

Bharat Syringe Works Vs. Commissioner of Sales Tax

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Court : Allahabad

Decided On : Aug-29-1986

Reported in : [1985]65STC353(All)

Judge : R.R. Misra, J.

Appeal No. : Sales Tax Revision Nos. 201 to 203 of 1981 and 62 to 64 of 1982

Appellant : Bharat Syringe Works ;commissioner of Sales Tax

Respondent : Commissioner of Sales Tax;bharat Syringe Works

Advocate for Def. : Chief Standing Counsel

Advocate for Pet/Ap. : Pradeep Agarwal, Adv.

Disposition : Petition dismissed

Judgement :

R.R. Misra, J.

1. Consequent upon three second appeals filed for the assessment years 1973-74 to 1975-76 and a consolidated order dated 23rd October, 1981, passed by the Sales Tax Tribunal partly allowing the appeals, these six Sales Tax Revisions have been filed by the dealer are numbered as Sales Tax Revisions Nos. 201, 202 and 203 of 1981 and the revisions filed on behalf of the Commissioner of Sales

Tax are numbered as Sales Tax Revisions Nos. 62, 63 and 64 of 1982. The yearwise break up of the revisions is that for the assessment year 1973-74, the revision filed by the dealer is numbered as Sales Tax Revision No. 203 of 1981 while the revision filed by the department is numbered as Sales Tax Revision No. 64 of 1982. For the assessment year 1974-75 the revision filed by the dealer is numbered as Sales Tax Revision No. 202 of 1981 while the revision filed by the department is numbered as Sales Tax Revision No. 62 of 1982. Regarding the assessment year 1975-76, the revision filed by the dealer is numbered as Sales Tax Revision No. 201 of 1981 while the revision filed by the department is numbered as Sales Tax Revision No. 63 of 1982. Since all the above six revisions arise out of a consolidated order passed by the Sales Tax Tribunal the same are being also heard and disposed of by me by one common judgment.

2. Admittedly M/s. Bharat Syringe Works, Lalbagh, Lucknow, is not a manufacturer. The assessee deals in medicine, glasswares and iron and steel furniture and its main supplies are to Government hospitals. So far as the disclosed version of the dealer for the three assessment years in question is concerned, it was conceded before the Tribunal as well as before me that in the absence of proper accounts, the authorities below were justified in taking recourse to best judgment assessment. Admittedly the assessee had not maintained any cash book, ledger stock register and purchase register. So the question remains regarding determination of quantum of turnover for the years in question.

3. The premises of the assessee were surveyed on 21st March, 1974, by the Sales Tax Officer (S. I. B.) and certain account books and loose papers were seized. Another survey was made on 2nd March, 1977, by the Sales Tax Officer (S. I. B.) and again some account books and loose papers were seized. The Sales Tax Tribunal has, in its impugned orders, given detailed facts with regard to the huge suppression of turnover found as a result of survey and other enquiries made from the Directorate of Medical and Health Services, U. P., Lucknow. Accordingly for all these years there was enhancement in the quantum of taxable turnover.

4. Learned counsel appearing on behalf of the dealer has urged that since medicine is taxable at single point therefore unless having regard to the enhanced

turnover so made and confirmed by the Sales Tax Tribunal, there is positive proof led by the department that the assessee was an importer with regard to those enhanced figure of turnover, the same cannot be taxed under the law. He has relied upon the decision reported in the case of Punjab Tyres v. Commissioner of Sales Tax 1982 UPTC 408.

5. I have heard learned counsel for the applicant as well as Sri P. C. Verma, learned counsel appearing on behalf of the Commissioner of Sales Tax.

6. The relevant portion regarding burden of proof has been stated thus is Section 12-A of the U. P. Sales Tax Act :

12-A. Burden of proof.-In any assessment proceedings, when any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him....

7. In the case of Punjab Tyres 1982 UPTC 408, I find that the same is distinguishable inasmuch as in the said case there was no finding recorded by the Tribunal that there was suppression of sales and in that view of the matter the court took the view that tax cannot be levied on assumption that the dealer had sold the commodity after importing it without any positive finding.

8. In the present case the Sales Tax Tribunal has recorded findings pointing out various materials and huge suppression of sales. To my mind it is a case of pure and simple estimate of quantum of taxable turnover. In my opinion, in view of the findings recorded by the Tribunal and the provisions of Section 12-A of the U. P. Sales Tax Act the burden of proof lay squarely on the dealer himself and not on the department. I find that the dealer has failed to discharge that burden of proof and in my opinion there is no substance in the argument advanced by the learned counsel for the assessee on this score.

9. Dealing with a similar situation when there was suppression of sales and the assessee had not produced either the purchase vouchers or indicated the particulars of the selling dealers from whom he had purchased the match-box, etc., this Court in the case of Lajja Ram Mahesh Butt, Agra v. Commissioner of

Sales Tax, U. P., Lucknow 1974 UPTC 472 has taken the view that in such a situation and in view of Section 12-A of the U. P. Sales Tax Act, the burden of proof is on the assessee.

10. In view of the above, I find no substance in the submission made on behalf of the assessee. All the three revisions filed by the assessee, therefore, deserve to be dismissed.

11. As regards the three revisions filed on behalf of the Commissioner of Sales Tax, I find that the argument advanced relate to the sufficiency of evidence or appraisal of evidence for the reduction of turnover. The question regarding sufficiency or adequacy of material or appraisal of evidence cannot be gone into by the High Court in a revision filed under Section 11 of the U. P. Sales Tax Act. The three revisions, therefore, filed on behalf of the department fail and are dismissed.

12. In the result, all the aforesaid six revisions are dismissed with parties to bear their own costs. Interim order dated 12th January, 1982, passed in the three revisions filed by the assessee stand automatically vacated.