

(1977) 01 AHC CK 0011

Allahabad High Court

Case No: Civil Miscellaneous Writ No"s. 966 and 1012 of 1975

Ram Singh and Sons Engineering
Works and Another

APPELLANT

Vs

The State of Uttar Pradesh and
Another

RESPONDENT

Date of Decision: Jan. 4, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1977) 39 STC 424

Hon'ble Judges: R.M. Sahai, J; D.M. Chandrashekhar, J

Bench: Division Bench

Advocate: Bharatji Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

D.M. Chandrashekhar, J.

In these petitions under Article 226 of the Constitution, the petitioners are common. They have impugned two notices issued u/s 22 of the U.P. Sales Tax Act, 1948 (hereinafter referred to as the Act), calling upon the petitioners to show cause why the orders of assessment of the petitioners to sales tax for the years 1969-70 and 1970-71 should not be rectified.

2. In the original assessments for the aforesaid two years the Sales Tax Officer had treated certain transactions of the petitioners as amounting to works contract and hence not assessable to sales tax. In the impugned notices the Sales Tax Officer has proposed to treat the aforesaid transactions as assessable to sales tax.

3. In the assessment of the petitioners for the year 1965-66 certain transactions of the petitioners were claimed as amounting to works contract and hence not assessable to sales tax, but the Sales Tax Officer had rejected that claim and treated those transactions as amounting to sales and had levied sales tax. The decision of

the Sales Tax Officer was affirmed by the appellate authority ; but the Judge (Revisions) held that those transactions amounted to works contract and hence were not liable to tax. In a reference at the instance of the sales tax authorities, this court held that those transactions did not amount to works contract, but amounted to sales and hence were liable to sales tax. The aforesaid decision of this court has been reported in Commissioner of Sales Tax, U.P. v. Ram Singh & Sons Engineering Works 1975 U.P.T.C. 133.

4. In the impugned show cause notices the Sales Tax Officer has referred to the aforesaid decision of this court as furnishing the basis for initiating rectification proceedings u/s 22 of the Act.

5. In these petitions, Sri Bharatji Agarwal, the learned counsel for the petitioners, assailed the show cause notices issued to the petitioners on the following two grounds :

(i) The decision of this court in Commissioner of Sales Tax v. Ram Singh & Sons Engineering Works 1975 U.P.T.C. 133 is clearly distinguishable on facts and has no application to the present cases; and

(ii) The Sales Tax Officer could not initiate rectification proceedings merely because he had changed his opinion as to the legal nature of the relevant transactions.

6. Elaborating his first contention, Sri Agarwal submitted that the decision of this court in Commissioner of Sales Tax v. Ram Singh & Sons Engineering Works 1975 U.P.T.C. 133 proceeded upon the terms and conditions of the relevant contracts in that case and that the terms and conditions of the contracts relevant for the present petitions are entirely different. Sri Agarwal has taken us through the terms of the contracts as set out in the earlier decision of this court. From a perusal of the earlier decision of this court, it is not possible to state straightway that that decision has no application to the present cases. Whether the earlier decision governs the present cases or not, is a matter which requires examination by the Sales Tax Officer when the petitioners appear before the Sales Tax Office and show cause against the proposed rectification proceedings. Hence we are unable to say that the impugned notices are ex facie bad.

7. Elucidating his second contention, Sri Agarwal submitted that the mere change of opinion by the Sales Tax Officer as to the legal nature of the transactions cannot amount to an error apparent on the face of his order. But this contention ignores the fact that what prompted the Sales Tax Officer to initiate rectification proceedings was the ruling of this court in the aforesaid earlier case relating to the same parties. In Narain Chemical Industries v. Sales Tax Officer, Moradabad 1970 U.P.T.C. 605 a Division Bench of this Court held that where the Sales Tax Officer has levied sales tax on sale of certain commodity at a rate which (the rate) was patently erroneous: in view of a subsequent decision of the High Court, such mistake in the order of the Sales Tax Officer would be a mistake apparent on the face of the record liable to be

corrected u/s 22 of the Act.

8. However, Sri Agarwal contended that the decision of this court in Commissioner of Sales Tax v. Ram Singh & Sons Engineering Works 1975 U.P.T.C. 133 was under appeal before the Supreme Court and that hence it cannot be said that there is any final enunciation of law on the question whether the transactions of the type involved in the present petitions do no amount to works contract.

9. We are unable to accept the above contention of Sri Agarwal. The mere fact that the decision of this court is under appeal does not make it any less binding on courts, tribunals and other authorities within this State until it (that decision) is reversed by the Supreme Court.

10. For the foregoing reasons, we are unable to accept the contention of Sri Agarwal that the impugned notices are without jurisdiction and that the Sales Tax Officer had no power to initiate rectification proceedings But nothing said by us herein should be understood by the Sales Taj Officer as expressing any opinion on the questions that arise for determination before him in the proposed rectification proceedings.

11. In the result, these two petitions fail and are dismissed. In the circumstances of the case, we direct the parties to bear their own costs.

12. The interim orders made by this court on 2nd December, 1975, in both the petitions are vacated.