(2005) 01 AHC CK 0016

In the Allahabad High Court

Jain Coal Traders APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2007) 10 VST 694

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

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 April 22, 1996 relating to the assessment year, 1996-97 under the Central Sales Tax Act, 1956.

2. For the aforesaid assessment year, assessing authority passed the assessment order u/s 9(2) of the Central Sales Tax Act, 1956 on March 9, 1991 and declared the applicant non-assessable. Later on it came to the knowledge to the assessing authority through letter dated July 25, 1981 written by A.D.M. (SC), Moradabad, that the endorsement of the RR was made by the applicant and not by the D.S.O., Moradabad, on behalf of the D.M., a proceeding u/s 21 of the Act was initiated. It appears that the notice u/s 21 was issued on March 28, 1981 for March 31, 1981 which was not served. Another notice was issued on March 25, 1982 for March 30, 1982 which was also not served. Another notice was issued on March 30, 1982 for March 31, 1982 for serving the notice by affixation, on which the assessing authority had mentioned that if the notice is refused to be taken or the shop is found closed, the notice may be affixed. Treating this service of the notice as sufficient, the assessing authority passed the assessment order. Aggrieved by the reassessment order, the applicant filed appeal before the Deputy Commissioner (Appeals), Trade Tax, Moradabad, which was dismissed.

The applicant filed second appeal before the Tribunal. The Tribunal vide impugned order allowed the appeal and remanded back the case to the assessing authority to pass assessment order afresh. The Tribunal, however, held that the notice issued on March 30, 1982 for March 31, 1982 was served by affixation and was proper service. The Tribunal further held that on March 25, 1982 notice was sent by registered post and thereafter on March 30, 1982 fixing the date as March 31, 1982 was served by affixation.

Heard learned Counsel for the parties.

3. Learned Counsel for the applicant submitted that the Tribunal has erred in treating the notice dated March 30, 1982 alleged to have been served by affixation in accordance with the law while the said notice was not served in accordance with Rule 77. He submitted that on March 25, 1982, notice was sent by registered post, it was neither returned nor served. Thereafter, no reason was recorded by the assessing authority that it is not possible to serve notice by tendering the notice to the dealer or by registered post which is mandatory and thereafter direction should be issued for serving the notice by affixation, but no such order was passed by the assessing authority before directing to serve by affixation. Therefore, the service is not proper. Learned Standing Counsel submitted that firstly the notice was sent on March 25,1982 by registered post and when it could not be served, direction was issued to serve by affixation and therefore, the service of the notice was proper.

4. I have perused the order of the Tribunal and the authorities below. I have also perused the record of the case which has been produced at the time of the assessment proceedings.

5. Sub-rules (1) and (5) of Rule 77 of the U.P. Trade Tax Rules, 1948 read as follows:

77. Modes 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 male 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.

(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.

6. It is also relevant to refer the order-sheet entry.

25.03.1982 Registry se notice 30.03.1982 ke liye bhaje jaye. 29.03.1982 Senior Superintendent office ka ek patra likha gaya jiske uttar main unhone kaha ki ek mah bad wo tamili suchit karege 30.03.1982 Ek dhara 21 ka notice 31.03.1981 11 AM ke liye niwas stan ke pate se bheje tatha waha chaspa karawe koi upasthit nahe huaek pakshi roop se dhara 21 ka adesh parit kiya gaya. 7. Record does not show service of the notice by registered post. There is no letter of the Senior Superintendent, Post office, informing anything'' about the service of notice. Copy of the notice dated March 30, 1982 is available on record and has also been filed along with the supplementary affidavit which shows that on the top of the notice it is mentioned that notice lene se inkar karne se par athwa dukan band milne par notice chaspa kare. Process-server given the report on March 31, 1982 as follows:

Shrimanji notice lekar New Civil Lines...waha logo ne bataya Smt. Shakuntala Jain karobar khatam karke Bihar chale gaye hain. Jahan Smt. Shakuntala Jain rahti thi use jagah makan par chaspa kar diya aur Sri Vishnu Chand Jain...aur mauke par koi gawah nahi mila.

8. The only controversy in the present revision whether the notice issued on March 30, 1982 alleged to have been served by affixation on March 30, 1982 was the proper service in accordance with Rule 77. In my opinion, service of the notice dated March 30, 1982 was not in accordance with Rule 77. Order-sheet shows that the notice was issued by registered post on March 25, 1982 which was not served. Order-sheet entry dated March 30, 1982 by which the direction

was issued to serve the notice by affixation does not contemplate satisfaction on the part of the assessing authority, who has not recorded any reason that the service of the notice under Rule 77(1)(a) and (b) was not possible before issuing direction to serve the notice by affixation, therefore, direction to serve the notice by affixation does not appear to be proper. Further, direction that in case the dealer is not found the same may be served by affixation cannot be said to be in accordance with Rule 77. This shows lack of satisfaction on the part of the assessing authority that the notice contemplated under Clauses (a) and (b) of Sub-rule (1) of Rule 77 is not possible before directing to serve by affixation. Further Sub-rule (5) of Rule 77 contemplates that the process-server should give report 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 is 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. The report given by the process-server does not disclose the name of the person who has identified residence of the dealer and it has also not disclosed the name of the person in whose presence copy was affixed. He simply stated that no witness is available. In the circumstances, report cannot be said to be in accordance with Sub-rule (5) of Rule 77.

9. For the reasons stated above, in my opinion, notice u/s 21 of the Act has not been served in accordance to the law. Service of the notice u/s 21 of the Act on the dealer is condition precedent for a valid proceeding as held by the Full Bench of this Court in the case of Laxmi Narain Anand Prakash v. Commissioner of Sales Tax reported in [1980] 46 STC 71 : [1980] UPTC 125.

In the result, revision is allowed. The order of the Tribunal is set aside and the proceeding u/s 21 of the Act is hereby quashed.