

(1966) 03 AHC CK 0005

Allahabad High Court

Case No: Government Criminal Appeal No"s. 44, 45, 46 and 47 of 1964

State of Uttar Pradesh

APPELLANT

Vs

Babu Mian

RESPONDENT

Date of Decision: March 16, 1966**Acts Referred:**

- Uttar Pradesh Sales Tax Act, 1948 - Section 14(1)(a)

Citation: (1966) 18 STC 13**Hon'ble Judges:** J.N. Takru, J**Bench:** Single Bench**Advocate:** A.G, for the Appellant; R.K. Das and Behariji Das, for the Respondent**Final Decision:** Allowed

Judgement

1. These are four appeals by the State. Government Appeals Nos. 44 and 45 have been filed against Babu Mian, while Government Appeals Nos. 46 and 47 have been filed against Om Prakash. All these appeals are directed against the orders of the learned Sub-Divisional Magistrate, City Aligarh, dated the 5th October, 1963, acquitting the respondents u/s 14(1)(a) of the U.P. Sales Tax Act-hereinafter called the Act. As all these appeals raise a common question of law, it will be convenient to dispose of them by a single judgment.

2. The facts giving rise to these Government appeals are as follows:- In Government Appeal No. 44 of 1964, the Sales Tax Officer, Aligarh, on the 1st June, 1955, assessed the respondent to a sales tax of Rs. 67,822.00 for the assessment year 1956-57, and after deducting Rs. 384.75 P. paid by him, issued a demand notice to him for Rs. 67,437.25 P. but the respondent failed to make the payment within the time allowed. In Government Appeal No. 45 of 1964 the Sales Tax Officer, Aligarh, on the 20th September, 1961, assessed the respondent to sales tax of Rs. 48,846.44 P. for the assessment year 1958-59 and issued a demand notice for the said amount but the respondent failed to make the payment within the time allowed. In Government

Appeal No. 46 of 1964 the Sales Tax Officer, Aligarh, on the 30th December, 1960, assessed the respondent to sales tax amounting to Rs. 37,500 for the assessment year 1956-57, and issued a demand notice to him for that amount, but the respondent failed to make the payment within the time allowed. In Government Appeal No. 47 of 1964 the Sales Tax Officer, Aligarh, on the 30th December, 1960, assessed the respondent to sales tax in the sum of Rs. 15,626 for the assessment year 1957-58, and issued a demand notice to him for that amount, but the respondent failed to make the payment within the time allowed. Hence the Sales Tax Officer after obtaining the previous sanction of the Commissioner, Sales Tax, U.P., and serving a show cause notice on the respondents, launched their prosecution u/s 14(1)(a) of the Act.

3. The defence of the respondents in all the cases was the same, and, stated shortly, was that as sales tax was not leviable on the goods in which they dealt during the relevant periods, they had neither collected any sales tax nor were they liable for the same. Further that at the time the demand notices were served on them, they had no property or money from which they could make those payments. They, therefore, pleaded that they had made out "reasonable cause" for their failure to pay the assessed tax within the time allowed to them. The defence found favour with the learned Sub-Divisional Magistrate, and he, therefore, ordered their acquittal.

4. On behalf of the State it was contended, (1) that as the assessments in question were not challenged by the respondents, in accordance with the procedure laid down in the Act, it was not open to them to contend that the goods in which they dealt were not liable to sales tax, and (2) that their inability to pay the tax due to their subsequent straitened circumstances could not be regarded as "reasonable cause" within the meaning of Section 14(l)(a), so as to absolve them of the consequences of their failure to deposit the assessed tax within the time allowed to them for that purpose. After hearing the learned counsel for the parties, I am satisfied that both the contentions advanced by the learned counsel for the State are well-founded. I shall therefore proceed at once to record my reasons for coming to that conclusion.

5. Now from the undisputed facts mentioned above, it is clear that none of the respondents challenged their assessments in accordance with the procedure provided therefore by the Act or by any other law. Hence it is futile for them to urge in the present proceedings, that as the goods in which they dealt were not liable to sales tax, they had not collected any sales tax and they were therefore not liable for the payment of the same. This ground touches upon the merits of the assessments, and as such should have been challenged in the manner provided by the Act or by any other law in force at that time. The fact that they had filed writ petitions in previous years challenging-and successfully challenging-their assessment on this very ground, did not relieve them of their duty of challenging the subsequent

assessments on the same ground, except on pain of their becoming final against them.

6. On behalf of the respondents, it was then contended that having regard to the fact (1) that the respondents did not realise any sales tax during the material periods on account of the uncertainty in law as to whether sales tax was chargeable on the goods in which they dealt, (vide the Full Bench decision of this Court in *Adarsh Bhandar v. Sales Tax Officer, Aligarh* [1957] 8 S.T.C. 666. and to the further fact (2) that at the time of the service of the demand notices on them the respondents were in very straitened circumstances and were totally incapable of paying the taxes, they must be held to have made out "reasonable cause" for not paying the assessed tax within the time granted to them. In my opinion, the words "reasonable cause" in Section 14(l)(a) cannot be held to mean the inability of the respondents to pay the assessed tax on either of the grounds mentioned above. The liability of the respondents to the payment of the tax arose under the Act, and, if on account of their misunderstanding of the law or any other reason, they failed to realize it from their purchasers, they have themselves to thank for it, and they cannot on either of those grounds shirk their liability to pay the assessed tax within the period granted to them for doing so. Thus interpreted the expression "reasonable cause" would mean a cause such as that the time given for making the payment was insufficient or that the demand notice was received very late with the result that the time left for making the payment was very short or some cause analogous thereto. As the failure to deposit the sales tax in none of these cases was due to a cause of the kind mentioned above, the respondents cannot be held to have made out "reasonable cause" for their failure to make the payments of the assessed tax in time and their acquittal cannot therefore be justified.

7. The next question to be considered is as to the amount of penalty which should be imposed upon the respondents. In my opinion having regard to all the facts and circumstances of the case, a token penalty in each of these appeals would suffice to meet the ends of justice. I, therefore, allow all these appeals, set aside the orders of acquittal and sentence the respondents to a penalty of Rs. 50 each, in all these appeals.