

(2007) 10 AHC CK 0176
In the Allahabad High Court

Gurprasad Ramprasad Agencies

APPELLANT

Vs

Commissioner, Trade Tax

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 368

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated August 6, 2007 relating to the assessment year, 1982-83 by which the appeal filed by the applicant was dismissed and the appeal filed by the Commissioner of Trade Tax was allowed.

2. Heard Sri S.D. Singh, learned Counsel for the applicant and Sri K.M. Sahai, learned Standing Counsel.

3. With the consent of both the parties, present revision is being disposed of.

4. Learned Counsel for the applicant submitted that the business of the applicant had been closed in the year 1985 for ever and no business had been carried on at 33/20 Chowk, Kanpur. He submitted that the Tribunal has passed the ex parte order on the ground that no one appeared on the date fixed on July 26, 2007. He submitted that the applicant was not served with any notice for the date fixed on July 26, 2007 and had no information about the said date. He submitted that the alleged service of notice by affixation is not in accordance with rule 77 of the U.P. Sales Tax Rules, 1948 (hereinafter referred to as "the Rules"). He submitted that on June 25, 2007 the case was adjourned because Judicial Member of the Tribunal was on leave and the fresh notice was directed to be issued. Such notice should be served in accordance with the procedure prescribed under rule 77 of the Rules, namely, that first it should be served personally or by registered post

and in case, if the services by aforesaid method were not possible after recording reason to this effect direction should be issued for service of the notice; affixation should be made at a conspicuous place in the presence of the witnesses, but the report of the process server reveals that no place is mentioned where the notice has been affixed and the signature of the witness has not been taken and, therefore, the notice was not served in accordance with law. He submitted that the fact that the business was closed in the year 1985 is on the record of the Tribunal. Such fact has been averred in the affidavit which is on record. The service of the notice should be made at the last known place, but the same has not been done. He submitted that in view of the above, the order was passed without giving opportunity to the applicant and, thus, it is liable to be set aside.

5. Learned Standing Counsel produced the record of the Tribunal and submitted that the notice was served by affixation.

6. Having heard the learned Counsel for the parties, I have perused the record of the Tribunal.

7. On June 25, 2007, the case was adjourned as Judicial Member of the Tribunal was on leave, therefore, notice was issued fixing the date on July 26, 2007. Record of the Tribunal reveals that the notice was alleged to have been served by affixation. The report of the process server is as follows:

Mahodey Suchna patra ki mool prati vyapari ke antim vyapar stal par chaspa kiya samne yunik book agencies hai aur daye makhanlal ram richpal nam ki firm hai. Maujudh logo ne gawahi dene se mana kiya. Adesharth hetu prastuth. Suresh. 11.07.2007.

8. Rule 77 of the Rules is as follows:

77. Method of service.?(1) The service of any notice, summons or order under the Act or the Rules may be effected by any of the following methods, namely:

(a) by giving or tendering a copy thereof to the dealer or person concerned or to his manager, munim, accountant or agent, or to one of his employees or to any adult member of his family residing with him ;

(b) by registered post:

Provided that if, upon an attempt having been made to serve any such notice, summons or order by either of the abovesaid methods, the authority concerned has reasonable grounds to believe that the addressee is evading service or that, for any other reason which in the opinion of such authority is sufficient, service cannot be effected by any of the abovesaid methods, the said authority shall, after recording the reasons therefor, cause the notice, summons or order to be served by affixing a copy thereof--

(i) if the addressee is a dealer, on some conspicuous part of the dealer's place of business or the building in which the dealer's place of business is located, or

upon some conspicuous part of the place of the dealer's business last intimated to the said authority by the dealer or of the place where the dealer is known to have last carried on business ; or the place where the dealer resides ; or

(ii) if the addressee is not a dealer, on some conspicuous part of his residence or office or the building in which his office or residence is located ; and such service shall be deemed to be as effectual as if it had been made on the addressee personally.

(2) Where a process-server, peon or any other employee of the Sales Tax Department delivers or tenders any notice, summons or order to the dealer or addressee personally or to any of the persons referred to in clause (a) of sub-rule (1), he shall require the person to whom the notice, summons or order is delivered or tendered to sign an acknowledgement of the service of the notice, summons or order.

(3) Where the person to whom the notice, summons or order is tendered as aforesaid refuses to accept the same or refuses to sign the acknowledgement after its acceptance, the process server, peon or employee shall submit a report to the concerned authority stating facts about such refusal and the name and address of the person, if any, present at the time or such refusal. Such report shall be verified on oath by the process-server, peon or employee. The concerned authority may, having regard to the facts and circumstances and after making such further enquiry in the matter, if any as it thinks fit, consider such refusal to be proof of service.

(4) When service is made by post, an acknowledgement purporting to have been signed by the addressee or his manager, munim, accountant or agent or employee or member of his family, or an endorsement by a postal employee that the addressee or his manager, munim, accountant or agent or employee or member of his family refused to take delivery may be deemed by the concerned authority to be proof of service.

(5) When the notice, summons or order is served by affixing a copy thereof in accordance with the first proviso to sub-rule (1), the official serving it shall return the original to the authority concerned with a report endorsed thereon or annexed thereto, stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or residence or the building in which his office or residence is located or his place of business was identified, and in whose presence the copy was affixed. The said official shall also obtain the signature or thumb-impression of the person identifying the addressee's residence or office or building or place of business to his report.

9. Under rule 77(1) of the Rules, the notice was to be served personally and by registered post and if, upon an attempt having been made to serve any such notice by either of the above methods, the authority concerned has reasonable grounds to believe that the addressee is evading service or that, for any other

reason which in the opinion of such authority is sufficient, service cannot be effected by any of the above said methods, the said authority shall, after recording the reasons therefor, direct the service by affixation. In the present case, the record reveals that the notice was neither sent for service personally nor by registered post. No finding has been recorded that the applicant was evading the service or the service by the aforesaid two methods was not possible. Further in accordance with rule 77 of the Rules, affixation should be made on some conspicuous part of the dealer's place of business or the building in which the dealer's place of business is located, or upon some conspicuous part of the place of the dealer's business last intimated to the said authority. Perusal of the report of the process server reveals that no place is mentioned when the affixation has been made. Sub-rule (5) of rule 77 of the Rules provides that report should be given in the circumstances under which the official affixed the copy and the name and address of the person, if any, by whom the addressee's office or residence or the building in which his office or residence is located or his place of business was identified, and in whose presence the copy was affixed, the said official shall also obtain the signature or thumb impression of the person identifying the addressee's residence or office or building or place of the business to his report. In the present case, the name of the person who has identified the place of the service has not been given and the signature of the person who has given identification has not been obtained.

10. In view of the above, I am of the view that the notice has not been properly served and ex parte order has been passed without giving proper opportunity of hearing. Thus, the order of the Tribunal is liable to be set aside and the matter is remanded back to the Tribunal to decide the appeals afresh after giving proper opportunity of hearing to the applicant. In the result, revision is allowed in part. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the appeal afresh after giving proper opportunity of hearing to the applicant-dealer. Applicant-dealer is directed to appear on any working day before the Member Tribunal by October 31, 2007 and the Member Tribunal may fix a date of hearing. It is made clear that no fresh notice be issued to the applicant-dealer. It is further made clear that in case, on account of any reason if the case will be adjourned in future, it will be the responsibility of the applicant-dealer to take the notice of the date and the date of hearing will not be informed to the applicant-dealer in future. In case, if the applicant-dealer fails to appear before the Member Tribunal before October 31, 2007 the present order shall stand vacated.