
(1971) 09 AHC CK 0026

In the Allahabad High Court

Case No : Sales Tax Reference No's. 118 and 119 of 1970

Ramnath Dubey

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 03-09-1971

Acts Referred:

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

Citation : (1972) 29 STC 130

Hon'ble Judges : S.N. Dwivedi, J; R.L. Gulati, J

Bench : Division Bench

Advocate : P.N. Pachauri, J.P. Bajpai, R.R. Misra and N.S. Chaudhary, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—This is a reference u/s 11(1) of the U.P. Sales Tax Act.

2. The assessee is a manufacturer and dealer in bricks. He disclosed his turnover for the assessment year 1961-62 at Rs. 1,00,535.15 and Rs. 73,938.39 for the assessment year 1963-64. He deposited tax on this turnover at the rate of 2 per cent, which was the rate of tax prescribed under the charging Section 3. The Sales Tax Officer did not accept the returns of the assessee and estimated the turnover for the two years at Rs. 1,51,000 and Rs. 1,17,000 respectively. He levied tax at the rate of 6 per cent, on the turnover for the year 1961-62 and at the rate of 7 per cent, on the turnover for the year 1963-64. It may be mentioned here that brick is a commodity which is taxable u/s 3-A of the U. P. Sales Tax Act and according to the notifications issued under that section the rate of tax on the turnover of bricks was 6 per cent, during the year 1962-63 (sic) and 7 per cent, during the year 1963-64. The assessee was aggrieved and he filed two appeals without depositing any further tax. A preliminary objection, was taken at the time the appeals came up for hearing that the appeals were incompetent because the assessee had failed to deposit the admitted tax as required by the first proviso to Section 9 of the Act. The assessee's contention

that the bricks are a commodity which is not taxable u/s 3-A and the tax is leviable under the charging section was overruled and the appeals were dismissed as incompetent. The assessee went up in revision and contended that he had deposited the tax which he had admitted to be due and it was not necessary for him to deposit the tax as eventually calculated by the Sales Tax Officer, because he had disputed the legality of the notifications under which the enhanced rate of tax was fixed on the turnover of bricks. His further contention was that as he had disputed the jurisdiction of the Sales Tax Officer, who made the assessment, he was under no liability to pay any tax at all before filing the appeals. These contentions have been rejected by the Judge (Revisions). The assessee has asked for a reference and the revising authority has submitted the statement of the case and has invited the opinion of this court on the following questions of law :

(1) Whether in the circumstances of the cases has it rightly been held by the Additional Judge (Revisions) Sales Tax, Agra, that the appeals were rightly dismissed as non-entertainable for want of payment of the admitted tax at the prescribed rate of 7 per cent. ?

(2) Whether in view of the grounds taken in appeal as well as in revision that the Sales Tax Officer had no jurisdiction to make the assessments, which were subject-matter of dispute, was the Additional Judge (Revisions) Sales Tax justified in holding that even then the admitted tax ought to have been deposited at the prescribed rate of 7 per cent. ?

(3) Whether in view of the point about the jurisdiction taken by the applicant the admission of tax at 2 per cent, was not a superfluous admission on his part and has such admission been rightly read against him ?

(4) Whether in the circumstances of the case the principle of law laid down by the Honourable High Court in the case of Kanpur Vanaspati Stores v. Commissioner, Sales Tax, U.P. [1969] 23 S.T.C. 62(UP) has correctly been interpreted ?

3. After having heard the learned counsel we are of opinion that the questions have not been properly framed. In our opinion, only three questions arise. The first question is as to whether the admitted tax should be the amount calculated on the admitted turnover at the rate of 2 per cent, as contended for the assessee or it should be at 6 per cent, for the year 1961-62 and 7 per cent, for the year 1963-64. The second question would be as to whether the assessee had paid the admitted tax so as to fulfill the requirement of the first proviso to Section 9 of the Act. The last question would be as to whether on the facts and in the circumstances of the case the assessee was absolved from the payment of any tax for the purpose of the first proviso to Section 9 merely because he had challenged the jurisdiction of the Sales Tax Officer in the memorandum of appeals. We accordingly reframe the questions as indicated above and proceed to answer them.

4. Section 9 of the U.P. Sales Tax Act gives a right of appeal to an assessee who is aggrieved against an assessment order. The first proviso to that section reads as under :

Provided that no appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax admitted by the appellant to be due, or of such installments thereof as may have become payable.

5. It is thus clear that before an appeal can be entertained u/s 9, the assessee must adduce evidence of the payment of the admitted tax. The assessee had admitted certain turnover in his returns. Obviously the amount of tax payable by him would be calculated with reference to the turnover so shown in the return. But the question is as to what is the rate at which the tax should be calculated. According to the assessee, the rate of tax on bricks should be 2 per cent, which is the general rate prescribed u/s 3. As already mentioned, bricks have been made taxable u/s 3-A. The State Government has been issuing notifications from time to time under that section. There are two notifications relevant for our purposes according to which the rate of tax on bricks was 6 per cent, during the year 1961-62 and 7 per cent, during the year 1963-64. So long as these notifications stand, the rate of tax on bricks could not be other than that prescribed in the notifications. The assessee contends that the notifications were ultra vires, because brick was not a commodity which went through successive sales and hence Section 3-A had no application to it. Now this is a question which can neither be raised before the appellate authority u/s 9, nor before the revising authority u/s 10. In *K.S. Venkataraman and Co. Vs. State of Madras*, the Supreme Court held that the Sales Tax Tribunal can only decide a dispute between the assessee and the Tribunal in terms of the provisions of the Madras Sales Tax Act and the question of ultra vires was foreign to its jurisdiction. That being the position, it was not open to the sales tax authorities to entertain any ground against the vires of the notifications. Accordingly it was not open to the assessee to take any such ground before the sales tax authorities. Once that ground goes, the admitted tax on the turnover of bricks would be at the rates specified in the two notifications and not at the rate specified in Section 3 which is applicable to the commodities which are taxable at multiple points. It follows, therefore, that in order to calculate the admitted tax on the turnover of bricks, the assessee had to calculate the same by applying the rates specified in the two notifications on his admitted turnover as disclosed in the returns filed by him. He was clearly wrong in applying the rate of 2 per cent. The same view has been taken by this court in *Kanpur Vanaspati Stores, Kanpur v. Commissioner of Sales Tax, U.P.* [1969] 23S.T.C. 62. Therefore, our answer to question No. (1) is that the appropriate rate for the purposes of determining the admitted tax was 6 per cent, during the assessment year 1961-62 and 7 per cent, during the year 1963-64.

6. Coming to the next question, it is plain that the assessee had deposited tax

only at the rate of 2 per cent., whereas he should have deposited the tax at the rate of 6 per cent, and 7 per cent. The assessee had clearly failed to fulfill the requirements of the first proviso to Section 9. We accordingly answer question No. (2) by saying that the assessee had not deposited the admitted tax within the meaning of the first proviso to Section 9 of the Act.

7. As regards the third question, the assessee's contention is that as he had challenged the jurisdiction of the Sales Tax Officer, the assessment orders were void and no tax was payable by him at all. We do not propose to give any opinion on the general question as to whether an assessee would be absolved from the payment of tax for the purpose of the first proviso to Section 9 of the Act in cases where he objects to the jurisdiction of the Sales Tax Officer, because, in our opinion, in the present case the assessee had not denied his liability altogether in the memorandum of appeal. As has been pointed out by the revising authority, the assessee had in his memorandum of appeal admitted the tax to the extent of 2 per cent, and no more. That being the position, it is not open to him now to say that he was not liable to pay any tax at all. The amount of tax calculated at the rate of 2 per cent, has already been found by us to be deficient.

8. In the circumstances we, answer the third question by saying that in the facts and circumstances of the case, the assessee was not absolved from the payment of the tax by reason of his having objected to the jurisdiction of the Sales Tax Officer.

9. As all the questions have been answered against the assessee and in favour of the Commissioner of Sales Tax, the department is entitled to get costs which we assess at Rs. 100. There would be one set of costs only.