
(2005) 05 SC CK 0061
In the Supreme Court Of India
Case No : Civil Appeal No. 3825 Of 2000

State Of Up	Vs	APPELLANT
Anil Kumar Ramesh Chandra Glass Works		RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Constitution Of India, 1950 — Article 226
Uttar Pradesh Trade Tax Act, 1948 — Section 4A, 9, 11

Citation : (2005) 05 SC CK 0061

Hon'ble Judges : Ruma Pal, J;C.K. Thakker, J

Bench : Division Bench

Advocate : Jatinder Kumar Bhatia, S. Rajappa

Final Decision : Allowed

Judgement

1. The challenge in this appeal arises out of the decision of the High Court relating to eight show-cause notices issued by the appellants under the provisions of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as "the Act"). The eight show-cause notices were issued for the period 1982-83 to 1984-85. By the show-cause notices the respondents were asked to explain why they should not be held liable for payment of sales tax on account of sales made by them for the period covered by the notices.

2. The respondents manufacture glass bangles. Although there is some dispute as to when the respondents commenced their business, there is no dispute, and the High Court has found that the respondents continued to realise sales tax on their products from their customers until they were granted an eligibility certificate under Section 4-A of the Act on 23-10-1984.

4. The respondents filed a writ petition challenging the show-cause notices on 2-1-1986. During the pendency of the writ petition the eligibility certificate granted to the respondents was sought to be cancelled by the Commissioner of Sales Tax on 25-2-1988. The cancellation was challenged by the respondent

before the Sales Tax Tribunal. The challenge was negated by the Tribunal. Being aggrieved the respondents filed a revision petition before the High Court. The High Court by its order dated 23-11-1994 allowed the revision petition under Section 11 of the Act and held that the eligibility certificate could not be cancelled by the Commissioner in the circumstances of the case.

5. The writ petition challenging the eight show-cause notices was also allowed by the High Court on 4-2-2000. The High Court appears to have proceeded on the basis that the show-cause notices had been issued on the basis that the eligibility certificate had been wrongly obtained. It is apparent from the narration of facts that the show-cause notices were in fact issued for the period prior to the grant of the eligibility certificate. It cannot be said, therefore, that the show-cause notices proceeded on the basis that the eligibility certificate was invalid. All that the appellants proposed to do was to hold the respondent liable to pay sales tax in respect of the amount admittedly collected by the respondent on account of sales tax until it was granted the eligibility certificate.

3. The respondents submitted their reply to the show-cause notices on 23-12-1985 and on 26-12-1985 an order of assessment was passed in respect of the eight show-cause notices raising a demand against the respondents.

6. In our view, the High Court proceeded on an incorrect basis. Hence, the decision cannot stand. In any event, this Court had repeatedly held that Article 226 should not be permitted to be invoked in order to challenge show-cause notices unless accepting the fact in the show-cause notices to be correct, either no offence is disclosed or the show-cause notices are ex facie without jurisdiction. That could not be said as far as the eight show-cause notices in question are concerned. The High Court, therefore, should not have interfered and should have left the respondents to pursue their remedy by way of an appeal under Section 9 of the Act from the order of assessment which, according to the High Court, had admittedly been passed before the writ petition had been filed by the respondent.

7. In the circumstances of the case, the appeal is allowed. The decision of the High Court is set aside. The respondents are at liberty to challenge the order of assessment dated 26-12-1985 by filing an appeal under Section 9 of the Act. The delay in preferring the appeal, in our view, should be condoned having regard to the fact that the respondents were prosecuting proceedings erroneously before another court. This relaxation of the time-limit however will operate in favour of the respondents provided the appeal is filed within a period of four weeks from date.

8. There shall be no order as to costs.