(2008) 07 AHC CK 0045

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Sharda Trading Company — RESPONDENT

Date of Decision : 10-07-2008

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

Citation : (2009) 26 VST 376

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—These revisions were heard together and are being disposed of by a common order as identical controversy is involved therein. These revisions arise out of the proceeding u/s 21 of the U.P. Trade Tax Act, 1948.

2. The dealer-opposite party was carrying on the business of purchase and sale of foodgrains, oil-seeds, etc. Original assessment order was passed on February 9, 1990. The said assessment order was sought to be reopened on the ground of escaped turnover u/s 21 of the Act on the basis of certain information received from Krishi Utpadan Mandi Samiti, Rath. Notice u/s 21 was served on the dealer-opposite party by affixation. Reassessment order was passed ex parte. Against the ex parte reassessment order, the appeal preferred by the dealer-opposite party was allowed by the first appellate authority on a short ground that notice u/s 21 of the Act was not validly served. The order of the first appellate authority was challenged by the Department before the Tribunal in second appeal.

3. The matter was taken up by the Tribunal. The two member bench of the Tribunal, after hearing the counsel for the parties, deferred and they delivered separate orders. One member held that the service of notice by affixation is not a "service" in the eyes of law and, therefore, he was of the opinion that the appeal should be allowed. The other member was of the opinion that the "service by affixation" was valid service and, therefore, the matter should be remanded back to the first appellate authority for consideration on the question of turnover. In view of the difference of opinion in between the two members, the matter was

referred to the third member of the Tribunal who by the order under revision agreed and held that service by affixation is not a "valid service".

4. The learned Standing Counsel for the Department submits that the finding recorded by the Tribunal is not legally correct.

5. Considered the submissions of the learned Standing Counsel and perused the record.

6. It is not in dispute that the said firm consisted of four partners and the firm has been dissolved with effect from August 26, 1987. The information regarding dissolution and closure of the firm was given to the Department on August 28, 1987. The notice meant for service was sent on the firm''s address. As noted above, the service of notice was presumed as it was served by affixation. The Tribunal took the view that since the firm was dissolved and the Department was informed about the dissolution of the firm, notices should have been given to all the four erstwhile partners which was not done. The Tribunal has placed reliance upon the Full Bench judgment of this Court in Laxmi Narain Anand Prakash v. Commissioner of Sales Tax [1980] 46 STC 71(sc) : [1980] UPTC 125.

7. The order of the Tribunal is in consonance with the Full Bench judgment of this Court. I find no legal infirmity therein. There is no merit in the revision.

8. Both the revisions are hereby dismissed, but no order as to costs.

