

Rishabh Kumar and Sons

Vs

State of U. P. and Others

Civil Appeals Nos. 270-72 of 1975

(Ranganath Misra, G. L. Oza JJ)

24.04.1987

ORDER

1. These are three appeals by special leave petitions relating to the periods of 1967-68, 1968-69 and 1969-70 for purpose of assessment of sales tax under the Uttar Pradesh Sales Tax Act. The appellant is a dealer in Weights and measures. At the relevant time the statute authorised the State Government to make a deviation from the general scheme of multi-point taxation by notifying that sales of such items as were included in the notification would be liable to single-point tax. The State Government, in exercise of such power under Section 3-A of the Act by notification No. ST-4124-x-950(12), 1967 dated July 31, 1967 provided that sale of "mill stores and hardware" would be exigible to single-point tax and as against the general rate of 3 percent the same would be liable at 6 per cent. Several representations were made by dealers in weights and measures to their association for clarification from the authorities as to whether weights and measures were included in "mill stores and hardware". We have been shown several notifications, letters and clarificatory orders issued by authorities under the Act and some of them even quoted the authority of the State Government as the originating point of the view that weights and measures were included within the notification being covered by item 3. The question came up for consideration before a Full Bench of the Allahabad High Court as to whether weights and measures were so included with the item "mill stores and hardware" and a Full Bench of the High Court in *CST v. Ram Niwas Pushkar Dutt, Faizabad* ((1971) 28 STC 736 (All HC)) came to hold to the contrary, namely, that that entry did not cover weights and measures. Apparently, the correspondence, the orders and directions of the officers etc. were not placed before the court and the court had, therefore, no occasion to consider the effect of such representations as contained therein. At the relevant time when the Full Bench decision came, the appellant had appeals for these three years pending before the Appellate Authority raising certain other issues. The assessing officer had accepted the stand of the appellant and given him the benefit and assessed the transactions as covered by the notification under Section 3-A. The Appellate Authority put the assessee to notice and on the basis of the decision of the High Court held that the sales were not covered by the notifications under Section 3-A and were liable to tax at the general rate. The present appeals question such action of the Appellate Authority as uphold by the other authorities in the hierarchy.

2. Having heard learned counsel for the appellant, we are satisfied that the view taken by the Full Bench decision is correct. We are equally satisfied that the representations either of the State Government or of the authorities under the statute would not give rise to a situation of estoppel against the statute. The law is clear and there are several decisions of this Court which make the position abundantly certain the estoppel is not available to be pleaded against an Act.

3. Aware of these difficulties, learned counsel instead of trying to contend that the decision of the

Full Bench is wrong has confined his submission to a short aspect, namely that the assessee in the instant case is a small dealer who had no occasion to enquire and examine as to whether the representations of the authorities were correct. He could have passed on the liability of tax if he knew that the multipoint basis was the right one to be applied. But he felt misled by the orders of the authorities, and therefore, he could not passed on the liability to the purchasing dealers or the consumers. We find that the ultimate tax liability involved in these three years is less than Rs. 30,000. Learned counsel has relied upon two decision of this Court where almost in similar situation this Court has taken the view that notwithstanding the legal position the tax demand should not be collected. Those authorities are Collector of Customs and Central Excise v. Oriental Timber Industries ((1985) 3 SCC 85 : 1985 SCC (Tax) 365) and Union of India v. Godfrey Philips India Ltd. ((1985) 4 SCC 369 : 1986 SCC (Tax) 11) We are inclined to accept this submission that in the special facts and circumstances of this case, the assessee should not be made to pay the amount involved in the three years in question. We indicate that this shall not be cited as a precedent. If the amount has in the meantime been collected, the same be refunded to the assessee. Parties will bear the respective costs both before the High Court and here.

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