(1982) 01 AHC CK 0013

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 302, 331, 332 and 333 of 1981

R.R. Engineering Co. APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 28-01-1982

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

Citation : (1983) 52 STC 174

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : S.N. Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, J.—The short point which arises for consideration in these applications-in-revision made by the dealer u/s 11(1) of the U. P. Sales Tax Act is whether it was open to the Tribunal to have granted stay of realisation of only 50 per cent of the tax in dispute before it. The counsel for the applicant argues that it was not and that the Tribunal was under a legal obligation to have granted stay of realisation of the entire amount in dispute.

2. Sub-section (6) of Section 10 of the Act deals with the question of stay by the Tribunal. It reads thus :

Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved within thirty days from the filing of such appeal, after giving the parties a reasonable opportunity of being heard, stay recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due, under the order appealed against till the disposal of the appeal:

Provided that--

(i) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one-third of such disputed amount in addition to the amount required to be deposited under Sub-section (1) of Section 9 ; (ii) the Tribunal, may, for special and adequate reasons to be recorded in writing, waive or relax the requirement of the preceding clause regarding payment of the one third of such disputed amount.

3. In the instant case, the Tribunal had initially rejected the prayer of the applicant for waiving the requirement of payment of not less than one-third of the disputed amount of tax in addition to the amount required to be deposited under Sub-section (1) of Section 9. Since this had been done by the Tribunal without opportunity to the dealer to have its say in the matter, it rectified its order u/s 22 of the Act at the instance of the dealer. It dwelt at length on the special circumstances which existed in favour of the dealer for acceding to its prayer for waiving the requirement for deposit of one-third tax. Thereafter, it observed as follows :

So far as the question of stay is concerned, the appellants were assessed to tax by the assessing authority and the appeals were disallowed. After considering all the facts and circumstances of the case, I stay 50 per cent of the disputed amount of tax except in respect of the application for 1971-72 under the Central Act in which the amount of tax payable is stayed to the extent of Rs. 7,000....

4. The learned counsel for the applicant has urged that having regard to the language of Sub-section (6) of Section 10, it was clear that once having decided to waive the requirement of payment of one-third tax by the dealer, the Tribunal was left with no option but to grant stay of the entire amount of tax in dispute. He emphasised the words "stay recovery of the disputed amount of any tax...due, under the order appealed against till the disposal of the appeal" and submitted that on this language, there was no element of discretion left with the Tribunal to decide about the extent of the disputed tax of which recovery was to be stated. He also drew my attention to the words used in Section 10, Sub-section (4), prior to its amendment by U. P. Act No. 12 of 1979, and which were to the effect that the revising authority, on an application of the dealer, may, after giving the Commissioner, Sales Tax, an opportunity of being heard stay the realisation of any amount of tax... payable by him under the order against which a revision is pending. The submission loses sight of fact that Sub-section (6) of Section 10 provides that the Tribunal may stay recovery of the disputed amount of tax till the disposal of the appeal, on an application made by the dealer, and further that no application for stay shall be entertained unless the dealer has furnished satisfactory proof of the payment of not less than one-third of the disputed amount The use of the word "entertain" in the proviso clearly indicates that the grant of stay was not contemplated as a matter of course.

5. In Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, , the Supreme Court had occasion to examine the meaning to be given to the word "entertain" as occurring in the proviso to Section 9 of the

U. P. Sales Tax Act. It held that the word "entertain" did not mean the mere presentation of the memorandum of appeal but indicated that the appeal shall not be admitted to consideration unless the condition contemplated by the proviso to Section 9 was fulfilled. It expressly approved of some decisions of this Court which had taken the view that the word "entertain" meant not "receive" or "accept" but "proceed to consider on merits" or "adjudicate upon".

6. The word "entertain" in the proviso to Section 10(6) bears the same meaning. Here too, like u/s 9, the legislature has laid down the condition precedent for consideration of the matter on merits, that is, subject to fulfilment of the requirement of depositing of tax to some extent. Read as a whole, the language of Sub-section (6) leads to no other construction except that the prayer for stay can be considered on merits or adjudicated upon only when the requirement of the proviso is fulfilled. If that be the true construction, as I hold it to be, it is obvious that the very purpose of consideration of the prayer for stay on merits will be lost in case the contention of the learned counsel for the dealer that there is no option with the Tribunal but to stay the entire amount of disputed tax is accepted.

7. The learned standing counsel urged that the present revision was not competent, inasmuch as, in essence, it had been brought against an order made by the Tribunal under Sub-section (6) of Section 10, albeit upon an application for rectification made by the dealer u/s 22 of the Act. Referring to Section 11, the standing counsel urged that no revision was contemplated against an order made under Sub-section (6) of Section 10 of the Act. It is not necessary to express any on this question in the present case for, even on merits, the contention of the counsel for the dealer has to be rejected.

8. I sum, the conclusion is inescapable that on the language used by the legislature, the Tribunal has full discretion under Sub-section (6) of Section 10 of the Act to decide upon the extent of the disputed tax of which recovery may be stayed by it during the pendency of an appeal before it. Thus viewed, the revision deserve to be dismissed though without any order as to costs.

9. The counsel for the dealer has stated that on account of the pendency of these revisions, the dealer was unable to fulfill the terms imposed upon by the Tribunal. It will be open to the dealer to approach the Tribunal for necessary relief in this respect.