(1970) 03 AHC CK 0018

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 2858 of 1964

Mahadeo Prasad Shanker Lal		APPELLANT
	Vs	
Judge (Revisions) Sales Tax, Varanasi Range and Others		RESPONDENT

Date of Decision: March 11, 1970

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1971) 27 STC 265

Hon'ble Judges: R.S. Pathak, J; R.L. Gulati, J

Bench: Division Bench

Advocate: V.P. Misra and Ashoke Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

R.S. Pathak, J.

By this petition under article 226 of the Constitution the petitioner challenges the validity of certain proceedings under the U,P. Sales Tax Act in respect of the year 1954-55,

2. The petitioner carries on business in bullion and ornaments. On 28th April, 1955, the petitioner made an application in form V for exemption from tax on the sale of bullion u/s 4 of the U.P. Sales Tax Act for the year 1954-55. It was accompanied by a cheque of Rs. 100. The application disclosed that the sales were estimated below Rs. 50,000. On 25th July, 1955, the Sales Tax Officer made an order determining the turnover of bullion at Rs. 3,50,000 and computing the exemption fee thereon at Rs. 500. He directed the petitioner to deposit the balance, namely, Rs. 400, within ten days of the receipt of the order. The amount was not deposited within the time

fixed. On 17th March, 1956, the petitioner gave a cheque for Rs. 400 to the Sales Tax Officer. The cheque was dishonoured, and it was sent back to the petitioner with a direction that the sum of Rs. 400 should be deposited in cash in the treasury within three days and that payment should not be made by cheque again. The petitioner did not comply with the direction. On 13th May, 1956, he sent another cheque for Rs. 400 and this was also dishonoured. It is, therefore, clear that the petitioner did not deposit the further amount of exemption fee within the time fixed by the Sales Tax Officer.

3. On 16th August, 1956, the Sales Tax Officer wrote to the petitioner to show cause why he should not be criminally prosecuted for issuing bogus cheques and fixed 24th August, 1956, for the appearance of the petitioner in the matter. On 23rd August, 1956, the petitioner deposited Rs. 400.

4. Meanwhile, the Sales Tax Officer had commenced assessment proceedings for the year 1954-55. He made an assessment order on 28th April, 1956, in respect of the different commodities in which the petitioner dealt, and as regards bullion he did not assess any tax being under the impression that an exemption certificate had been granted to the petitioner.

5. Against the order of 25th July, 1955, assessing the turnover of the petitioner for the purpose of determining the exemption fee, the petitioner filed a revision application. The revision application was dismissed by the Judge (Revisions) Sales Tax on 13th November, 1957. The Judge (Revisions) observed that the petitioner had falsely stated that the admitted turnover of bullion was less than Rs. 50,000. He pointed out that the petitioner had not deposited the amount of Rs. 400 within the period fixed by the Sales Tax Officer and, therefore, he was not entitled to an exemption certificate.

6. Then on 26th March, 1958, the Sales Tax Officer dismissed the application for exemption certificate. In that order he pointed out that the petitioner had not paid the amount of Rs. 400 within time. Against that order the petitioner filed a revision application.

7. The exemption application having been dismissed, the Sales Tax Officer took proceedings u/s 21 for assessment of the turnover (r)f bullion. The turnover was assessed to tax by an order dated 17th September, 1959. On appeal, the turnover was reduced by an order dated 12th February, 1962. Against the appellate order, the petitioner filed a revision application. This revision application along with the revision application refusing exemption was disposed of by a common order dated 25th February, 1964. The Judge (Revisions) held that having regard to the conduct of the petitioner and its failure to deposit the amount of Rs. 400 as exemption fee within the time fixed by the Sales Tax Officer the rejection of the application was fully justified. He also upheld the assessment to tax of the turnover of bullion. A third revision application was also dismissed by the order dated 12th February,

1964, but that relates to the assessment year 1955-56 with which we are not concerned.

8. The petitioner challenges the order dated 26th March, 1958, rejecting its exemption application, the assessment order dated 17th September, 1959, for the year 1954-55, the appellate order dated 12th February, 1962, and the order dated 25th February, 1964, in so far as it relates to the rejection of the exemption application and to the assessment for the year 1954-55.

9. Four alternative contentions have been urged on behalf of the petitioner. But, in our opinion, as the petitioner is entitled to relief on one of them it is not necessary to consider the others. That contention is that as the exemption fee had been deposited while the exemption application was still pending, the Sales Tax Officer could not reject the exemption application. He was obliged to take into account the deposit made by the petitioner even though it was made beyond the time fixed. The question which arises here is whether the direction of the Sales Tax Officer to deposit the amount within the time fixed by him is mandatory in nature or merely directory. If it is mandatory the omission to deposit the amount within the time fixed results in the forfeiture of the dealer''s right to the exemption certificate, but if it is merely directory the deposit of the exemption fee, even though beyond the time fixed in that behalf, will amount to payment in law of the exemption fee and accordingly an exemption certificate must issue. In our opinion, there is nothing in Rule 19 of the U.P. Sales Tax Rules from which we can infer that the period fixed by the Sales Tax Officer for the payment of the exemption fee is fundamental to the grant of exemption. What the rules require is that the exemption fee demanded by the Sales Tax Officer should be deposited. It should be deposited within the time fixed by the Sales Tax Officer, but even if it is deposited thereafter it must be taken into consideration so long as the deposit is made before the exemption application is finally disposed of. It is urged on behalf of the respondents that the exemption is available to a dealer only if he strictly satisfies all the conditions necessary to such exemption. We are referred to Section 4(1)(b) of the Act declaring that no tax shall be payable on the sale of goods by such persons or class of persons as the State Government may from time to time exempt on such conditions and on payment of such fees as may be notified in the official Gazette. It is contended that one of the conditions is the payment of the fee within the time fixed by the Sales Tax Officer. In our opinion, all the conditions envisaged in Section 4(1)(b) need not necessarily be of a mandatory nature. Whether they are mandatory or directory will depend upon their nature as construed from the language of the relevant rule and the context in which it has to be applied. There is nothing in the language of any rule placed before us to show that the element of time for deposit of the fee is a mandatory requirement. Nor can the mandatory nature be spelled out from anything in the context. We are not satisfied that merely because an exemption is involved every condition necessary to such an exemption is of a mandatory nature requiring strict compliance by the dealer. In our opinion, on this ground alone, the petitioner is

entitled to succeed.

10. The petition is allowed. The order dated 26th March, 1958, refusing exemption and the assessment order dated 17th September, 1959, made by the Sales Tax Officer, the appellate order dated 12th February, 1962, made by the Judge (Appeals) in the assessment case, and the order dated 25th February, 1964, made by the Judge (Revisions) Sales Tax in so far as it relates to the rejection of the exemption application and to the assessment for the year 1954-55 are quashed. Having regard to the circumstances of the case, there is no order as to costs.