
(1969) 05 AHC CK 0004
In the Allahabad High Court
Case No : Sales Tax Reference No. 526 of 1966

The Commissioner, Sales Tax

APPELLANT

Vs

Sita Ram Agarwal

RESPONDENT

Date of Decision : 13-05-1969

Acts Referred:

Uttar Pradesh Sales Tax Rules, 1948 — Rule 8

Citation : (1970) 25 STC 218

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The assessee deals in foodgrains. In assessment proceedings under the U.P. Sales Tax Act for the assessment year 1959-60 he disclosed a gross turnover of Rs. 21,047-9-6 and claimed that he was not taxable. He relied upon Notification No. ST-1025/X-1097(i)/58 dated 1st April, 1959, which declares that with effect from 1st April, 1959, no tax will be payable by the dealer on the turnover of foodgrains where such turnover does not exceed Rs. 25,000 during the assessment year. He admitted that he had sold foodgrains worth Rs. 32,756-6-6 through commission agents but claimed that the sale proceeds could not be included in his turnover. The Sales Tax Officer rejected the contention and held him liable to tax on the ground that by including the sale proceeds of Rs. 32,756-6-6 the gross turnover of the assessee exceeded the limit of Rs. 25,000. The assessee preferred an appeal, and the appeal was allowed by the Assistant Commissioner (Judicial) Sales Tax who, following a decision of a learned single Judge of this court in Lakshmi Narain Ram Narain v. Sales Tax Officer, Bareilly, (Writ Petition No. 2154 of 1960 decided by B.L. Gupta, J., on September 18, 1961) held that the sales made by the assessee through the commission agents could not form part of the assessee's turnover. The Commissioner of Sales Tax applied in revision, and the revision application was dismissed by the Additional Judge (Revisions) Sales Tax, The Additional Judge

(Revisions) noted the plea of the assessee that tax on the turnover had been paid by the commission agents and held that, therefore, the sales could not be included in the turnover of the assessee. At the instance of the Commissioner, this reference has been made on the following question :-

Whether the sales made through the commission agents on which the sales tax was paid by the commission agents could legally be included within the gross turnover of the principal for determining his liability to sales tax?

2. The U.P. Sales Tax Act was amended by the U.P. Sales Tax (Amendment) Act, 1959, with effect from 1st April, 1959, and we are concerned with the provisions of the Act as they stood then.

3. Section 3 provides that every dealer shall for each assessment year pay tax at the rate of two paise per rupee on his turnover of such year. Then follows the proviso which declares that

a dealer shall not...be liable to pay the tax if his turnover of the assessment year is less than Rs. 12,000 or such larger amount as may be notified by the State Government in that behalf either in respect of all dealers in any particular goods or in respect of a particular class or category of such dealers.

4. There is no dispute that the notification dated 1st April, 1959, was made with reference to that proviso. The effect of the notification is that if the turnover of foodgrains of a dealer does not exceed Rs. 25,000 during the assessment year he will not be liable to tax on that turnover.

5. The case of the assessee is that in the computation of the gross turnover sales made through a commission agent must be excluded. Now, Section 3 itself does not make any distinction between gross turnover and net turnover. That distinction is drawn by the U.P. Sales Tax Rules. Rule 8 provides that a dealer's liability to pay tax under the Act shall be determined on the basis of his gross turnover. In other words, for the purpose of determining whether Section 3 is attracted in the case of any dealer his gross turnover must be taken into consideration. Rule 44 lays down that the tax u/s 3 shall be computed on the net turnover, and the net turnover has to be determined by making certain specified deductions from the gross turnover. The scheme, therefore, appears to be this that for determining whether a dealer falls within the net of taxation spread by the U.P. Sales Tax Act, one of the considerations to be examined is : "Is his gross turnover of the assessment year in excess of the prescribed limit?" If it is, the provisions of the U.P. Sales Tax Act and the Rules come into operation in respect of him. It is thereafter that the question arises "what is the tax payable by the dealer?" For determining the tax liability, the net turnover is computed and the quantum of the tax liability is calculated by reference to the net turnover.

6. The question before us is whether the sales worth Rs. 32,756-6-6 can be included in the gross turnover of the assessee although made through commission agents. There is an explanation to Section 3, and it reads :

Explanation.-Where tax is payable and has been so paid by the commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

7. It must be noted that this explanation is part of Section 3, and must be taken as qualifying the provisions of that Section. Section 3 is a charging provision, and the explanation clearly excludes certain turnover from the field of tax liability over which Section 3 operates. In other words, where tax is payable and has been so paid by the commission agent on any turnover on behalf of his principal, then such turnover cannot be treated as part of the turnover of the principal for the purposes of Section 3. Such turnover will fall outside the scheme of Section 3 altogether. A feature of that scheme is that a dealer will not be liable u/s 3 if his turnover is less than the prescribed minimum. Therefore, when computing the gross turnover of the assessee for the purposes of the first proviso to Section 3 the turnover on which tax is payable and has been paid by the commission agent on behalf of his principal must be excluded.

8. Reference may also be made to the definition of a dealer by Section 2(c). "Dealer" means "any person carrying on the business of buying or selling the goods in Uttar Pradesh whether for commission, remuneration or otherwise." An explanation, added by the U.P. Sales Tax (Amendment) Act, 1959, reads:

Explanation.-A factor, a broker, a commission agent or arhati, a delcredere agent, an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying or selling goods on behalf of his principals or through whom the goods are sold or purchased shall be deemed to be a dealer for the purposes of this Act.

9. In a case falling within the terms of the explanation, the commission agent is treated as the dealer. The turnover of goods sold by him on behalf of his principal is treated as his turnover, and tax is assessed on him. Where the commission agent has been assessed to tax and has paid it, the turnover so assessed in his hands falls completely outside the scope of Section 3 when that provision is applied to the principal. In coming to this conclusion we find ourselves in agreement with the view taken in *Lakshmi Narain Ram Narain*, Writ Petition No. 2154 of 1960 decided by B.L. Gupta, J., on September 18, 1961. A special appeal against that decision was dismissed, Special Appeal No. 632 of 1961 decided by V. Bhargava and S.D. Khare, JJ., on April 16, 1965.

10. It is not disputed in the instant case that the commission agents were assessed and have paid the tax in respect of the turnover of Rs. 32,756-6-6. Upon the considerations to which we have adverted, that turnover cannot be considered for the purpose of computing the gross turnover of the assessee.

11. The question is answered in the negative. The assessed is entitled to his costs which we assess at Rs. 100. The fee of learned counsel is assessed in the same figure.