
(1972) 07 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5384 of 1971

Hira Lal Ayodhya Prasad

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 18-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 148

Citation : (1972) 42 AWR 693 : (1973) 30 STC 365

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : K.M. Hafela, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—The petitioner, a joint Hindu family concern, is a registered dealer under the U. P. Sales Tax Act. For the assessment year 1966-67, the Sales Tax Officer passed an assessment order dated 29th April, 1969, under Rule 41(5) of the U.P. Sales Tax Rules. The petitioner filed an appeal and by an order dated 24th July, 1970, the Assistant Commissioner (Judicial), Sales Tax, Nainital, set aside the assessment order and remanded the case to the Sales Tax Officer for reassessment after making a detailed enquiry into the exemptions claimed by it. On remand, the Sales Tax Officer passed a fresh assessment order dated 28th February, 1971, disallowing certain exemptions claimed by the petitioner. The petitioner once again appealed. That appeal is pending. On 20th March, 1971, the Sales Tax Officer issued to the petitioner a notice u/s 21 of the Act in respect of the assessment year 1966-67 saying that he had reason to believe that the turnover of the petitioner had escaped assessment and requiring the petitioner to file a fresh return. The petitioner has challenged that notice in this petition under Article 226 of the Constitution.

2. The notice u/s 21 of the Act has been challenged on two grounds: (1) that the

Sales Tax Officer did not record any reason before issuing the notice, and (2) that there was no material before the Sales Tax Officer upon which he could form a reasonable belief that any turnover of the petitioner had escaped assessment.

3. So far as the first ground is concerned, the learned counsel for the petitioner has not been able to point out any provision of law which requires the Sales Tax Officer to record reasons before initiating proceedings u/s 21. In this respect, the U. P. Sales Tax Act is materially different from the Income Tax Act. Section 34 of the Income Tax Act, 1922, and Section 148 of the Income Tax Act, 1961, which are the provisions corresponding to Section 21 of the U. P. Sales Tax Act, do require the Income Tax Officer to record his reasons before issuing a notice under those provisions. It is true that in *Deoki Nandan v. M.L. Gupta*, Sales Tax Officer, Etawah [1969] 23 S.T.C. 481 this court observed that it would be advisable for the Sales Tax Officer to record his reasons before issuing notice u/s 21 but, nevertheless, it was held that there was no legal requirement of recording such reasons. In the absence of a statutory requirement, the non-recording of reasons cannot invalidate the proceedings.

4. In *Uttareswari Rice Mill Vs. Sales Tax Officer, Intelligence Wing, Vigilance and Another*, it has been held that a notice u/s 12(8) of the Orissa Sales Tax Act would be invalid if it does not contain any reasons for the issuance of such a notice. We do not know the precise language in which Section 12(8) of the Orissa Act is couched. May be that that provision requires the reasons and the material to be disclosed in the notice itself but if that provision is in pan materia with Section 21 of our Act, we are unable to agree with the Orissa High Court.

5. No form has been prescribed for a notice u/s 21 either under the Act or under the Rules. It is not necessary that such a notice should specify the items of turnover which have escaped assessment or the source of such item. In other words, it is not necessary that the material upon which the notice is based should be disclosed in the notice itself. But in the course of proceedings, the Sales Tax Officer should sufficiently draw the attention of the assessee to the case which he has to meet. That would meet the requirements of the law and the principles of natural justice. That is the settled position so far as the Income Tax Act is concerned: See *COMMISSIONER OF Income Tax, PUNJAB, HIMACHAL PRADESH and BILASPUR, SIMLA Vs. JAGAN NATH MAHESHWARY.*, and *HYDERABAD ALLWYN METAL WORKS LTD. Vs. Income Tax OFFICER, SPECIAL INVESTIGATION CIRCLE, HYDERABAD, AND ANOTHER.*, .

6. We do not think that the position under the U.P. Sales Tax Act is in any way different. We are of the opinion that the impugned notice in the instant case did not suffer from any infirmity, either on the ground that no reasons were recorded or on the ground that the notice did not disclose the reasons or the material.

7. Coming now to the second ground of attack, it is true that in order to enable the Sales Tax Officer to initiate proceedings u/s 21, he must have before him

material which induced a reasonable belief in his mind that turnover of the assessee, either in whole or in part, had escaped assessment. The satisfaction of the Sales Tax Officer as to the escapement of the turnover is not subjective but has to be based upon relevant material. In paragraph 4(a) of the counter-affidavit of Sri M.D. Chauhan, it has been stated that information was received from the Sales Tax Officer, Hathras, on 26th February, 1971, that the petitioner had sold during the assessment year 1966-67 foodgrains worth Rs. 15,790.67 to Sarvashri Badri Das Laxmi Narain of Hathras. At the time of assessment proceedings, the petitioner had disclosed sales to the above dealer of Rs. 15,071.35 only. It has further been stated that on going through the file, the Sales Tax Officer discovered that information had also been received from the Sales Tax Officer, Muzaffarnagar, on 22nd February, 1971, saying that the petitioner had sold during 1966-67 foodgrains worth Rs. 1,12,082.59 to Sarvashri Nand Lal Paras Ram of Muzaffarnagar and at the time of assessment the petitioner had shown sales to the above Muzaffarnagar dealer of Rs. 98,188.86 only. We are satisfied that the material disclosed in the counter-affidavit was a relevant material which did indicate that a part of the turnover of the petitioner had escaped assessment. A notice u/s 21 of the Act was, therefore, fully justified. The contention of the learned counsel for the petitioner that the notice had been issued without any material is without any substance.

8. The learned counsel then contended that the information had been received by the Sales Tax Officer before the assessment order was passed on 28th February, 1971, and, as such, the Sales Tax Officer could easily have utilised that information while passing the assessment order. This contention must be rejected on two grounds. In the first place, no such ground has been taken in the writ petition. Secondly, we find that the assessment order passed on 28th February, 1971, was not the original assessment order but an order passed in pursuance of the remand order by the appellate authority. The remand order authorised the Sales Tax Officer only to scrutinise certain exemptions claimed by the petitioner. Such a remand order would obviously restrict the jurisdiction of the Sales Tax Officer to the matter which he was required to investigate under the remand order. The whole assessment could not be said to have been open before him. It was, therefore, not possible for the Sales Tax Officer to have enhanced the assessment as fixed by him in the original- assessment order.

9. For the reasons stated above, this petition fails and is dismissed with costs.