(1984) 09 AHC CK 0068

In the Allahabad High Court

Case No : Sales Tax Revision No. 438 of 1983

Kashi Prasad Kesarvani APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17

Citation : (1986) 61 STC 270

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : R.K. Gulati and S.K. Yogeshwar, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—This is a revision by the assessee for the assessment year 1972-73 against the Tribunal''s order dated 23rd June, 1983.

2. In this case the Tribunal affirmed the order of the Assistant Commissioner (Judicial) holding that the appeal was belatedly filed by the assessee and as no condonation application was given, the appeal was dismissed by the Assistant Commissioner (Judicial). Dismissal of the appeal in limine was confirmed by the Tribunal. Before the Tribunal, the question for consideration was : whether the report of the process-server submitted to the department, on which no witness was obtained, was valid. The Tribunal considering the provisions of rule 77 of the Sales Tax Rules, 1948, came to the conclusion that on the face of rule 77, there was no need for the process-server to obtain any witness. The argument of Sri R. K. Gulati, the learned counsel for the assessee, is that the report of the process-server without obtaining a witness, either for identification of residence or the office, of the assessee, wherever notice was affixed or for the fact that the notice was really, affixed on the premises, is invalid. So the question for consideration is : whether it was necessary for the process-server to obtain witnesses on the report submitted to the department. Sri Gulati to reinforce his argument relied

on Commissioner of Income Tax, West Bengal III and Others Vs. Ramendra Nath Ghosh, . The Honourable Supreme Court in this authority while considering the provisions of Rule 17, Order V, of the Code of Civil Procedure, observed :

The report of the serving officer does not mention the names and addresses of the persons who identified the place of business of the assessees. That officer does not mention in his report nor in the affidavit filed by him that he personally knew the place of business of the assessees. Hence the service of notice must be held to be not in accordance with the law.

3. The provisions of rule 77 of the Rules, 1948, are analogous to the provisions of Rule 17, Order V, of the Code of Civil Procedure, and, therefore, the decision of the Honourable Supreme Court is fully applicable to the instant case. It is amply clear from the decision of the Supreme Court that it is necessary to obtain witnesses to identify unless an affidavit was shown by the process-server that he knew residence or office, place of business or residence. The Tribunal was, therefore, wrong in holding that it was not necessary for the process-server to obtain any witness on the report. I, therefore, hold that the substituted service in the absence of obtaining witnesses was invalid. There is nothing on record to show that the case of the assessee that it came to know about the order only when the recovery proceedings were initiated, is false. Therefore, the appeal filed before the Assistant Commissioner (Judicial) could not be said to be barred by limitation.

4. I, therefore, set aside the order of the Tribunal and restore the case to the Assistant Commissioner (Judicial), who will dispose of the appeal on merits.

5. The revision is allowed. Parties will bear their own costs.