

Ajaipal and anr. Vs. Additional Revising Authority, Sales Tax and ors.

Ajaipal and anr. Vs. Additional Revising Authority, Sales Tax and ors.

SooperKanoon Citation : sooperkanoon.com/480163

Court : Allahabad

Decided On : Feb-16-1982

Reported in : [1983]52STC59(All)

Judge : K.N. Seth and ;R.R. Rastogi, JJ.

Appeal No. : Civil Miscellaneous Writ Petition No. 755 of 1976

Appellant : Ajaipal and anr.

Respondent : Additional Revising Authority, Sales Tax and ors.

Advocate for Def. : Standing Counsel

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

Disposition : Petition dismissed

Judgement :

R.R. Rastogi, J.

1. This petition seeks the quashing of the orders dated 30th November, 1974, 10th March, 1975, and 1st May, 1976, passed by the Sales Tax Officer, Banda, the Assistant Commissioner (Judicial), Sales Tax, Jhansi, and the Additional Judge (Revisions), Sales Tax, Allahabad, respectively. There is a further prayer for the issue of a writ, order or direction restraining the respondents from realising any

amount as sales tax under the impugned assessment orders from the petitioners.

2. M/s. Jaipal Ajaipal, Hamirpur, carried on business in foodgrains and oilseeds. For the period from 1st April, 1969, to 30th September, 1969, the business under this name was carried on by one Jaipal and Ajaipal, petitioner No. 1. With effect from 1st October, 1969, the business was carried on by a new firm constituted of Jaipal and three others. Ajaipal, petitioner No. 1, is a minor and Sukhnandan, petitioner No. 2, is his father and guardian. For the aforesaid assessment year 1969-70 two assessments were made under the U. P. Sales Tax Act for the aforesaid two periods. Subsequently those assessments were reopened under Section 21 of the Act and the reassessment orders were passed for the two periods separately on 30th November, 1974. Aggrieved, the assessee filed two appeals against those assessment orders on 10th February, 1976. Since those appeals were filed beyond the statutory period of limitation, it was claimed that it was only on 3rd February, 1975, when the recovery was pressed against the petitioners for realisation of the entire amount payable in respect of both the periods that the petitioners came to know of those assessment orders and after obtaining certified copies of the same filed the appeals. This contention did not find favour with the appellate authority and the reason given was that Jaipal who was a partner in the firm in both the periods concerned was served with demand notices and copies of the assessment orders on 19th December, 1974. That service was treated as sufficient service on the firm. The appeals were hence dismissed in limine as barred by time.

3. Aggrieved, the matter was taken up by way of two revisions before the Additional Judge (Revisions), Allahabad. The learned Additional Judge (Revisions) concurred with the view taken by the appellate authority and dismissed the revisions.

4. Counter-affidavits have been filed on behalf of the respondents.

5. The first submission made before us on behalf of the petitioners was that since petitioner No. 1, Ajaipal, was a minor and no valid and legal partnership firm having come into existence no valid assessment could be made on such firm for the period that it remained in existence, i. e., for the period from 1st April, 1969, to

30th September, 1969. As a consequence thereof, no recovery proceedings can be taken against petitioner No. 1. We do not find much substance in this contention. In the first instance it has not been averred that this partnership was evidenced by any instrument in writing so that it may be possible to say that it was a case of partnership firm coming into existence for the aforesaid period. It appears that the business was carried on in the name of M/s. Jaipal Ajaipal. It may be that a minor cannot enter into a partnership but there is no restriction on his being a member of an association of persons and this fact could not be disputed before us on behalf of the petitioners. At the relevant time, 'dealer' as defined in Section 2(c) of the Act was stated to mean 'any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh whether for commission, remuneration or otherwise and includes any firm or Hindu joint family and any society, club or association, which sells goods to its members and also includes any department of the State Government or the Central Government which carries on such business and any undertaking engaged in the generation or distribution of electrical energy or any other form of power'.

6. There was an explanation to this clause, but that is not relevant for our purposes. From this definition it would be clear that an association of persons could also be a dealer within this Act. A minor through his guardian can be a member of an association of persons. Apart from this, copies of the relevant assessment orders have not been filed, and therefore, it cannot be said as to whether the assessment was made treating the dealer as a partnership firm or an association of persons. Therefore, for the period concerned, it can be taken that the business was carried on by an association of persons consisting of Jaipal and Ajaipal, minor, through his father as guardian. The assessment was validly made on it and the tax payable can be recovered from the members of the association.

7. The next submission made was that no demand notice or recovery certificate was served on the petitioner. This submission, as well, had no merits because the Assistant Commissioner (Judicial) in the appeals filed against the assessment orders made under Section 21 of the Act recorded a finding of fact that the demand notices and copies of those assessment orders were served on Jaipal on 19th December, 1974. This finding has been affirmed by the Additional Judge

(Revisions), who is the last fact-finding authority. It is, thus, a finding of fact which cannot be challenged in writ proceedings before this Court. Thus, it has been found that the demand notice and copies of the assessment orders for the period in dispute were served on Jaipal, one of the members of the association. This being so, the view taken by the appellate authority that the appeals were barred by time was absolutely correct.

8. There is no merit in this writ petition and it is hence dismissed. The stay order is vacated. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com