

Judicial Review: Special Leave to Appeal, Amendment of Section 22, and Precedent from Colonial Sugar Refining Co., Ltd. vs Irving

assessee thereupon applied to this Court for special leave to appeal on the 12th May, 1952. This Court granted special leave to appeal, but such leave was, by the order granting such leave, limited to the question of the effect of the amendment to section 22 of the Act on the petitioner's appeal to the Sales Tax Commissioner, Madhya Pradesh. This Court took the view that the other questions sought to be raised by the assessee would have to be decided by the Sales Tax Commissioner in case the appeal succeeded. The appeal has now come up for final disposal before us and in this appeal we are concerned only with the limited question of the effect of the amendment to section 22 of the Act. Section 22(l) of the Act was originally expressed in the following terms : "22. (1) Any dealer aggrieved by an order under this Act may, in the prescribed manner, appeal to the prescribed authority against the order: Provided that no appeal against an order of assessment, with or without penalty, shall be entertained by the said authority unless it is satisfied that such amount of tax or penalty or both as the appellant may admit to be due from him, has been paid." The relevant portion of section 22 as amended runs as follows: "22. (1) Any dealer aggrieved by an order under this Act may, in the prescribed manner, appeal to the prescribed authority against the order: Provided that no appeal against an order of assessment, with or without penalty shall be admitted by the said authority unless such appeal is accompanied by a satisfactory proof of the payment of the tax, with 991 penalty, if any, in respect of which the appeal has been preferred. " It is clear from the language used in the proviso to section 22 (1) as it stood prior to the amendment that an aggrieved assessee had only to pay such amount of tax as he might admit to be due from him, whereas under the proviso to section 22(l) as amended the appeal has to be accompanied by satisfactory proof of payment of the tax in respect of which the appeal had been preferred. The contention of the present assessee is that as the amendment has not been made retrospective its right of appeal under the original section 22(l) remains unaffected and that accordingly as it does not admit anything to be due it was not liable to deposit any sum along with its appeal and the Commissioner was bound to admit its appeal and had no jurisdiction or power to reject it on the ground that it had not been accompanied by any proof of payment of the tax assessed against the appellant as required under the amended proviso and the Board of Revenue and the High Court were in error in not directing the Commissioner to admit the appeal. That the amendment has placed a substantial restriction on the assessee's right of appeal cannot be disputed, for the amended section requires the payment of the entire assessed amount as a condition precedent to the admission of its appeal. The question is whether the imposition of such a restriction by amendment of the section can affect the assessee's right of appeal from a decision in proceedings which commenced prior to such amendment and which right of appeal was free from such restriction under the section as it stood at the time of the commencement of the proceedings. The question was answered in the negative by the Judicial Committee in Colonial Sugar Refining Co., Ltd. vs Irving(1). In that case the Collector of Customs acting under an Act called the Excise Tariff Act, 1902, required the appellants to pay pound 20,100 excise duty on 6,700 tons of sugar.