(1965) 09 AHC CK 0037

In the Allahabad High Court

Case No : Special Appeal No. 452 of 1965

Allahabad Milling Co. Private Ltd. — APPELLANT

Vs

Sales Tax Officer II — RESPONDENT

Date of Decision : 03-09-1965

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 21

Citation : (1966) 17 STC 211

Hon'ble Judges : M.C. Desai, C.J;S.C. Manchanda, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.C. Desai, C.J.—A notice has been served upon the appellant u/s 21 of the U.P. Sales Tax Act by the Sales Tax Officer in respect of assessment for the year 1959-60. It was stated in the notice that the Sales Tax Officer had reason to believe that a part of the turnover of the appellant had escaped assessment to tax for the assessment year. The appellant appeared in response to the notice but without filing the return called for by it, and objected to the issue of the notice on the ground that he had no information on the basis of which he could issue the notice. It is said that on the receipt of the objection the Sales Tax Officer wrote to another Sales Tax Officer, namely the Sales Tax Officer, Special Investigation Branch, Varanasi, asking for certain information in connection with the appellant''s assessment to Income Tax. No order has been passed by the Sales Tax Officer on the appellant''s objection and he has not passed any assessment order u/s 21. The assessee, after waiting for some time for orders on its objection, applied for prohibition to restrain him from going on with the assessment and. prohibition has been refused by our brother Pathak. Hence this appeal.

2. Section 21 lays down that "if the assessing authority has reason to believe that whole or any part of the turnover of the dealer has, for any reason, escaped assessment to tax for any year, the assessing authority may, after issuing notice

to the dealer...assessor reassess him to tax." The Sales Tax Officer has issued the notice as required by this provision. Under Sub-section (2) of Section 21 the notice has to be issued before the expiry of four years from the end of the assessment year and it is admitted that the notice in this case was issued before the expiry of four years. It is wholly immaterial that it was issued only two days before the expiry. What is contended is that the Sales Tax Officer had no reason to believe that any part of the appellant''s turnover had escaped assessment. The Sales Tax Officer in his counter-affidavit has averred that he believed that a part of the turnover had escaped assessment and that he believed so on account of the following facts. The Sales Tax Officer of the Special Investigation Branch wrote to the Sales Tax Officer on 26th March, 1964, that the appellant''s account books for the years 1957, 1958 and 1959 had been seized and impounded by the Income Tax Department, that the case was being investigated by the Special Investigation Circle, Kanpur, and that the examination of the account books for the year 1957 showed that the assessee had suppressed sales from his accounts by the adoption of three methods.'' One method was that it did not maintain the accounts correctly; its book of bank pledges did not tally with the stock shown in the Production and Issue Register, entries in it did not tally with the delivery memos and for certain deliveries no memos were issued at all. Another method was that it did not incorporate some sales of goods in its account books. The third method was to show too high a percentage of the production ratio of bran with the consequence that the production of costly and taxable wheat products like flour, maida and suji was understated. As their production was understated their sale also was understated. It was on the basis of this information received before the issue of the" notice that the Sales Tax Officer is said to have believed that part of the turnover of the assessee for the assessment year had escaped assessment. The only question raised in the petition for prohibition, and also before us, is whether he had reason to believe that a part of the turnover had escaped assessment.

3. "Has reason to believe" means that there is belief and that it is not arbitrary or capricious but based on, or justified by, facts. Belief is a subjective and not objective fact and the Sales Tax Officer''s statement in his counter-affidavit that he formed the belief must be accepted unless it is disproved. There is no direct evidence in disproof of it and there are no circumstances also which might suggest that he did not form the belief. We, therefore, agree with our learned brother that the belief was there.

4. As regards the other requirement that the Sales Tax Officer had reason, i.e., basis or justification for the belief we must first note the distinction between "has reason to believe" and "there is reason to believe". The former words call for an inquiry of a personal nature and require a more subjective test than the latter ones; they show that the question is whether there was reason which , according to his mind, justified the belief and not whether there was reason which would justify the belief in the mind of any other person or a reasonable man. Therefore, in considering whether the Sales Tax Officer had reason to believe or not one has

to be guided by a subjective test more than by an objective test. If he formed the belief and the facts in his possession could possibly justify it, it must be held that he had reason to believe. Another fact to be noted is that the reason has to be merely for the belief; the word used in the provision is "believe" and not "be convinced" nor even "be satisfied". Less reason is required for believing than for conviction or even for satisfaction. Certain reason may be enough for belief though not for conviction or satisfaction. The Sales Tax Officer was not required to be convinced or satisfied about the escape of a part of the turnover from assessment; it was enough if he only believed or opined that it had escaped assessment, provided that his belief or opinion was actually there and not a mere pretence. Ordinarily it would be actually there only if there was some reason, i.e., justification or basis for it. In this case there is nothing to indicate that he was not a reasonable man or did not act bona fide in issuing the notice. So as he actually had the belief, it must have been a reasoned belief. But the matter does not rest upon such presumption; there is actual evidence of the facts and of the belief being based on them. There is no reason for disbelieving that evidence. We have reproduced the facts which were in his possession and there is logical connection between them and the belief. If another person would not have found the logical connection enough and might not have formed the belief on the basis of them it does not follow that this Sales Tax Officer also did not base the belief on them. So long as we cannot say that there was no logical connection at all between them and the belief there can be no justification for our saying that he had no reason for the belief. It is irrelevant that the facts were in respect of a previous year ; there is logical connection between what a man does in one year and what he does in the succeeding year. Even under the strict law of evidence past similar facts are relevant. The facts were relevant for showing that the assessee suppressed sales in the past year ; this fact could induce belief in the mind of a person that he suppressed sales in the succeeding year also.

5. That the Sales Tax Officer again wrote to the Sales Tax Officer of the Special Investigation Branch, enquiring about the result of the investigation is of no consequence. There is nothing like the facts in his possession so far being incomplete. If on them, even though they were not full facts, he could, and did form the belief, the notice issued by him was in order. Even though he had reason for the belief he could obtain further facts from the Sales Tax Officer in order to decide whether to proceed with the assessment or cancel the notice. He always had jurisdiction to cancel the notice on being satisfied that there was no escape and his seeking information about further facts from the other Sales Tax Officer cannot prove that he had not enough facts in his possession before the issue of the notice or that the issue of the notice was invalid. Really the fact that he sought further information shows his bona fides; it shows that he acted fairly and was prepared to cancel the notice if further information revealed that there was no escape. We are concerned with the reason that existed before the issue of the notice and not with any reason that might come into existence subsequently for believing that there was no escape.

6. In the result we see no force in this special appeal and dismiss it summarily.

