

(1969) 10 AHC CK 0012

Allahabad High Court

Case No: Sales Tax Reference No. 621 of 1967

Sethu Prasad Lalta Prasad

APPELLANT

Vs

The U.P. Government

RESPONDENT

Date of Decision: Oct. 7, 1969

Acts Referred:

- Central Sales Tax Act, 1956 - Section 8(2A)
- Uttar Pradesh Sales Tax Act, 1948 - Section 11

Citation: AIR 1970 All 594 : (1969) 39 AWR 824

Hon'ble Judges: Yashoda Nandan, J; Jagdish Sahai, J; J.S. Trivedi, J

Bench: Full Bench

Advocate: K.C. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Jagdish Sahai, J.

The Additional Judge (Revisions) Sales Tax, Meerut Range has submitted the instant statement of the case and has referred the following question of law for the opinion of this Court:

"Whether on the facts and circumstances of the case gurlota is taxable under the Explanation to Section 8(2-A) of the Central Sales Tax Act?".

2. The assessment giving rise to this reference is in respect of the year 1958-59 and has been made under the provisions of the Central Act. Messrs. Sethu Prasad Lalta Prasad (hereinafter referred to as the asses-see) at whose instance the instant reference has been made, are the "dealers" in the present case. They have, during the year 1958-59 disclosed a turnover of Rs. 8,887,34 P. in respect of gurlota against C Forms and of Rs. 1,01,015.86 P. without C Forms. Inter-State sales of gurlota, with effect from 1-10-1958 to 31-3-1959, with C Forms, were disclosed by the assesses for Rs. 1,11,143.34 P. and without C Forms for Rs. 21,816. The assessing authority made

the assessment adopting the rate of one per cent and. 3 pies per rupee. The sales without C Forms were assessed at the rate of 7 per cent. On appeal by the assessee, the Assistant Commissioner (Judicial) held that sales upto 30-9-1958 were not liable to be assessed to tax but those thereafter were liable. The assessee filed a revision application and pleaded that the entire turnover of gurlota after 30-9-1958, was not liable for being assessed to sales tax. The Additional Judge (Revisions) dismissed the application in revision but as already stated earlier has made the instant reference to this Court.

3. The Vice-President, acting as the President, has promulgated the Central Sales Tax (Amendment) Ordinance, 1969. Section 6 of this Ordinance reads:

"6. Substitution" of new section for Section 9. --For Section 9 of the principal Act, the following section shall be, and shall be deemed always to have, been substituted, namely:--

"Levy and collection of tax and penalties.-- (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within Clause (a) or Clause (b) of Section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of subsection (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within Sub-section (2) of Section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained, or as the case may be, could have obtained, the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods.

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or, penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references,

refunds, rebates, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf, make necessary provision for all or any of the matters specified in this Sub-section,

(3) The proceeds in any financial year of any tax, including any penalty, levied and collected under this Act in any State (other than a Union Territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union Territories shall form part of the Consolidated Fund of India."

4. It is conceded by Mr. K.C. Agarwal, the learned counsel for the assessee, that in a reference proceeding the vires of this Ordinance cannot be gone into. It is also conceded that in view of this provision the question referred to us has to be answered in favour of the Commissioner, Sales Tax and against the assessee.

5. We, therefore, answer the question referred to us in the affirmative, in favour of the Commissioner, Sales Tax and against the assessee but direct the parties to bear their own costs.