(1978) 04 AHC CK 0067

In the Allahabad High Court

Case No : Sales Tax Reference No. 297 of 1974

Commissioner of Sales Tax — APPELLANT

Vs

Ram Chand — RESPONDENT

Date of Decision : 20-04-1978

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

Citation : (1978) 42 STC 432

Hon'ble Judges : Satish Chandra, C.J;C.S.P. Singh, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—The assessee did not file any return for the assessment year 1959-60. The Sales Tax Officer issued notice u/s 21 of the U. P. Sales Tax Act. This notice was served by affixation on 11th March, 1964. The assessee, however, did not appear. The Sales Tax Officer passed an assessment order.

2. The assessee appealed. The assessment order was set aside and the case was remanded. After remand the Sales Tax Officer passed a best Judgment assessment on the ground that the assessee had not maintained any accounts. The assessment was made on a net turnover of Rs. 53,550. The assessee was assessed to a tax of Rs. 1,077.

3. The assessee again appealed. This time he took up the plea that the notice u/s 21 was not validly served upon him and, hence, the entire proceedings were without jurisdiction. This plea was upheld, the appeal was allowed and the assessment order was annulled. This view was upheld by the revising authority.

4. At the instance of the Commissioner, the following question of law has been referred for our opinion:

Whether, on the facts and circumstances of the case, an assessee was entitled to question the validity of the notice u/s 21 in remand proceedings ?

5. It is well-settled that service of notice u/s 21 is a condition precedent to the valid exercise of power under that provision: see Laxmi Narain Mittal v. Commissioner of Sales Tax 1971 U.P.T.C. 217. It goes to the very jurisdiction of the officer.

6. It is equally well-settled that a point which goes to the root of the matter or affects the very existence of the jurisdiction of an authority can be raised at any time, be it in appeal or in revision : see B. K. GOOYEE Vs. COMMISSIONER OF Income Tax, WEST BENGAL., .

7. The finding of fact is that the service by affixation was invalid because the other modes mentioned in the rules were not exhausted. The service of the notice was hence invalid. Since the notice itself was not validly served, the initiation of proceedings was without jurisdiction. The assessment order was rightly annulled.

8. We, therefore, answer the question referred to us in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to costs, which are assessed at Rs. 200.

