

Commissioner of Sales Tax, U. P., Lucknow

Vs

M/s. Vijai Int. Udyog, G.T. Road, Sikandrarao, Hathras

Civil Appeal No. 4121 of 1984

(D. A. Desai, Ranganath Misra JJ)

15.10.1984

ORDER

1. Special leave granted.

2. The respondent was assessed to sale-tax under the Uttar Pradesh Sales-tax Act for the year 1977-78. The books of account were rejected and the disclosed taxable turnover of Rs. 51,451 was enhanced on estimate to Rs. 1,00,000 by the assessment order dated October 30, 1979, Assessee's appeal to the Assistant Commissioner succeeded in part and by order dated June 10, 1980 the Assistant Commissioner reduced the taxable turnover to Rs. 65,000 while sustaining rejection of the books of account. Against the appellate decision of the Assistant Commissioner, the assessee and the Commissioner appealed to the Tribunal - the assessee claiming acceptance of the accounts and the returned taxable turnover and the Commissioner challenging the reduction of the estimated taxable turnover from Rs. 1,00,000 to Rs. 65,000. Assessee's appeal being O.M.A. No. 1366 of 1980 was dismissed by order dated June 11, 1982, by the Tribunal and the decision of the Assistant Commissioner was confirmed. The appeal by the Commissioner being 541 of 1981 was partly allowed on September 13, 1982 and the estimated taxable turnover was determined at Rs. 90,000. Assessee allowed the Tribunal's decision against it to become final but challenge was laid against the decision of the Tribunal in the connected appeal by the Commissioner by filing a revision under Section 11 of the U.P. Sales-tax before the High Court at Allahabad. The High Court held :

Once the Tribunal decided the appeal filed by the assessee and dismissed it, the doctrine of merger applied and the judgment of the Assistant Commissioner (Judicial) stood merged in the judgment of the Tribunal. When the appeal filed by the Commissioner was allowed, the Tribunal was interfering in effect with a previous order of the Tribunal itself which was incompetent. It is unfortunate that the appeal of the Commissioner cannot be decided on merit. This contingency would have been avoided and should be avoided in future by ensuring that when the appeals are filed by the assessee and the Commissioner, they are heard and decided together.

Against the decision of the Allahabad High Court the present appeal has been filed by the Commissioner.

3. We entirely agree with the High Court that the two appeals should have been heard at a time by the Tribunal. Since both the parties were before the Tribunal, it was proper that when the assessee's appeal was taken up first, the Tribunal's attention should have been drawn to the fact that the Commissioner's appeal against the same decision of the Assistant Commissioner was pending and both should have been clubbed together. If that had been done the unfortunate situation which has

necessitated the present appeal to be carried to this Court would not have arisen.

4. On the facts of the case, we do not accept the view of the High Court that the doctrine of merger applied. Both the assessee and the Commissioner had a statutory right of appeal to the Tribunal against the decision of the Assistant Commissioner and in exercise of that right two separate appeals had been filed. On account of the mistake of the Tribunal in not clubbing the two appeals the statutory right of appeal of one party could not be negated. It is a well-settled proposition of law that no party should suffer on account of the mistake of the Court or the Tribunal. That apart in a situation like this, the doctrine of merger has no application and the High court was in error in throwing out the Commissioner's appeal by applying the doctrine of merged.

5. To meet out justice to the parties and overcome the difficulty arising in the circumstances indicated above, we suggested to the counsel of the parties that both the appeals should be reheard by the Tribunal and counsel for both parties fairly agreed that it should be done. We accordingly allowed this appeal, set aside the order of the High Court as also the two separate orders of the Tribunal by consent of parties and direct that Appeal 1366 of 1980 filed by the assessee and Appeal 541 of 1981 filed by the Commissioner relating to the year 1978-79 shall be reheard. The Tribunal shall hear both the appeals on the same day and dispose them of by a common judgment to avoid any further difficulty. There shall be no order as to costs.

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