

## **Girdhari Lal vs Sales Tax Officer on 17 July, 1951**

**Equivalent citations: AIR1952ALL95, AIR 1952 ALLAHABAD 95**

### **JUDGMENT**

C.B. Agarwala, J.

1. This is an application Under Section 11 of the U. P. Sales Tax Act praying that the Judge (Revisions Sales Tax, Uttar Pradesh, may be directed to state the case and refer it to this Court. The facts of the case are these:

2. The applicant is a bullion merchant at Allahabad. Under Section 3 of the U. P. Sales Tax Act every dealer is liable to pay on his turnover in each assessment year sales tax, subject to the provisions of the Act. One of these provisions is contained in Section 4 under which the State Government is authorised by means of a notification in the official Gazette to exempt from time to time from taxation certain dealers on such conditions and on payment of such fees, if any, not more than Rs. 500/- annually as may be specified therein. The State Government issued a notification dated June 7, 1948, by virtue of which dealers in bullion and specie were exempted from sales tax on condition that they obtained an exemption certificate from the appropriate authority after payment of the appropriate fee. The annual fee under that notification on a turnover exceeding Rs. 2,00,000/- is Rs. 500/-. The applicant paid the maximum fee of Rs. 500/- and obtained an exemption certificate for the year 1948-49. For the following year 1949-50 he made an application for exemption from the sales tax on the 6th May 1949. The authority concerned granted him a certificate exempting him from the sales tax not from the commencement of the year, namely, the 1st April 1949, but from the date of the application i.e. the 6th May 1949. The applicant was thereafter assessed to sales tax upon his actual turnover for the period from 1st April 1949 to 5th May 1949. He objected that the certificate of exemption should enure for the whole year 1949-50 and that, therefore, he was not liable to pay the tax for the period of one month and five days referred to above. This contention of the applicant was rejected by the sales Tax Officer. An appeal and a revision were also rejected. He then made an application to the Judge (Revisions), Sales Tax, to refer the relevant points of law to this Court. This application was also rejected.

3. The contention of the applicant before us is that the fee of Rs. 500/- was for the whole year and not for a part thereof and further that, having applied for an exemption certificate, he should have been granted exemption from payment of the sales tax for the whole year. According to him, it was immaterial that he made the application on the 6th May and not within thirty days of the commencement of the year. The rules which have to be considered in this connection Rules 19, 19A, 20, 21 and 22. They are as follows:

" 'Rule 19'. Application for certificate of exemption-

(a) Every dealer liable to pay any fee in accordance with a notification issued under Section 4 shall deposit the fee calculated on his turnover of the previous year in the treasury along with a challan.

(b) Such dealer shall, within one week of the deposit of the fee, submit to the Sales Tax Officer a statement in Form V, showing his turnover in the previous year in respect of the goods to which the provisions of the notification issued under Section 4 are applicable. The statement shall be accompanied by the treasury challan.

(c) If the Sales Tax Officer, after such enquiry as he may deem necessary, is satisfied that the information given in such statement is correct, and the fee has been correctly deposited, he shall issue an exemption certificate to the dealer.

(d) If the Sales Tax Officer finds that the fee deposited is less than that payable in accordance with the notification, he shall require the dealer to deposit the balance within a time to be fixed by him.

(e) If the Sales Tax Officer finds that the fee deposited by the dealer exceeds the amount payable, he shall order the excess to be refunded.

'Rule 19A.' The exemption certificate issued under Rule 19 shall take effect from the date of the presentation of the application under Rule 19.

Provided that in the case of applications presented before December 31, 1948, the exemption certificate issued thereupon shall take effect from April 1, 1948.

Rule 20.' Application by dealer starting business after issue of notification

(a) If any dealer liable to pay fee in accordance with a notification issued under Section 4 commences his business after the issue of such notification, he shall, within thirty days of such commencement, apply to the Sales Tax Officer to issue an exemption certificate in his favour.

(b) The Sales Tax Officer may fix a provisional fee not exceeding Rs. 500/- to be deposited by such dealer.

(c) Upon the expiry of the assessment year such dealer shall submit a return in Form V showing his turnover during the year and thereupon the provisions of Sub-rules (c), (d) and (e) of Rule 19 shall apply as if it were a statement submitted under Sub-rule (b) of Rule 19. (d) The provisions of Sub-rules (a), (b) and (c) shall apply mutatis mutandis to such dealers as may start business on or before the date of the notification, but did not carry on business for full twelve months in the previous year.

'Rule 21.' Deposit of maximum fees--In any case in which a dealer to whom the provisions of Rule 19 or 20 apply deposits Rs. 500/- as fee, he shall not be required to submit the statement under

Sub-rule (b) of Rule 19 and Sub-rule (a) of Rule 20 and shall be entitled to the grant of the exemption certificate by the Sales Tax Officer on presentation of an application in that behalf, accompanied by the treasury challan. Such dealer shall not be entitled to any refund of the fee deposited.

'Rule 22.' Grant of fresh certificate--The exemption certificate granted under Rule 19, 20 or 21 shall remain valid till the expiry of the assessment year in respect of which it is granted. A fresh certificate shall be obtained for each subsequent year for which application shall be made within 30 days of the commencement of such year. To any such application the provisions of Rule 19 or 21 shall, *mutatis mutandis*, apply."

4. It appears to us that primarily Rule 19 deals with the case of a first application made after the issue of the notification already adverted to. No time limit is fixed for making the first application for the grant of an exemption certificate. It will further be seen that an exemption certificate granted under Rule 19 shall take effect from the date on which the application is made, except in the case of applications made before December 31, 1948. If, however, the dealer commences his business of dealing in exempted articles after the date of the notification, Rule 20 applies to him. In that case he must make an application for the grant of an exemption certificate within thirty days of the commencement of his business. If he does that, then he is granted an exemption certificate as provided in Rule 19. Rules 19 and 20 have to be read together as they deal with the grant of an exemption certificate and the payment of fee up to a maximum limit of Rs. 500/-. Rule 22 deals with a case in which a second or subsequent application for an exemption certificate is made. After an exemption certificate has been granted under Rule 19, 20 or 21, a fresh certificate for the subsequent year should be obtained upon an application made within thirty days of the commencement of that year. If this is done, again the provisions of Rule 19 or 21 shall, *mutatis mutandis*, apply and the exemption certificate shall enure not only from the date on which the application is made but for the whole of the year.

In case, however, no such application is made within the time fixed by Rule 22. what is the result? The rules do not make a clear provision for such a contingency. But it appears to us that in such a case Rule 19 again comes into operation. The second application, if made after the expiry of thirty days from the commencement of the year, may be treated as a fresh application under Rule 19 to which the provisions of Rule 19A will apply. The result is that if a subsequent application is made after the expiry of thirty days from the commencement of the year, the exemption certificate granted to the applicant will take effect not for the whole of the year but from the date of the application. In this case, as already stated, we are dealing with a case in which the applicant made a second application for exemption, the first having been made in 1948-49. This second application was made after the expiry of thirty days from the commencement of the year. It was not, therefore, covered by Rule 22. The Sales Tax Officer was not bound to grant a certificate for the whole year. The certificate granted to him was correctly granted and exempted him for the period of the year between the date of the application and the expiry of the year.

5. It was next urged by Mr. Raina that Rule 19A which prescribes a period of thirty days for making a subsequent application for the grant of a fresh certificate is inconsistent with the notification issued

by the State Government. Reliance was placed upon the words "annual fee" mentioned in the notification. It is urged that if the annual fee is paid, it must enure for the whole of the year and not only for a part thereof. We think that this contention, though plausible, is not sound. Under Section 4 of the Act the Provincial Government is authorised from time to time to exempt certain dealers "on such conditions and on payment of such fees" as may be specified by the notification in the official Gazette. The notification is in the following terms;

"Notification No. S. T. 118/X-928-48 Published in U. P. Gazette Extraordinary, dated June 7, 1948. In exercise of the powers conferred by Section 4 of the United Provinces Sales Tax Act, 1948, the Governor of the United Provinces is hereby pleased to order that with effect from the 8th of June 1948, the provisions of Section 3 of the Act shall not apply to the sale of goods as hereinafter described by the following classes of dealers, on condition that-

(a) they obtain an exemption certificate from the appropriate authority after payment of the appropriate annual fee mentioned below,

(b) they maintain a separate account of the goods in respect of which the exemption certificate is issued to them, and

(c) they also observe the conditions laid down in the rules framed under the Act : 1. Dealers in bullion and specie on payment of a fee of-

....."

6. It will be observed that an exemption certificate was to be granted, subject to three conditions. One of these conditions, namely, condition (c) is that "they also observe the conditions laid down in the rules framed under the Act. Under Rule 22 the State Government was, therefore, justified in fixing a time limit under which an application for a fresh certificate of exemption may be made and if no such application was made within the time fixed under the rule, another rule could be made under which the exemption should be granted not for the whole year but for the period commencing from the date of the making of the application till the expiry of the year. This was done by enacting Rule 19A. The result, therefore, is that though annual fee is paid which ordinarily should be good for the whole year, it enures only for a lesser period because of the applicant's own fault in not making the application within the time fixed. The applicant was free to make the application or not to make it. If the period fixed for making the application had expired, he could have chosen to pay the sales tax on his actual turnover under Section 3. But if he chose to claim exemption well knowing that under Rule 19A he could get exemption from the date of the application, he cannot complain that he has to pay the whole annual fee. We think there is force in this application. It is dismissed with costs. We assess the fee of the Standing Counsel at Rs. 200.