

Prem Devi and anr. Vs. Sales Tax Officer (Shri R.N. Upadhyaya) and ors.

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SooperKanoon Citation : sooperkanoon.com/465295

Court : Allahabad

Decided On : Aug-11-1977

Reported in : [1978]41STC314(All)

Judge : C.S.P. Singh and ;B.N. Sapru, JJ.

Appeal No. : Civil Misc. Writ No. 511 of 1975

Appellant : Prem Devi and anr.

Respondent : Sales Tax Officer (Shri R.N. Upadhyaya) and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.N. Bhalla, Adv.

Disposition : Petition dismissed

Judgement :

C.S.P. Singh, J.

1. By this petition the petitioner has challenged the order of assessment made by the Sales Tax Officer, as also the recovery proceedings consequent to the demand created by the orders. It transpires that the petitioner filed appeals against the assessment orders and, on appeal, the assessment for the year 1968-69 has been set aside, while that for the year 1969-70 has been modified. The appeal for

the year 1970-71 is still pending.

2. In view of the fact that the petitioner has already resorted to the alternative remedy of appeal and even in the event of the appeal being adversely decided, he can file a revision, the petition in so far as it seeks to challenge the assessment orders has to abate in view of Section 58 of the Constitution (42nd Amendment) Act, 1976.

3. So far as the challenge to the recovery proceedings is concerned, no procedural defect has been pointed out to us in the mode of recovery adopted by the recovering authority. The learned counsel stated that he made a request to respondent No. 2 for being granted permission to sell the attached goods/stocks so as to clear off the dues outstanding against him, but respondent No. 2 has not passed any orders yet. It is not clear as to whether any written application was filed by the petitioner before respondent No. 2. In view of these circumstances, it is not possible to issue any order against respondent No. 2 directing him to permit the petitioner to sell the goods so as to clear off the dues. The proper procedure for the petitioner to adopt is to make an application before respondent No. 2 for the permission to sell the goods to pay off the tax provided, of course, the same is permissible under the law.

4. In view of the above considerations we dismiss the petition as having abated. The stay order is discharged. However, in view of the fact that the appeal for the year 1970-71 has been pending before the appellate authority for a considerable length of time, we hope that the appellate authority will dispose of as expeditiously as possible.

5. A copy of this order will be given to the counsel for the petitioner tomorrow on payment of usual charges.