(1987) 08 AHC CK 0043

In the Allahabad High Court

Case No : Sales Tax Revision No. 1025 of 1986

Ramesh Chandra Brick Kiln Owner APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 14-08-1987

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 3

Citation : (1988) 69 STC 52

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : K.N. Kumar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

Om Prakash, J.—Raising a very short but interesting question this revision is filed by the dealer carrying on business of brick kiln for the assessment year 1980-81, against the Tribunal''s order dated 11th August, 1986.

2. Briefly, the facts are that the assessee carried on business of brick kiln up to 10th June, 1980 and then started a new kiln on a different location on 25th March, 1981. The Sales Tax Officer made a single assessment in regard to the turnover of both the businesses. The assessee is the proprietary concern. The contention of the assessee was that the turnover of two separate businesses should have been assessed separately- under two assessment orders and the Sales Tax Officer erred in having clubbed the turnover of the two separate businesses. The contention of the assessee having not been accepted by the Tribunal, the assessee has come up in revision. The short question for consideration is whether on the facts and circumstances of the case, the turnover of the two kilns belonging to the assessee, deserves to be assessed under two separate assessment orders and whether the Sales Tax Officer was right in having made a single assessment in respect of the aggregate turnover of the two kilns of the assessee.

3. Section 3 of the U. P. Sales Tax Act, 1948 (for short "the Act, 1948") which is a charging section, states that subject to the provisions of this Act every dealer shall for each assessment year pay a tax at the rates provided under the Act on his turnover of sales or purchases or both as the case may be, which are determined in such manner as may be prescribed. From the charging section, it clearly appears that a dealer is to be assessed in respect of his aggregate turnover of an assessment year.

4. Sri K. N. Kumar, learned counsel for the assessee, urges that there are two distinct businesses in this case, inasmuch as two separate kilns in two different periods at different location were being carried on by the assessee during the assessment year. In short, he says that for each business, dealer is separate. The assessee is a proprietary concern; it means he is an individual in flesh and blood. The question is whether the assessee who is an individual, can be treated as a separate dealer for each business. In the case of an individual assessee, it is inconceivable that he would become a separate dealer for separate business being carried on in a single assessment year. The argument of Sri Kumar comes to this: each separate business carried on by an individual during a single assessment year gives birth to a new dealer. This submission has no force. The question is whether there is any change in the dealer when he commences a new business during an assessment-year. There being no change in the individual and change being only in the business. It cannot be said that a new dealer comes into being when an individual starts different businesses in different periods of a single assessment year. The scheme of the Act is that a dealer has to be assessed in respect of his aggregate turnover. So the turnover may be of several businesses, but so long as there is no change in the identity of dealer, the turnover of all the businesses will have to be clubbed in a single assessment made for a given assessment year. The Act does not contemplate a situation that the same dealer will be assessed separately for each business carried on in a single assessment year. The assessment is not made for the turnover of a single business but the assessment is in respect of the aggregate turnover of the assessment year of a dealer. The assessee being individual and he having not been converted into any separate assessable entity for example a firm, a joint family, a company, etc., the obvious result is that there was no change in the entity of the assessee and it is he who carried on the two separate kilns in a single assessment year in two different periods. Simply because the second kiln was started with a gap during the year, two separate assessments on the same assessee are not warranted.

5. Sri Kumar then drew my attention to Section 18 of the Act, 1948. This section is not an exception to Section 3 or to the broad scheme of the Act which enjoins upon the assessing authority to assess the aggregate turnover of a dealer of an assessment year. Section 18(1) and (2) simply state that if a business is discontinued or commences during the year then the dealer is enjoined to give a notice of discontinuation and commencement of the business in the circumstances, as stated under the two subsections of Section 18, it does not

permit two separate assessments for the two businesses on one and the same dealer.

6. For the reasons, the order of the Tribunal affirming the single assessment made by the assessing authority in regard to the turnover of two kilns is upheld.

7. The second contention of Sri Kumar is that the authorities below erred in having enhanced the sale rate. Whereas, the assessee applied the rate of Rs. 105 per 1,000 bricks, the assessing officer taking the sale rate of first quality at Rs. 200 in the second season, took the average rate of Rs. 150. The appellate authority reduced the same to Rs. 130. The submission of Sri Kumar is that the assessing officer wrongly referred to the rate of Rs. 200. He urges that the assessee showed the average rate at Rs. 105 only and in support of that he adduced evidence also. This contention requires reconsideration. The question is as to what is the basis of the rate of Rs. 200 which the assessing officer took into consideration for taking the average rate of Rs. 150 per 1,000. The other question is as to how the sole instance of Rs. 105 for which the evidence was adduced by the assessee, is not relevant for the case of the assessee.

8. In the result, the revision is partly allowed. The case is sent back to the Tribunal on a limited point of sale rate with a direction that it will record a clear finding as to what is the basis of the rate of Rs. 200 which was considered to arrive at the average rate of Rs. 150 per 1,000 bricks. Thereafter, the case will be decided afresh considering the evidence of the assessee adduced on the point of rate according to law. No order as to costs.