

SUPREME COURT OF INDIA

Commissioner of Sales Tax, U.P.

Vs.

Israr Hotel, U.P.

C.A.No.5088 of 1998

(S. Rajendra Babu and S. N. Phukan JJ.)

07.03.2000

ORDER

1. In this appeal the order made by the High Court setting aside an assessment order is called in question. The assessment pertains to the period 1979-80 and the order was made in 1987. The High Court did not advert to the fact that under what circumstances the order had been made by the assessing authority and it did not take note of the relevant provisions of the Act nor did it notice the findings recorded by the Tribunal in this regard. It had simply noted two dates namely, year of assessment and date of order of the assessment and set aside the same. We do not think that it was a satisfactory way of disposing of the matter.

2. The Tribunal in this case examined the contention put forth on behalf of Nisar Ahmad, proprietor of M/s. Israr Hotel that he was a stranger to the proceedings and noted as follows:

It is a case in which the Department appears to have been duped by the two brothers Shri Irshad Ahmad and Shri Nisar Ahmad in collusion with each other by informing of change of name of hotel at the time of survey dated 17.5.1979, and then getting assessment completed in the name of Irshad Ahmad Hotelwala for this year, and accepting before the assessing authority, his daily sales to be of Rs: 50 to 60 only without telling that the business was done in this year in the name of M/s. Israr Hotel, and not by him.

3. In those circumstances the assessing authority applied the enlarged period of limitation as provided under Section 21(7) of the Act. Section 21(7) in fact provided that if in the case of an assessment or reassessment of a dealer for any assessment year, an assessing authority has included any turnover and any superior authority or court has, in exercise of the powers lawfully vested in it, held such turnover relates to the assessment of any other dealer whether under the Act or under the Central Sales Tax Act it would attract enlarged period of limitation. The, view taken by the Tribunal in this regard stands to reason in the facts set out above.

4. Shri Shakil Ahmad, learned Counsel for the respondent submitted that Section 21(7) of the Act would only mean a person who is party to a proceeding but not any other person and proceedings could not be held against a stranger to those proceedings. We cannot appreciate this contention particularly when the authority while concluding the assessment in respect of one dealer has held that if such turnover has to be assessed in the hands of any other dealer, the enlarged period of limitation would be attracted. If he was also a party to those proceedings, assessment could have been completed and the question of remand in such a case could not arise at all. In that view of the matter there is no substance in the contention urged on behalf of the respondent. In the circumstances, we allow this appeal and set aside the order made by the High Court and restore that of the Tribunal. However, in the circumstances of the case there shall be no order as to costs.