(1966) 02 AHC CK 0029

In the Allahabad High Court

Case No : Sales Tax Reference No. 440 of 1963

Upper India Sugar Mills APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 22-02-1966

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 10(3)

Citation : (1966) 17 STC 536

Hon'ble Judges : M.C. Desai, C.J;R.S. Pathak, J

Bench : Division Bench

Advocate : A.B. Saran, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The assessee manufactures and sells sugar. It was assessed to sales tax on its turnover of sugar for the year 1953-54. Aggrieved by the assessment order the assessee preferred an appeal, and the Judge (Appeals), Sales Tax, reduced the assessable turnover and also the rate of tax applicable thereto. The Commissioner of Sales Tax applied in revision against the appellate order, and the Additional Judge (Revisions), Sales Tax, allowed the revision application and modified the appellate order. During the hearing of the revision application, an objection was raised by the assessee that the revision application should not be entertained as it had not been validly presented. It was pointed out that the revision application had been sent by the Commissioner of Sales Tax to the office of the Judge (Revisions) by local post ("isthaniya dak") and this was not the mode prescribed by Rule 69 of the U.P. Sales Tax Rules, 1948. It was contended that the revision application not having been presented in accordance with law, the entire proceedings consequent upon it were vitiated. The objection was overruled by the Additional Judge (Revisions), Sales Tax. He found that the grounds of revision had been signed by the Commissioner, and treating the mode adopted of forwarding the revision application being by ordinary post, he held that the mere circumstance that ordinary post had been preferred to registered post amounted at the most to a mere irregularity and the proceedings following thereon could not be held vitiated. At the instance of the assessee the Additional Judge (Revisions), Sales Tax, has referred the following two questions to this Court:-

(a) Whether in view of the facts of the case, the revision petition presented by the Commissioner, Sales Tax, through the peon (isthaniya dak) was properly presented within the provisions of Rule 69 of the U.P. Sales Tax Rules, 1948 ?

(b) Whether the presentation of the revision petition in the manner by the Commissioner, Sales Tax, would vitiate the entire proceedings in revision when the revision petition was accepted by the Revising Authority ?

2. Section 10(3) of the U.P. Sales Tax Act provides :

10. Power of revision.-

(1)...

(2) ...

(3) (i) The Revising Authority (or any additional Revising Authority) may, for the purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion, call for and examine, either on its own motion or on the application of the Commissioner of Sales Tax or the person aggrieved, the record of such order and pass such order as it may think fit:...

3. The statute does not provide for the procedure which must be followed when the Commissioner of Sales Tax or the person aggrieved decides to file a revision application. That is provided by the rules made under the Act. Rule 69(1) provides that a revision application may be presented "by the applicant, or his duly authorised agent, or lawyer, to the Judge (Revisions) or may be sent to him by registered post." It will be noticed that Rule 69 contemplates filing a revision application by either of two distinct modes : (a) presentation of the revision application either by the applicant, his duly authorised agent or his lawyer or (b) filing by registered post. In case it is sent by registered post, no question arises of determining whether the revision application has been presented by a proper person. That question arises when it is presented by the applicant or some one who purports to act on his behalf. If it is presented by the applicant, no difficulty arises. But if it is presented by his agent or lawyer then the question would arise whether the agent was duly authorised in that behalf by the applicant or the lawyer was engaged for that purpose. Where the applicant presents the revision application, the Judge (Revisions) is bound to accept it. But where an agent or lawyer presents it, the Judge (Revisions) is entitled to ascertain whether the agent has been duly authorised by the applicant to present the application or the lawyer has been duly appointed for the purpose. In case the Judge (Revisions) finds that the agent was duly authorised or the lawyer was duly appointed he is bound to accept the revision application. It is not open to him to refuse to accept

it. The purpose of ascertaining whether the agent or the lawyer presenting the revision application has been armed with due authority is for the purpose of ensuring that they are acting on behalf of the applicant. The provision has been made, we think, for the protection and benefit of the applicant. The same object underlies the alternative mode of filing a revision application. Where the provision requires the revision application to be sent by registered post, it ensures that a greater degree of security is afforded to the applicant when he despatches the revision application by post, and also makes available to him the presumptions of law attendant upon despatch by registered post.

4. Now, when a revision application is presented by a duly authorised agent, the law does not require that the authority empowering the agent must be in writing. Nothing has been shown to us to indicate that that is so. That the agent is duly authorised to present the application may be determined by the circumstances. In the instant case, the peon who presented the revision application was one employed by the Commissioner of Sales Tax and was acting in the ordinary course of his duties when he delivered the revision application. The Judge (Revisions) was justified in concluding that the peon had been duly authorised by the Commissioner of Sales Tax to present the revision application. It was open to him to hold that the peon was so authorised, and when he was satisfied that the peon was armed with such authority, we see nothing contrary to the law in the Judge (Revisions) accepting the revision application.

5. Even if delivery of the revision application by the peon be treated as its delivery by ordinary post, we are unable to hold that the Judge (Revisions) acted illegally in accepting the revision application. When Rule 69(i) provides for the revision application being sent by registered post, it does not prescribe a mandatory requirement but merely, as we have already observed, provides a rule for the benefit of the applicant. We cannot accede to the contention that in order that a revision application be entertainable it must be sent by registered post and not by ordinary post. When the Judge (Revisions) accepted the revision application, we cannot say that the revision application could not be acted upon. The acceptance of the revision application does not vitiate the proceedings taken thereon by the Revising Authority. Accordingly, we answer question (a) in the affirmative and question (b) in the negative.

6. A copy of this judgment under the seal of the Court and the signature of the Registrar shall be sent to the Judge (Revisions), Sales Tax, and the Commissioner of Sales Tax, U.P. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 100. Counsel''s fee is assessed at Rs. 100.