(1976) 09 AHC CK 0009

In the Allahabad High Court

Case No : S.T. Ref No. 281 of 1971

COMMISSIONER OF SALES TAX	APPELLANT
Vs	
BAKHTAWAR SINGH BHAWAR SINGH.	RESPONDENT

Date of Decision : 02-09-1976

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 21
Uttar Pradesh Sales Tax Act, 1948 — Section 21
Uttar Pradesh Sales Tax Act, 1948 — Section 21

Citation : (1977) 6 CTR 72

Hon'ble Judges : R. M. Sahai, J

Bench : Division Bench

Judgement

R. M. Sahai, J. - The following question has been referred by the Additional Judge (Revision), Sales Tax, Agra, for the opinion of this Court :-

"Whether under the circumstances of the case first assessment can also be made under S. 21 when whole of the turnover has escaped assessment as the dealer has neither filed return nor paid any sales tax for the year in dispute ?"

Briefly stated, the relevant facts of the case are these. The assessee did not file any return. The Sales Tax Officer was of the view that since the assessee had filed any return, the entire turnover had escaped assessment. An ex-parte order of assessment was made on 19-4-1963. The assessee filed an appeal and the appellate court was of the opinion that the assessment order made after four years from the date of the assessment year, was barred by time and was invalid.

2. Under the U.P. Sales Tax Act, the period of limitation for an assessment under S. 7 and that for an assessment of escaped turnover S. 12, are the same with this difference, namely that where a notice under S. 21 is served within four years from the end of an assessment year, then an assessment can be made within one year of the date of service of such notice.

3. The year in dispute is 1958-59. The assessment order was passed on

19-4-1963. The notice under S-21 was served within four years the end of the assessment year. Hence the assessment proceedings could be computed within one year of service of such notice.

4. In Commissioner of Sales Tax, U.P. vs. Jagmohan Lal, a Full Bench of this court held that in case no return was filed by a dealer, the assessment could be made both under S.7 (3) as well as under S. 21 of the U.P. Sales Tax Act.

5. As the assessee had not filed any return nor paid any tax the turnover had escaped assessment had the Sales Tax Officer did not commit any error in issuing a notice under S. 21 of the U.P. Sales Tax Act. In view of this, we answer the questions referred to us in the affirmative in favour of the Department and against the assessee.

6. Our answer is as under.

"In the circumstances of the case the first assessment could also be made under S. 21 of the U.P. Sales Tax Act when whole of the turnover has escaped assessment on account of the dealer having neither filed the return nor paid any tax for the year in question."

7. As nobody has appeared for the assessee, there will be no order as to costs.

