

(2003) 05 AHC CK 0266

Allahabad High Court

Case No: Sales Tax Revision No. 526 of 1991

Panchi Petha Store

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision: May 2, 2003**Acts Referred:**

- Uttar Pradesh Sales Tax Act, 1948 - Section 10B, 21

Citation: (2006) 143 STC 325**Hon'ble Judges:** Prakash Krishna, J**Bench:** Single Bench**Advocate:** Bharat Ji Agrawal and Piyush Agrawal, for the Appellant; Bipin Kumar Pandey, for the Respondent

Judgement

Prakash Krishna, J.

The sole question involved in the present case is whether the Deputy Commissioner in exercise of powers u/s 10-B of the U.P. Sales Tax Act, 1948 can revise the assessment order on the materials, which came into existence subsequent to that of passing of the assessment order. This revision is directed against the order dated February 20, 1991 passed by the Trade Tax Tribunal Bench-II, Agra, in Second Appeal No. 426 of 1988 (assessment year 1980-81 part-I). The applicant is a registered dealer under the provisions of the U.P. Sales Tax Act and was carrying on the business of manufacture and sale of petha and namkeen. The Sales Tax Officer passed assessment order on June 2, 1984 in respect to the assessment year 1980-81 (II-Part). It appears that subsequently the said assessment order was sought to be revised by the Deputy Commissioner (Executive), Sales Tax u/s 10-B of the Act, on the basis of the fact that there was Income Tax search and seizure in the business premises of the applicant and in that search and seizure the statement of the proprietor of the firm was recorded on February 24/25th 1987. In the said statement the proprietor of the firm before the Income Tax Department admitted that he had been making suppression of sale in the books of account. The Deputy Commissioner

(Executive), Sales Tax by order dated May 27, 1988 revised the assessment order dated June 2, 1984 and enhanced the tax liability. The applicant filed an appeal against the aforesaid order before the Trade Tax Tribunal, which has been dismissed.

2. I have heard Sri Bharat Ji Agrawal, Senior Advocate for the applicant and Sri Bipin Kumar Pandey, Standing Counsel for the department.

3. It was submitted that the order passed by the Deputy Commissioner (Executive), Sales Tax u/s 10-B of the said Act is wholly without jurisdiction. The order u/s 10-B can be revised when there is any illegality or impropriety in the assessment order on the basis of materials already on record, of the case. It was further submitted that at the most this case may be case of escaped assessment for which there is provision u/s 21. This plea was also raised before the Tribunal but was not accepted on the basis that on fresh information obtained from other source the Commissioner can revise the order u/s 10-B of the Act.

4. In [1995] 96 STC 31 (All) : 1994 UPTC 75 (A.K. Corporation v. State of Uttar Pradesh) it has been held that from the language of Section 10-B of the Act it is evidently clear that the power u/s 10-B of the Act has been conferred on the authority to call for and examine the records relating to any order passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such an order and pass order with respect thereto as it thinks fit. The court in the aforesaid case thereafter considered Section 21 of the said Act and held that while exercising power of revision the revising authority must confine itself to the material available on record of the assessing authority and it cannot take into consideration any material which was not on the record of the assessing authority. The revisional power can be exercised only to satisfy the revising authority about the legality or correctness of the order passed under the Act on the basis of existing materials and not on the subsequent information or materials. In view of this the observation made by the Tribunal that the information received subsequent to the assessment order can be the basis for revising authority to revise the assessment order, is incorrect in law.

5. Further reference can be made to [1997] 105 STC 48 (All) : 1996 UPTC 1185 (United Tractors v. State of Uttar Pradesh) Para 3 of the said judgment reads as under :

The question raised is regarding jurisdiction of the authority u/s 10-B of the Act. This section deals with revisional power of the Commissioner of Sales Tax. Section 21 deals with cases of escaped assessment, underassessment, assessed at lower rate, etc. u/s 10-B Commissioner may revise any order passed by any officer subordinate to him for satisfying himself as to the legality or propriety of such order which may include escaped assessment, or any such which he overlooked or including and interpreting, common illegality or impropriety, Commissioner may examine any order for satisfying himself of its legality and propriety. Satisfaction of legality and

propriety means whether on facts of the case and the law an order passed could be said to be legal or proper. No order could be said to be improper or illegal only because different order results on account of materials which were not placed before him. This would be a case of escaped assessment falling u/s 21. What Commissioner can do cannot be done u/s 21.

6. Following the aforesaid view I find force in the argument of learned Counsel for the applicant that subsequent materials cannot be taken into consideration while revising the assessment order by the revising authority. In the present case the revising authority has further noticed that the dealer purchased coal and raddi from unregistered dealer, but in the assessment order tax has not been imposed on raddi. The revising authority consequently imposed tax on raddi to the tune of rupees four thousand. As regards the purchase of coal from unregistered dealer is concerned I find that the assessing authority in the original assessment order did the same. The turnover on purchases of coal from unregistered dealer was taxed at item No. 3. Therefore, observation by the Deputy Commissioner (Executive), Trade Tax in the revisional order to that extent is not correct.

7. From a perusal of the assessment order it is clear that the assessing authority did not assess the dealer on the purchases of raddi from the unregistered dealer. To that extent the order of Deputy Commissioner (Executive) is liable to be upheld. As regards other additions made on the turnover of petha, coal sand khandsari, etc., they are liable to be set aside as the Deputy Commissioner (Executive) while revising the order, had taken into consideration the statement of the dealer recorded during search and seizure operation by the Income Tax authorities.

8. In the result the revision succeed and is allowed in part. The order of the Trade Tax Tribunal and of the Deputy Commissioner (Executive), Trade Tax dated February 20, 1991 and May 27, 1988 are set aside except for the turnover of raddi.