
(1978) 08 AHC CK 0065
In the Allahabad High Court
Case No : S.T.R. No. 476 of 1976

Ram Saran Dauji

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 01-08-1978

Acts Referred:

Citation : (1979) 43 STC 292

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

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S.P. Singh, J.—After having heard counsel for the parties, I am satisfied that the question referred should be reframed as under :

Whether, on the facts and in the circumstances of the case, the cheque drawn by the assessee in favour of the department would be treated as valid payment of the amount of admitted tax due on the date of filing of the appeal ?

2. An ex pane assessment order was made against the assessee determining his turnover at Rs. 9,50,000 and imposing a tax of Rs. 19,700. The assessee filed an appeal before the Assistant Commissioner. The appeal was presented on the last day of limitation and, along with the appeal, the assessee enclosed a cheque for an amount of Rs. 770, which admittedly covered all the arrears of admitted tax outstanding against the assessee. The cheque was presented at the bank but was dishonoured. The reference application filed by the assessee is supported by an affidavit; it was stated in paragraph 3 of the affidavit that the cheque was dishonoured not on account of any fault of the assessee but on account of the fact that the Sales Tax Officer had made a wrong endorsement on the cheque. No counter-affidavit appears to have been filed in reply to this affidavit and, as such, it may be taken that the averment made in the affidavit is correct.

Unfortunately, the Judge (Revisions) has not set out the circumstances in which the cheque came to be dishonoured. In case the cheque was dishonoured on account of any fault of the assessee, the payment made by the cheque would not discharge the admitted tax liability. In case the cheque was dishonoured on account of faulty endorsement by the Sales Tax Officer, the appeal could not have been dismissed on the ground that the assessee had not paid the admitted tax. Rule 48 of the Rules permits payment by cheque. Thus a cheque given to the Sales Tax Officer on encashment discharges the tax liability of an assessee. When payment is received by cheque, receipt is taken to be at the time when the cheque is delivered, and not when it is cashed. This is true even when a cheque is accepted conditionally in the first instance, provided that it is not dishonoured subsequently on presentation (see COMMISSIONER OF Income Tax, BOMBAY SOUTH, BOMBAY Vs. OGALE GLASS WORKS LTD., , Commr. of Income Tax, Bombay South, Bombay Vs. Kirloskar Bros. Ltd., , Jagdish Mills Ltd. Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad, , Azamjahi Mills Ltd., Hyderabad Vs. The Commissioner of Income Tax, Hyderabad, . This being so, the cheque given by the assessee amounted to payment of tax when it was handed over to the appellate authority. Any fault of the assessing authority in endorsing the cheque cannot be made a ground for penalising the assessee by dismissing the appeal. However, as there is no clear finding as to whether the cheque was dishonoured on account of any mistake of the assessee or of the department, the Judge (Revisions) was in error in holding that the appeal was liable to be dismissed for non-payment of the admitted tax. In case the cheque was dishonoured on account of faulty endorsement by the Sales Tax Officer, the assessee having given the cheque within time, he was, in law, deemed to have deposited the admitted tax at the time of filing the appeal.

3. The question is answered by saying that the cheque drawn by the assessee should be treated as valid payment of the admitted tax in case it was dishonoured on account of any mistake on the part of the department, but not otherwise. In the circumstances of the case, there is no order as to costs.