
(1970) 05 AHC CK 0011

In the Allahabad High Court

Case No : Sales Tax Reference No. 387 of 1964

Sales Tax Commissioner, U.P.

APPELLANT

Vs

Beharilal Ram Krishna and Others

RESPONDENT

Date of Decision : 13-05-1970

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4(1), 4(6)
Uttar Pradesh Sales Tax Rules, 1948 — Rule 20B, 23

Citation : AIR 1971 All 17 : (1971) 27 STC 182

Hon'ble Judges : T.P. Mukerjee, J; R.S. Pathak, J; J.S. Trivedi, J

Bench : Full Bench

Advocate : P.M. Agrawal, S.M. Chaturvedi, S.H. Tandon, R.M. Agrawal and S.N. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Pathak, J.—This reference has been made u/s 11 (1) of the U. P. Sales Tax Act and is in respect of six dealers. The questions referred are:--

"(1) Whether an exemption application in Form V, which is accompanied by deposit of deficit fee (as being not in accordance with Rule 20-B (a) must necessarily be rejected as incompetent, not maintainable or not in order ?

(2) Whether the assessing authority has jurisdiction to demand the deficiency in the initial deposit of the fee? If so, must he demand the initial deficiency during the currency of the assessment year before rejecting the exemption application as such ?

(3) Whether in case of initial deficit deposit the assessing authority is competent after the expiry of the assessment year, to finalise the exemption case in terms of Sub-clauses (h) and (i) of Rule 20-B and then demand the total deficiency ?

(4) Whether a default assessment under Rule 23 can be made only upon the failure of the assessee to deposit the deficiency on demand ?"

2. The dealers carry on business in food-grains. They applied under Rule 20-B (a) of the U. P, Sales Tax Rules for exemption from sales tax, the applications being made on different dates. One of them, M/s. Basdeo Ram Manohar Lal, applied for exemption for the assessment year 1958-59, while the rest applied for exemption for the assessment year 1957-58. With the exemption application each dealer deposited an amount towards the exemption fee purporting to be in compliance with Rule 20-B (a). The Sales Tax Officer took up the exemption applications after the close of the assessment year and holding that the deposit made by each dealer fell short of the true amount which he should have deposited, he rejected the exemption applications and assessed each dealer to sales tax by virtue of Rule 23. The dealers appealed but without success. Thereafter, they applied in revision, and the revision applications were allowed by the Additional Revising Authority who took the view that Rule 20-B(a) was merely directory in nature and that the failure to deposit the installment of the exemption fee contemplated by that provision was not fatal to the exemption applications. He expressed the view that it was open to a dealer to deposit the entire amount of the exemption fee when the fee was finally fixed under Rule 20-B(h). At the instance of the Commissioner of Sales Tax the present reference has been made.

3. A comparative table setting out the amount deposited by each dealer as against the deposit which he should have made is set out below:--

Name of the dealer

Initial Deposit with exemption application.

Fee required to be deposited u/s 20.B(a)

1

2

3

Beharilal Ram Krishna

...

Rs

250.00

Rs.

750.00

Basdeo Bam Manohar Lal

...

Rs.

18.00

Rs.

100.00

Girdhari Mal Jai Dayal

...

Rs.

150.00

Rs.

250.00

Ramnath Ram Dularey

...

Rs.

400.00

Rs.

1000.00

Narain Das Prahlad Ram

...

Rs.

75.00

Rs.

250.00

Chandrika Pd. Munni Lal

...

Rs.

150.00

Rs.

500.00

4. The essential question before us is whether the exemption applications filed by the dealers were rightly rejected because of the failure of the dealers to deposit the amount of fee required by Rule 20-B (a).

5. Section 4 (1) (b) of the U. P. Sales Tax Act provides for exemption from tax of sales of goods by such persons or class of persons, and on such conditions and on payment of such fees, if any, not exceeding Rs. 8,000/- annually, as may be specified by the State Government by notification in the official gazette. The State Government decided to grant exemption to dealers on the sale of foodgrains by Notification No. ST.6068/ X-1097-56 dated September 30, 1956, on condition that the dealer

"(a) obtains an exemption certificate from the assessing authority on payment of the appropriate annual fee mentioned below:--

(i) Rs. 18 where the turnover does not exceed Rs. 12,000,

(xii) Rs. 8,000 where the turnover exceeds Rs. 7,00,000, and

(b) observes the conditions laid down in the rules framed under the Act;"

Rule 20-B, which deals with the matter, provides:

"20-B (a). Applications for certificate of exemption by foodgrains dealers -- Every dealer in foodgrains seeking to obtain exemption certificate in accordance with a notification issued u/s 4, shall submit to the Sales Tax Officer an application for exemption in Form V, which, unless otherwise provided, shall be presented within thirty days of the commencement of the year for which it has been made, and shall be accompanied by a treasury chalan showing deposit of one-fourth of the exemption fee calculated on his turnover of the previous year:--

Provided that the exemption fee for the year ending March 31, 1957, shall, when business has been done during the whole year, be calculated on the basis of the turnover for the period from April 1 to December 31, 1956, increased by one-fourth thereof, and three-fourths of the exemption fee so calculated shall be paid before submitting the application and the remaining one-fourth by April 30, 1957.

(b) If a dealer in foodgrains commences business after the issue of the notification u/s 4, or has not done business in foodgrains during the whole of the year 1956-57, he shall estimate his turnover for the period from the date of commencement of business up to the end of the assessment year and shall calculate exemption fee thereon. The fee so calculated shall be divided into quarterly installments for the number of quarters of the year during which the dealer would do business; and he shall pay one such installment before submitting his application for exemption which shall be submitted in Form V within thirty days of the commencement of the business accompanied by a treasury chalan showing deposit of the first installment.

(c) Subsequent installment of the fee, other than the first payable under Sub-rule (a) or (b) except such payment as is prescribed in the proviso to Sub-rule (a), shall be paid within thirty days of the commencement of each quarter, that is, before July 31, October 31, and January 31.

(d) If a dealer has not done any business in foodgrains during the whole of the

previous year, he shall deposit the exemption fee on the basis of the turnover of the assessment year, and the provisions of Sub-rule (b) shall mutatis mutandis apply to the case.

(e) If the Sales Tax Officer after such enquiry as he may deem necessary, is satisfied that the application is in order and the fee has been correctly calculated, he shall issue a provisional exemption certificate to the dealer in Form VI-A.

(f) A certificate issued under Sub-rule (e) on an application filed within the period specified in Sub-rule (a) or (b) shall have effect from the beginning of the assessment year or from the date from which the dealer becomes entitled to exemption as the case may be. If the application is filed after the due date, the exemption certificate shall have effect from the date of application.

(g) Every exemption certificate issued under this rule shall remain valid upto the expiry of the assessment year for which it is granted.

(h) The fee deposited under any of the foregoing sub-rules shall be provisional and upon the expiry of the assessment year the Sales Tax Officer shall, after such enquiry as he may deem necessary, determine the turnover of the assessment year and finally fix the exemption fee payable thereon.

(i) If the exemption fee fixed under Sub-rule (h) differs from the total amount deposited during the year the difference shall be paid by the dealer, or refunded by the Sales Tax Officer, as the case may be. If the dealer fails to pay the amount found so due from him within the period fixed by the Sales Tax Officer, he shall be assessed to tax for the whole year.

(j) If no amount is found to be due from the dealer under Sub-rule (1), or if any such amount found due is paid within the period fixed by the Sales Tax Officer, the Sales Tax Officer shall pass an order declaring the exemption certificate issued under Sub-rule (e) final."

6. After carefully considering the relevant provisions of the Act, the Notification and the Rules it appears to me that the requirement of Rule 20-B (a) that the dealer should deposit one-fourth of the exemption fee calculated on his turnover of the previous year within thirty days of the commencement of the year for which he claims exemption is a mandatory provision if exemption is to be granted for the entire assessment year.

7. There are several considerations which persuade me to that view.

8. The claim is to exemption from tax. Before exemption can be claimed the person claiming exemption must strictly fulfil the conditions underlying the grant of exemption and comply with all the requirements necessary before such grant is made. In a number of cases of registration of partnership firms under the Income Tax Act, where upon such registration the benefit of lower rates of tax becomes available, the Supreme Court has held that if a firm desires to have such benefit it must conform strictly to the requirements of the law. Ravula

Subba Rao and Another Vs. The Commissioner of Income Tax, Madras, ; P.R. Chowdhary and S. Gangoli Vs. The State of U.P., and N.T. Patel and Company Vs. Commissioner of Income Tax, Madras, . It appears to me that this principle applies equally to the cases before us where exemption from tax is claimed. Section 4 of the U. P. Sales Tax Act grants exemption from sales tax on conditions notified by the State Government. Unless the conditions are satisfied no exemption can be granted. The conditions are set out in the Notification of September 30, 1956. There are two conditions, one, that the dealer obtains an exemption certificate on payment of the appropriate annual fee and, two, he observes the conditions laid down in the rules. Provision for the grant of the exemption certificate, and the conditions circumscribing the grant, are set out in Rule 20-B. The scheme embodied in Rule 20-B envisages the payment of an exemption fee in installments during the assessment year, followed by the final determination of the true exemption fee at the end of the assessment year with consequential adjustments calling for further payment or refund according as the final exemption fee exceeds or is less than the total amount deposited during the year.

9. The grant of a provisional exemption certificate involves an interim determination of the claim to exemption and it is highly important that all the material conditions affecting that determination are fully satisfied, Rule 20-B (a) requires the dealer to apply for exemption within thirty days of the commencement of the year for which exemption is claimed, and to file with it a treasury chalan showing deposit of one-fourth of the exemption fee calculated on his turnover of the previous year. Rule 20-B (e) provides that if the Sales Tax Officer, after such enquiry as he may deem necessary, is satisfied that the application is in order and the fee has been correctly calculated, he shall issue a provisional exemption certificate in Form VI-A. One of the matters of which he must be satisfied is that the application is in order. In other words, that the application complies with the requirements of Rule 20-B (a). The form of the application is prescribed as form V. According to Form V, among other things, the dealer must indicate therein the entire exemption fee payable for the assessment year and further state that he has deposited the total first installment of the exemption fee. Significantly, the information furnished in the application must be verified by the dealer as true and complete to the best of his knowledge and belief. Apart from the application being in order, the fee must also have been correctly calculated. If the fee is found to be correctly calculated, it will be possible to know whether the amount deposited fulfils the requirement in that regard contained in Rule 20-B (a).

10. Then follows the form of the provisional exemption certificate which is form VI-A. It certifies that the dealer has been fully exempted from payment of tax for the period mentioned therein, that he has deposited the first installment of the exemption fee and states that he is bound to deposit further installments on or before July 31, October 31 and January 31 following. The requirement of payment of further installments with reference to these dates is in obedience to

Rule 20-B (c). The certificate contains the warning that failure to deposit the installments on due dates will render the exemption liable to cancellation. Form VI-A, which is a statutory form and must be read as part of Rule 20-B, emphasises that the deposit of the installments on or before the requisite dates is material to the continued enjoyment of the exemption. If the installments are not paid on the due dates, the exemption is liable to be cancelled. That is so with reference to the second, third and fourth installments. If the payment of the second, third and fourth installments within the corresponding prescribed periods is an imperative condition for enjoying the exemption, the condition is equally imperative in respect of the deposit of the first installments.

11. It seems to me clear that payment of the exemption fee in installments is an integral feature of the scheme. That is not to say that it is not open to a dealer to deposit the entire amount of the installments in one sum within the period prescribed for the deposit of the first installment. But it is certainly not open to a dealer to deposit only part of the first installment in the beginning, and then wait for the end of the assessment year before paying the balance of the installments or to pay the amount after the final determination is made under Rule 20-B (h). If that were permitted the elaborate scheme set out in Clauses (a) to (j) in Rule 20-B would be set at naught and the integrity of the entire scheme would be destroyed. No question would then arise of obtaining a provisional certificate. An examination of the scheme indicates that the grant of a provisional exemption certificate is a necessary concomitant, because it is the provisional exemption certificate which is declared to be final at the end of the assessment year. The fresh grant of an exemption certificate at the end of the assessment year is not contemplated. It is necessary to note that the provisional exemption certificate is granted upon compliance with Rule 20-B (a) which requires, among other things, the deposit of the first installment of the exemption fee. The point of time is significant. It is upon the deposit of the first installment that the grant is envisaged. That is also clear from the statutory form of the provisional exemption certificate.

12. It seems to me that the scheme embodied in Rule 20-B is intended to promote an accelerated recovery of the exemption fee, even as the accelerated recovery of sales tax is contemplated in the scheme set out in Rule 41. Indeed when the two schemes are compared it will be discovered that there is close identity in the pattern of the two schemes. Rule 41 also envisages the payment of sales tax provisionally in quarterly installments on or before specified fixed dates followed by consequential adjustments upon an assessment order made at the end of the assessment year determining the final tax liability. In both cases, the quarterly deposits are facilitated by making their determination depend on an easily referable basis. In the case of Rule 20-B it is ordinarily the turnover of the previous assessment year, and in the case of Rule 41 it is the turnover of the relevant quarter of the assessment year.

13. Upon the aforesaid considerations I am of opinion that to obtain exemption

from tax for the entire assessment year it is incumbent upon the dealer to make the exemption application within thirty days of the commencement of the year and also to deposit within that period one-fourth of the exemption fee calculated on the turnover of the previous year. I am supported in this view by the decisions of this Court in *Shyam Lal Vs. Assistant Sales Tax Officer and Another*, S. T. R. No 670 of 1961 decided by Desai, C. J. and Pathak, J. on 21-1-1964 and *Laxmi Narain Rice Mills v. Commr. of Sales Tax*, U. P., S. T. R. 668 of 1961 decided by Hon. Desai, C. J. and Pathak, J. on 26-2-1964 (All). For the dealers reliance is placed on *Luxa Upabhokta Co-operative Societies Ltd v. Sales Tax Officer* 1964 All LJ 93. In that case however, the Sales Tax Officer took the position that he had power to extend the time for payment of the exemption fee, but without considering the application for extension of time made by the dealer he proceeded to hold that the dealer was in default of payment of the exemption fee and assessed the dealer to tax by virtue of Rule 23. In the circumstances of that case, Manchanda, J. quashed the order of the Sales Tax Officer. The question before us in the present case was not raised before the learned Judge in that case.

14. It is possible to say that if the dealer makes good the deficiency even beyond the period specified in Rule 20-B (a), his exemption application may be treated as in order, but that can only be with reference to the date on which the deficiency is made good. The application will then be considered as having been made on that date, and on the basis of Rule 20-B (f) the dealer will be entitled to a provisional exemption certificate with effect from such date and not for the entire assessment year. However, inasmuch as there is no material before us to show that the deficiency was made good by any of the dealers at any time during the assessment year for which exemption was claimed, it is not necessary to express any final opinion in this matter. It is sufficient to say that as the deposit required by Rule 20-B (a) was not made by the dealers, and thereby they failed to comply with an essential requirement of Rule 20-B (a) their exemption applications were rightly rejected. Accordingly, I would answer the first question in the affirmative.

15. The second question raises the point whether the assessing authority has jurisdiction to demand that the dealer should make good the deficiency in the deposit of the first installment of the exemption fee and, if so, whether he must make the demand during the assessment year before rejecting the exemption application. Now, the jurisdiction of the assessing authority must be discovered within the provisions of the U. P. Sales Tax Act and the rules made thereunder. Being a creature of the statute, the assessing authority is armed with such jurisdiction only as has been expressly conferred on him or can be spelled out by necessary intendment. There is nothing in the Act or in the rules authorising the assessing authority to demand from the dealer the deficiency in the deposit of the first installment. The first part of the second question is, therefore answered in the negative. Accordingly, no answer need be returned to the second part of the question.

16. The third question is whether, in a case where the deposit of the first installment is deficient, the assessing authority can, upon the expiry of the assessment year, make an order determining the exemption fee under Rule 20-B (h) and demand the deficiency by reference to Rule 20-B (i). In the view taken by me in regard to the essential features of the scheme under Rule 20-B, I find it difficult to hold that although only the first installment has been deposited, and that even not in full measure, the benefit of the exemption can be granted to the dealers by following the procedure contained in Clauses (h) and (i) of Rule 20-B. I would answer the third question in the negative.

17. The last question is whether a dealer can be assessed to tax by virtue of Rule 23 only upon his failure to deposit the deficiency on demand made by the assessing authority. In my opinion, the answer should be in the negative. Upon the facts before us, when the several dealers deposited the first installment of the exemption fee short of the true amount and did not make good the deficiency at any time during the assessment year, nor made any attempt to deposit the remaining installments, they were not entitled to the benefit of exemption from sales tax and, therefore, not entitled to an exemption certificate. In the absence of an exemption certificate under Rule 20-B the dealers were liable to tax by virtue of Rule 23. That a demand should first be made by the assessing authority requiring the dealer to make good the deficiency in the first installment of the exemption fee before he can be liable to assessment to tax is not contemplated in law.

18. The four questions are, therefore, answered as follows:--

Question No. 1; In the affirmative.

Question No. 2; The first part of the question is answered in the negative; no answer is returned to the second part of the question.

Question No. 3; In the negative.

Question No. 4; In the negative.

19. Except for two dealers, M/s. Girdhari Mal Jai Dayal and M/s. Ram Nath Ram Dulare, no other dealer entered appearance before us. The Commissioner of Sales Tax will, therefore, be entitled to his costs as against those two dealers in the sum of Rs. 150 each and there is no order as to costs against the remaining dealers. Counsel's fee is assessed in the sum of Rs. 300.

J.S. Trivedi, J.

20. I agree.

T.P. Mukerjee, J.

21. I agree.