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MODI SUGAR MILLS LTD.

v.

COMMISSIONER OF SALES TAX, U.P., LUCKNOW

November 16, 1965

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[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

U.P. Sales Tax Act, (15 of 1948), s. 7 and U.P. Sales Tax Rules, rr. 39 and 40—Submission of returns on basis of previous year—Election to submit turnover of assessment year—Sanction of commissioner if necessary.

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For the assessment years 1948-49, 1949-50 and 1950-51, the appellant was assessed on the basis of returns filed for the turnover of each relevant previous year. For the assessment year 1951-52, the appellant, purporting to make an election under r. 39(1) of the U.P. Sales Tax Rules, filed returns of his turnover of the assessment year instead of the previous year. The Judge (Revision) Sales Tax held that without the sanction of the Sales Tax Commissioner under r. 39(2), the appellant was not entitled to do so, and the High Court also, on a reference, held against the appellant.

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In appeal to this Court,

HELD : The answer of the High Court should have been in favour of the appellant. [610 H]

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Under r. 39(1), the dealer makes a choice that he will be assessed in respect of the turnover not of the previous year, which is the normal position under s. 7, but in respect of the turnover of the assessment year. Rule 39(2), requiring the sanction of the Sales Tax Commissioner covers only the case where such election has been made under r. 39(1), that is, where the election has been made by a dealer to be assessed in respect of the turnover of the assessment year, and the dealer wishes to exercise a fresh option. Even assuming that, when a dealer submits a return in respect of the previous year under r. 40 he is treated to have elected within that rule, yet, there is no provision like r. 39 (2) which debars him from exercising the option under r. 39(1). In the absence of an express provision like r. 39(2), general principles cannot debar an assessee from exercising a statutory right given to him. [611 A-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 535 of 1964.

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Appeal by special leave from the judgment and order dated July 25, 1961 of the Allahabad High Court in Sales Tax Reference No. 460 of 1954.

A. V. Viswanatha Sastri and K. K. Jain for appellant.

C. B. Agarwala and O. P. Rana, for respondent.

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The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad passed

in a reference made to it under s. 11 of the U.P. Sales Tax Act, 1948 (U.P. Act XV of 1948)—hereinafter referred to as the Act. In this reference the following question was referred by the Judge (Revision), Sales Tax at the instance of the appellant, Modi Sugar Mills Ltd., hereinafter called the assessee :

“Whether a dealer who has been assessed to tax on the turnover of the previous year according to his election can change his option and elect the assessment year by filing quarterly returns without the previous sanction of Sales Tax Commissioner ?”

The High Court answered the question in the negative.

The answer to this question depends upon the interpretation of s. 7(1) of the Act, and rr. 39, 40 and 41 of the U.P. Sales Tax Rules, and form IV prescribed under these rules. These provisions are as under :

“S. 7-(1). Subject to the provisions of section 18, every dealer whose turnover in the previous year is Rs. 12,000 or more in a year shall submit such return or returns of his turnover of the previous year within sixty days of the commencement of the assessment year in such form and verified in such manner as may be prescribed :

Provided that the Provincial Government may prescribe that any dealer or class of dealers may submit, in lieu of the return or returns specified in this section, a return or returns of his turnover of the assessment year at such intervals, in such form and verified in such manner as may be prescribed, and thereupon all the provisions of this Act shall apply as if such return or returns had been duly submitted under this section.

Provided further that the assessing authority may in his discretion extend the date of the submission of the return by any person or class of persons.

Rule 39 : Election of Assessment year. (1) Any dealer may elect to submit returns of his turnover of the assessment year in lieu of the returns of the turnover of the previous year, and shall signify such election in the return filed by him in Form IV.

A Provided that a dealer who did not carry on business during the whole of the previous year shall elect to submit his returns of the assessment year.

B (2) A dealer who has once signified his election under sub-rule (1) shall not again exercise his option so as to vary the basis of assessment :

Provided that the Sales Tax Commissioner may, for reasons to be recorded in writing and on such conditions as he deems fit permit a dealer to exercise a fresh option.

C Rule 40. Submission of returns :

Every dealer who elects to submit return of his previous year shall, within sixty days of the commencement of the assessment year, submit to the Sales Tax Officer a return in Form IV showing his turnover for the previous year :

D Provided that no dealer whose turnover in the previous year was less than Rs. 15,000 shall be required to furnish such returns.

E Rule 41. Returns of assessment year. (1) Every dealer whose estimated turnover during the assessment year is not less than Rs. 15,000 and who elects to submit returns of such year shall before the last day of July, October, January and April submit to the Sales Tax Officer, a return of his gross turnover for the quarters ending June 30, September 30, December 31 and March 31, respectively, in Form IV :

F Provided that every dealer or firm, to whom the provisions of sub-section (3) of Section 18 are applicable shall submit such returns within seven days of the expiry of each month during the year in which the business is commenced.”

G Before we deal with the interpretation of the section and the rules it is necessary to give a few relevant facts. It appears that for the assessment year 1948-49, 1949-50 and 1950-51, the assessee was assessed on the basis of returns filed for the turnover of the previous year relevant to each of these assessment years.

H For the assessment year 1951-52, however, the assessee purporting to make an election under r. 39 of the rules filed returns of his turnover of the assessment year instead of the returns of the turn-

over of the previous year. The Judge (Revision) held that without sanction of the Sales Tax Commissioner the assessee was not entitled to do so. A

Mr. Sastri, the learned counsel for the assessee, submits that the above rules should be interpreted as follows : Under sub-rule (1) of r. 39 the election is to file returns of the turnover of the assessment year instead of returns of the turnover of the previous year and not *vice versa*. Sub-rule (2) also deals with the same election, *i.e.*, the election to file returns of the turnover of the assessment year instead of the turnover of the previous year. Rule 40 does not displace the above reading of r. 39 because it covers the case of every dealer who wishes to submit a return of the turnover of the previous year. There is no other rule which deals with such a dealer, and he says that the word 'elects' may perhaps have reference to the election mentioned in form IV which we will presently consider. At any rate, he says that sub-r. (2) of r. 39 has nothing to do with the election mentioned in r. 40. He then submits that r. 41 is concerned with the dealer who has elected under r. 39(1) to submit returns of the turnover of the assessment year and this rule provides various matters in this connection. B
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The learned counsel for the State, Mr. C. B. Aggarwala, on the other hand, contends that s. 7 of the Act, read with the rules, gives a dealer an option to file returns in respect of the turnover of the previous year or returns of the turnover of the assessment year, and he says that this option is and can only be exercised in the first year when a dealer becomes taxable under the Act, and it is this option or election that is covered by sub-rule (2) of r. 39. He relies strongly on form IV in which the following lines occur : E

"I have elected to submit return of my turnover of the previous year ending/month or months of the assessment year". F

In the alternative he contends that even if r. 39(2) does not cover the filing of the returns of the previous year, according to general principles the assessee having exercised an option to be assessed in respect of the turnover of the previous year cannot now change the basis of assessment. G

In our opinion the Judge (Revision) was in error in holding that the assessee was not entitled to make an election under r. 39 (1) without the sanction of the Sales Tax Commissioner, and the answer to the question referred to the High Court should be in favour of the assessee. Rule 39(2) specifically mentions an elec- H

- A tion under sub-r. (1) and there is only one kind of election under r. 39(1) and that is for a dealer to elect to submit returns of his turnover for the assessment year in lieu of the returns of the turnover of the previous year. In other words, under r. 39(1) the dealer makes a choice that he will be assessed in respect of the turnover not of the previous year, which is normally the rule under
- B s. 7, but in respect of the return of the turnover of the assessment year. It seems to us that r. 39(2) covers only the case where election has been made by a dealer to be assessed in respect of the turnover of the assessment year. It is true that r. 40 also uses the word 'elects' but this may have reference to the lines in form IV which we have already reproduced above. But assuming that
- C when a dealer submits a return in respect of the previous year under r. 40 and he is treated to have elected within r. 40, yet there is no provision like r. 39(2) which debars him from exercising the option under r. 39(1). In our opinion an express provision like r. 39(2) was necessary to prevent a dealer from exercising the option given to him under r. 39(1). We do not express any
- D opinion whether such a rule could validly be made under s. 7(1). We are not impressed by the argument of Mr. Aggarwal that general principles debar the assessee from exercising the option under r. 39(1). It is a statutory right given to the assessee and the general principles, if applicable, cannot displace the statutory right.
- E We may mention that the reasoning in the judgment under appeal has been doubted in an unreported judgment of the Allahabad High Court in *M/s Mahesh Company Kahoo Kothi Kanpur v. The Commissioner of Sales Tax, Uttar Pradesh*⁽¹⁾.

- F In the result we accept the appeal, and answer the question referred to the High Court in the affirmative. The appellant will have his costs here and in the High Court.

Appeal allowed.

(1) Sales Tax Reference No. 1623 of 1956; judgment delivered on March 13, 1963.