was lower than the preceding year it was obvious that more bricks of inferior categories must have been sold during the year. From this it followed that the closing stock of the assessee should contain more bricks of better category in proportion to inferior categories, but no such enquiry was conducted nor these points were taken into consideration. Thus the Tribunal held that without such enquiry the selling rate shown by the assessee could not have been accepted.

5. Apart from what has been stated above, the Tribunal also pointed out another discrepancy in the assessee's account books which had been left uninvestigated. The assessee's business premises were surveyed on 29th November, 1982, when the assessee was found to be in possession of 3,50,000 bricks. According to the assessee as opening stock of the year it possessed 6,80,000 bricks. Upto December, 1982 (as per figures in the order of the first appellate authority), 1,61,000 bricks were sold. Deducting the sale figures from the opening stock the assessee should have over 6,00,000 of bricks on the date of survey whereas the number of bricks found was 3,50,000 only.

6. For the reasons stated above and those contained in the order of the Sales Tax Tribunal, the assessment was set aside by the Tribunal with a direction that it be made afresh by the assessing officer after proper investigation.

7. Section 10 of the Act deals amongst others with the power of the Sales Tax Appellate Tribunal and the nature of orders which it can pass. Sub-section (5) of Section 10 as it stood on the date when the Sales Tax Appellate Tribunal passed

its order in so far as it is relevant for the purpose of this case was to the following effect:

The Tribunal may, if it has not already dismissed the appeal under Sub-section (4), after calling for and examining the relevant records, and after giving the parties a reasonable opportunity of being heard or as the case may be,...

(a) confirm, cancel or vary such order, or

(b) set aside the order and direct the assessing or appellate or revising authority...as the case may be, to pass a fresh order, after such further inquiry, if any, as may be specified, or

(c) ...

Explanation.-The power to vary an order referred to in Clause (a) includes the power to vary the order by reducing or enhancing the amount of assessment or penalty.

8. A scrutiny of the aforesaid provisions will show that it empowers the Sales Tax Tribunal to set aside an order and direct the assessing authority to pass a fresh order after such enquiry in the light of the directions issued by it. An order of remand implies setting aside of an order. It is settled law that an appellate authority which exercises a quasi-judicial function while exercising the power of remand cannot act according to its whim or humour but such power must be exercised in accordance with sound judicial principles. It is true that the power of remand should be used sparingly. If after examination of the material placed on record by way of evidence the Tribunal comes to a definite finding that it is not possible for it to make a just order on the appeal without the assistance of further evidence it may direct the assessing officer while setting aside the order to conduct or make such enquiry. It cannot be disputed that under the Act the Sales Tax Tribunal has been constituted as the final fact finding authority for the purpose of adjudicating upon the rights and liabilities between the assessee and the Revenue. It is at liberty to remand a case to the assessing officer if the interest of justice so requires. The exercise of the power of remand will be well within the limits of the Appellate Tribunal when the record of the case does not enable the Tribunal to determine the rights of the parties or if the assessing officer has omitted to record a specific finding on a material issue of fact or such finding had been recorded but it excludes material evidence relevant to the issue.

9. On the findings recorded in the instant case, it is clear that after considering the material which had been brought on record in the order of the assessing officer or in the order of the first appellate authority the Tribunal has come to a conclusion that the orders passed by both the authorities were erroneous and their findings were based on insufficient material.

10. In these circumstances in my opinion no valid objection can be taken when the Tribunal thought that orders passed by the lower authorities are not liable to be sustained unless further investigation was made on the lines suggested by it.

On a careful consideration of facts set out in the order of the Sales Tax Tribunal, I see no justification to interfere with it. It is so even assuming that an alternative view or other views might exist. The Tribunal in my opinion took a balanced view, rather favourable to the assessee by setting aside the assessment and sending it back to the assessing officer for fresh assessment where the assessee will have full opportunity to contend its case. The order of remand has been passed for good and sufficient reasons. I do not see any illegality in the order passed by the Tribunal.

11. In the result this revision fails and is dismissed. There shall be no order as to costs.