

Supreme Court of India

State Of U.P. vs M/S. Aditya Kumar Gulab Shankar ... on 25 February, 1993

Equivalent citations: AIR 1994 SC 1445, JT 1993 (2) SC 220, 1993 (1) SCALE 692, 1993 Supp (3) SCC 39, 1993 90 STC 103 SC

Author: K Singh

Bench: K Singh, N Kasliwal

ORDER Kudip Singh, J.

1. This appeal, by way of Certificate granted by the High Court, relates to the interpretation of Section 22 of the U.P. Sales Tax Act, 1948 (the Act) as it existed at the relevant time. Section 22 of the Act was as under:

The assessing, appellate or revising authority may at any time within three years from the -date of any order passed by him rectify any mistake apparent on the face of the record of appeal, revision, assessment or refund as the case may be.

2. The revising authority under the Act dismissed the revision petition of the assessee by an order dated April 17, 1969. The assessee moved an application under Section 22 of the Act for the rectification of the said order. The application was allowed and the revising authority by its order dated August 13, 1969 rectified the order dated April 17, 1969 and instead of dismissing the revision petition of the assessee it allowed the same.

3. Taking advantage of the U.P. Taxation Laws (Amendment) Act No. 11 of 1972 the State Government also filed an application dated March 3, 1973 (1972, according to appellant) for the rectification of the revisional order dated April 17, 1969 (as rectified on August 13, 1969). The application for rectification was allowed on April 17, 1974 (1973, according to appellant) and the revision petition of the assessee was dismissed. The assessee challenged the order by way of writ petition before the High Court which allowed the same on the short ground that the revising authority had no jurisdiction under Section 22 of the Act to revise the order dated April 17, 1969 after more than three years. The High Court interpreted Section 22 to mean that the revising authority has to pass an order rectifying the mistake within three years of the order to be rectified. According to the High Court since the order dated April 17, 1969 was rectified on April 17, 1974 it was beyond three years period and as such was without jurisdiction. This appeal by the State of Uttar Pradesh is against the order of the High Court.

4. While granting certificate the question framed by the High Court was whether the three years time prescribed under Section 22 of the Act is directory and is intended to cover the overtaking of the jurisdiction by the concerned authority. According to the appellant once an application has been made before the concerned authority within the period of three years then the deciding authority can pass suitable order even after the expiry of the three years period provided under Section 22 of the Act.

5. Section 22 of the Act was amended by the U.P. Act 12 of 1979 and the following proviso was added:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period.

6. The question before us has, thus, been answered in favour of the State by the above amendment. Although the present case relates to the period prior to the amendment, it is not necessary to go into merits of this . The High Court in its judgment has specifically mentioned that the original order was made by the revising authority on April 17, 1969 and rectified on August 13, 1969. The application for rectification was made by the State Government on March 9, 1973. The application having been made beyond the period of three years the question of applicability of Section 22 did not arise. The learned Counsel for the State Government has, however, contended that the dates mentioned in the judgment of the High Court are not correct. According to the learned Counsel the application for rectification was made on March 9, 1972 and not on March 9, 1973. We have no material before us to support the factual contention of the learned Counsel for the appellant. Even otherwise the amount involved is very small and the assessment relates to the year 1964-65.

7. In the facts and circumstances mentioned above, we are not inclined to interfere and as such the appeal is dismissed. No costs.