Rishabh Kumar And Sons vs State Of U.P. And Ors. on 24 April, 1987

Equivalent citations: AIR1987SC1576, 1987(1)SCALE1147, 1987SUPP(1)SCC306, [1987]66STC222(SC), 1987(1)UJ705(SC), AIR 1987 SUPREME COURT 1576, 1987 SCC (SUPP) 306, 1987 UJ(SC) 1 705, (1987) 66 STC 222, 1987 STI 17

Bench: G.L. Oza, Ranganath Misra

ORDER

1. These are three appeals by special leave petitions relating to the periods 1967-68, 1968-69 for purpose of assessment of sales tax under the Uttar Pradesh Sales Tax Act. The appellant is a dealer in weights and measures. At the relevant time the Statute authorised the State Government to make a division from the general Scheme of month-point taxation by notifying that sales of such items as were included i9n the notification would be liable to single-point tax. The State Government, in exercise of such power under Section 3-A of the Act by notification No. ST-4124-x-950(12), 1967 dated July 31, 1967 provided that sale "mill stone and hardware" would be exigible to single-point tax and as against the general rate of 3% the same would be liable at 6%. Several representations were made by dealers in weights and measures to their association for clarification from the authorities as to whether weights and measures were included in "mill stones and hardware". We have been shown several notifications, letters and clarificatory orders issued by authorities under the Act and some of them even quoted the authority of the State Government as the originating point of the view that weights and measures were included within the notification being covered by Item 3. The question came up for consideration before a full Bench of the Allahabad High Court as to whether weights and measures were so included with the item "mill stones and hardware" and a Full Bench of the High Court in Commissioner, Sales Tax, U.P. v. Ram Niwas Puskar Dutt, Faizabad - 28 STC 736 came to hold to the contrary, namely, that that entry did not cover weights and measures. Apparently, the correspondence, the orders and directions of the officers etc. were not placed before the Court and the Court had, therefore, no occasion to consider the effect of such representations as contained therein. At the relevant time when the Full Bench decision came, the appellant had appeals for these three years pending before the Appellate Authority raising certain other issues. The assessing officer had accepted the stand of the appellant and given him the benefit and assessed the transactions as covered by the notification under Section 3-A. The Appellate Authority put to the assessee to notice and on the basis of the decision of the High Court held that the sales were not covered by the notifications under Section 3-A and were liable to tax at the general rate. The present appeals question such action of the Appellate Authority as upheld by the other authorities in the hierarchy.

2. Having heard learned Counsel for the appellant, we are satisfied that the view taken by the Full Bench decision is correct. We arc equally satisfied that the representations either of the State

Government or of the authorities under the Statute would not give rise to a situation of estoppel against the Statute. The law is clear and there are several decisions of this Court which make the position abundantly certain the estoppel is not available to be pleaded against an Act.

3. Aware of these difficulties, learned Counsel instead of trying to contend that the decision of the Full Bench is wrong has confined his submission to a short aspect, namely that the assessee in the instant case is a small dealer who had no occasion to enquire and examine as to whether the representations of the authorities were correct. He could have passed on the liability of tax if he knew that the multipoint basis was the right one to be applied. But he felt misled by the orders of the authorities, and therefore, he could not pass on the liability to the purchasing dealers or the consumers. We find that the ultimate tax liability involved in these three years is less than Rs. 30.000/-. Learned counsel has relied upon two decisions of this Court where almost in similar situation this Court has taken the view that notwithstanding the legal position the tax demand should not be collected. Those authorities are Collector of Customs and Central Excise and Anr. v. Oriental Timber Industries -and Union of India and Ors. v. Godfrey Philips India Ltd. ere. . We are inclined to accept this submission that in the special facts and circumstances of this case, the assessee should not be made to pay the amount involved in the there years in question. We indicate that this shall not be cited as a precedent. If the amount has, in the meantime, been collected, the same be refunded to the assessee. Parties will bear the respective costs both before the High Court and here.