Ram Kishan Vs. the Additional Commissioner of Sales Tax and Another

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Court : Delhi

Decided On : Aug-27-1984

Reported in : [1986]61STC62(Delhi)

Judge : B.N. Kirpal, J.

Acts : Delhi Sales Tax Act, 1975 - Sections 47

Appeal No. : C.W. No. 1069 of 1984

Appellant : Ram Kishan

Respondent : The Additional Commissioner of Sales Tax and Another

Judgement :

Kirpal, J.

1. The writ petition is finally heard and is being disposed of by this order.

2. The challenge in this petition is primarily to the order dated 28th September, 1983, of the Additional Commissioner of Sales Tax. The assessment order dated 26th February, 1981, in respect of the assessment year 1974-75 was served on the petitioner on 15th March, 1981. By the said order sales tax of Rs. 2,350 including Rs. 100 was levied.

3. The petitioner filed a revision under section 47 of the Delhi Sales Tax Act, 1975, before the additional Commissioner of sales Tax. In the impugned order the Additional Commissioner of Sales Tax observed that the revision petition was barred by time and as such it was dismissed.

4. The view taken by the Additional Commissioner of Sales Tax is on the basis that the assessment order was for the assessment year 1974-75, when the Delhi Sales Tax Act, 1975, had not come into force. Under the Bengal Finance (Sales Tax) Act, as it extended to the Union Territory of Delhi, which was applicable for the assessment year 1974-75, the period within which a revision could be filed was 60 days. Under the Delhi Sales Tax Act, 1975, however, revision under section 47 can be filed within two years of the service of an assessment order.

5. It is not disputed by the learned counsel for the respondents that the assessment proceedings in the present case were initiated by the assessing authority by issuance of notice in form ST-XIV after the Delhi Sales Tax Act, 1975, has come into force. It is now well-established that if an Act is repealed then though substantive provisions would remain unaltered but the procedural provisions of repealing Act would be applicable. It is further clear that the provisions of the Delhi Sales Tax Act, 1975, would be applicable where the assessment proceeding were initiated when the new Act had come into force and the old had been repealed. In the 1975 Act the period within which a revision could be file was enlarged to two years. The assessment order was passed on 26th February, 1981, at the time when the Delhi Sales Tax Act, 1975, had come into operation. This being so, the revision which was filed by the petitioner was within time and, thereforee, the Additional Commissioner of Sales Tax was in error in holding that the said revision was barred by time.

6. It was argued by Mr. Wazir Singh, that in the writ petition the challenge is to the assessment order dated 26th February, 1981, and, thereforee, this petition is wholly belated. This argument has only to be noticed to be rejected. The learned counsel for the petitioner has confined his contentions only to the validity of the order dated 28th September, 1983, of the Additional Commissioner of Sales Tax. The present writ petition was filed on 2nd April, 1984. It cannot be said, thereforee,

that there has been undue delay on the part of the petitioner in challenging the order of the Additional Commissioner of Sales Tax. Reference to the date on which the assessment order was passed is wholly irrelevant in the present case.

7. For the aforesaid reasons, writ of certiorari is issued quashing the order dated 28th September, 1983, and the Additional Commissioner of Sales Tax is directed to decide the revision of the petitioner as expeditiously as possible. The petitioner may apply for stay of realisation of tax to the Additional Commissioner of Sales Tax within a period of one month from today. Till that time no tax in dispute shall be realised from the petitioner. The petitioner shall be entitled to costs. Counsel fee Rs. 300.