(1976) 07 AHC CK 0050

In the Allahabad High Court

Case No : Second Appeal No. 3164 of 1967

State of U. P. and Another — APPELLANT

Vs

Kaluwa and Another — RESPONDENT

Date of Decision : 27-07-1976

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 17

Citation : (1977) 40 STC 79

Hon'ble Judges : D.M. Chandrashekhar, J

Bench : Single Bench

Advocate : K.C. Dhulia, for the Appellant; V.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Chandrashekhar, J.—This appeal by the State of U. P. and the Sales Tax Officer, Aligarh, is from the judgment and decree of the Civil Judge, Aligarh, who reversed the judgment and decree of the Munsif at Aligarh and decreed the suit.

2. The plaintiff had been assessed to sales tax for the years 1958-59 and 1959-60. He pleaded before the Sales Tax Officer (appellant 2) that he was only a moulder, that he was moulding articles with the materials supplied by his customers and that he was not selling any goods. He denied having sold any goods to respondent 2, M/s. Dass Electrical, Delhi. In spite of the above plea, the Sales Tax Officer, as admitted by him in his evidence as D. W. 1, made no enquiry from M/s. Dass Electrical as to whether the plaintiff had supplied any goods to that firm, but merely on the basis of some secret information gathered behind the back of the plaintiff, assessed him to sales tax for the years 1958-59 and 1959-60. The plaintiff''s appeals under the Sales Tax Act against the orders of assessment were unsuccessful. Thereafter, he brought the suit for an injunction restraining the Sales Tax Officer from recovering the sums assessed on him (the plaintiff).

3. The learned Munsif dismissed the suit principally on the ground that the suit

was barred by Section 17 of the U. P. Sales Tax Act, 1948 (hereinafter called the Act). In the appeal the learned Civil Judge decreed the suit holding that the civil court has jurisdiction to examine whether the provisions of the Act had been complied with and whether the sales tax authorities had acted in conformity with the fundamental principles of judicial procedure. The learned Civil Judge came to the conclusion that the procedure adopted by the Sales Tax Officer was violative of the fundamental principles of judicial procedure inasmuch as he (the Sales Tax Officer) did not examine M/s. Dass Electrical in spite of the plaintiff''s clear assertion that he had not sold any goods to that firm.

4. In this appeal the learned standing counsel contended that the learned Civil Judge was in error in holding that the plaintiff''s suit was not barred by Section 17 of the Act. The learned standing counsel maintained that whatever contentions the plaintiff wanted to raise, should have been urged before the Sales Tax Officer and the appellate authority under the Act and that the plaintiff could not seek any remedy by way of suit.

5. It is unnecessary to refer to a large number of decisions bearing on the question of jurisdiction of the civil court to go into the validity of orders of assessment made by the sales tax authorities. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , the Supreme Court has reviewed all the earlier decisions on this point. Section 17 of the Madhya Pradesh Sales Tax Act, which came up for consideration in that case, is in pari materia with Section 17 of the Act. Hidayatullah, C. J., who spoke for the court summed up the legal position at page 89 (page 434 of 22 S.T.C.) and said, inter alia, that the provision in the Sales Tax Act, which gives finality to the orders of the special tribunals and seeks to exclude the jurisdiction of the civil court, does not exclude those cases where the provisions of the particular Act have not been complied with or statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

6. The learned Civil Judge, in my opinion, was right in holding that on account of non-examination of M/s. Dass Electrical in spite of the plaintiff''s categorical assertion that he never sold any goods to M/s. Dass Electrical, there was clear violation of the fundamental principles of judicial procedure. Mere secret gathering of information behind the back of the assessee, could not be a substitute for such examination of M/s. Dass Electrical. In view of such violation of the fundamental principles of judicial procedure, the learned Civil Judge has rightly set aside the orders of assessment and I do not see any good ground to interfere with his judgment.

7. In the result, the appeal fails and is dismissed.

8. In the circumstances of the case, there will be no order as to costs.