

State of Uttar Pradesh

Vs

M/S. Manchar and Company, Bareilly

Civil Appeal No. 1845 Of 1967

(K.S. Hegde, A.N. Grover JJ)

04.08.1971

JUDGMENT

HEGDE J. -

1. This appeal by special leave arises from the decision of the High Court of Allahabad in Sales Tax Reference No. 28 of 1964 on its file. That was a reference under Section 11(1) of the U.P. Sales Tax Act, 1948 (to be hereafter referred to as the Act). The two questions referred for the opinion of the High Court are :

"1. Whether a dealer can elect assessment year basis from previous year basis under Rule 39 in a case in which Section 18(4) applies warranting assessment on previous year basis ?

2. Whether the election so made and the resultant original assessment year basis would operate as a bar warranting the subsequent assessment to be completed on assessment year basis ?

The assessee was a dealer in imported Vanspati Oil and Kirana. It started its business in the year 1952-53 but in that year it carried on business only for a part of the year. In respect of its turnover for that year, the assessment was made for the broken period under Section 18(3) of the Act as it then stood. For the assessment year 1953-54, the assessee submitted quarterly returns. The assessing authority accepted the returns submitted by the assessee and assessed him on the basis of those returns. That assessment was not challenged by the assessee. Thereafter the assessing authority received information that some part of the turnover of the assessee had escaped assessment. Consequently a notice under the Section 21 of the Act was issued and the escaped turnover was brought to assessment on the basis of best judgment assessment. The escaped turnover was determined at Rupees three lakhs. The assessee challenged this re-assessment before the Judge (Appeals). It contended before the Judge (Appeals) that the re-assessment in question was invalid inasmuch as the assessing authority did not comply with the mandatory requirements of the Section 18(4) of the Act. Though the Judge (Appeals) found some force in that argument, it rejected the appeal of the assessee on the ground that as it had not challenged the original assessment, it was not open to it to challenge the re-assessment made. Thereafter the assessee took up the matter in revision to the Board of Revenue but the Board also rejected the revision petition of the assessee on the ground that it is not open to challenge the re-assessment as it had submitted to the original assessment. But at the instance of the assessee the Judge (Revisions) referred the two questions mentioned earlier for the decision of the High Court. The reference was first heard by a Division bench of the Allahabad High Court consisting of Manchanda and Beg, JJ. Manchanda, J., answered

those questions in favour of the assessee whereas Beg, J., answered those questions against the assessee. Thereafter the matter was placed before Oak, J., who agreed with the view taken by Manchanda, J.

2. The provisions of the Act which are relevant for our present purpose are Sections 3, 7 and 18. In addition to these provisions, we must also read Rule 39 of the rules framed under the Act. The aforementioned provisions to the extent relevant for our present purpose may one be read :

Section 3 which deals with the liability of the tax says :

"Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rate of three pies a rupee on his turnover of such year, which shall be determined in such manner as may be prescribed."

(The other portion of the section is not relevant for our purpose.)

3. Section 7 which deals with determination of turnover and assessment of the tax to the extent material reads as follows :

"Subject to the provisions the Section 18, every dealer whose turnover in the previous year is Rs. 12,000/- or more in a year shall submit such return or returns of its turnover of the previous year within sixty days of the commencement of the assessment year in such form and verified in such manner and may be prescribed :

Provided that the state Government may prescribe that any dealer or class of dealers may submit, in lieu of the return or returns specified in this section, a return or returns of his turnover of the assessment year at such intervals, in such form and verified in such manner as may be prescribed, and thereupon all the provisions of this act shall apply as if such return or returns had been duly submitted under this section....."

Section 18 deals with assessment of reconstituted or new firms and change of partnership. That section to the extent material for our present purpose reads

(1).....

(2).....

(3)(a) Every dealer or a reconstituted firm commencing business during the course of an assessment year whose monthly turnover is estimated to be not less than Rs. 1,000/- shall give the notice of the fact to the assessing authority within fifteen days of such commencement and shall submit monthly statements of his turnover within seven days of the expiry of each month in such form and verified in such manner as may be prescribed in respect of the portion of such year during which the business is continued.

(b) If the assessing authority after making such enquiry as he considers necessary, is satisfied that such returns submitted under clause (a) are correct and complete and that the average monthly turnover is not less than Rs. 1,000/- he shall assess the dealer on the total turnover shown in the returns.

(c).....

(4) The assessing authority shall fix the turnover of the dealer for the next succeeding assessment year at the amount of average monthly turnover determined by him in accordance with clause (b) or (c) of subsection (3) as the case may be multiplied by 12 and shall assess the tax thereon."

Rule 39 deals with an election of assessment year. It says :

"Any dealer may elect to submit returns of his turnover of the assessment year in lieu of the returns of turnover of the previous year, and shall signify such election in the return filed by him in Form IV :

Provided that a dealer who did not carry on business during the whole of the previous year shall elect to submit the returns of the assessment year....."

4. It is not necessary to elaborately consider the provisions of the law in order to answer the first question as that matter is concluded by the decision of this Court in Commissioner of Sales Tax, Lucknow v. Madan Lal Dayal Chand. (For the reasons mentioned above this appeal fails and the same is dismissed with costs.) In view of that decision, it was agreed by the Counsel for the parties that the first question has to be answered in the negative and in favour of the assessee. From that decision it follows that an assessment in contravention of Section 18(4) of the Act though in conformity with Rule 39 is an invalid assessment.

5. Now coming to the second question, the fact that the assessee was illegally assessed originally without challenge does not confer power on the Department to continue that illegality in the re-assessment proceedings. Section 18(4) applies to assessments under Section 21 as well. No separate procedure is prescribed by the Act for assessment under Section 21. Further there can be no estoppel against statute. While dealing with question No. 2, it is not necessary for us to decide as to the validity of the original assessment. In this appeal we are only concerned with the re-assessment proceedings.

6. For the reasons mentioned above this appeal fails and the same is dismissed with costs.

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