

(2006) 04 AHC CK 0087
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 478, 479, 480 and 481 of 2006

Krishna Kumar and Jai Prakash through Sri Krishna Kumar APPELLANT
Vs

State of U.P. and Assistant Commissioner (Assessment), RESPONDENT
Trade Tax

Date of Decision : 10-04-2006

Acts Referred:

Sales Tax Act — Section 7
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(1), 21(2), 21(3), 21(4)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 41(8), 6(8), 77

Citation : (2006) 9 ADJ 476

Hon'ble Judges : Prakash Krishna, J;A.K. Yog, J

Bench : Division Bench

Advocate : Kunwar Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Yog and Prakash Krishna, J.—These four writ petitions relate to the assessment year 1994-95 to 1998-99. Common questions of law and facts are involved except the different assessment years with regard to which the dispute relates. All the petitions were heard together and are being disposed of by a common judgment.

2. The case of the petitioner is that petitioner Krishna Kumar is son of Shri Jai Prakash who was carrying on the business in food grains in the name and style of M/s. Krishna Trading Company at Sidhawal, Pipraich, Gorakhpur as sole proprietor. The petitioner, Krishna Kumar, had no concern with the business of his father. The business premises of M/s. Krishna Traders was surveyed by the Special Investigation Branch Trade Tax, Gorakhpur on 26th of September, 1998 wherein five incriminating documents were seized. The Trade Tax Officer, Sector-IV, Gorakhpur on the basis of the facts as found in the aforesaid survey, initiated assessment proceedings for the aforesaid four assessment years and treated Krishna Kumar as one of the partners in M/S. Bhagwati Trading Company, Kushi

Nagar. The assessment orders were challenged by way of appeals and second appeals before the Tribunal. The Trade Tax Tribunal by the order dated 31st of March, 2000 relevant to the assessment year 1994-95 and 1995-96 set aside the assessment order by the order dated April, 19, 2005 on the short ground that the Assessing Authority, Trade Tax Officer, Sector-IV, Gorakhpur had no territorial jurisdiction over the petitioner, as Kushinagar is a separate District and there is no material on record to show that the assessment files were assigned to the Trade Tax Officer, Sector-IV Gorakhpur in exercise of power conferred by Rule 6(8) of the Trade Tax Rules. It was made clear that other points touching the merits of the dispute were left open. Similar order was passed by the Trade Tax Tribunal on April 21st, 2005 with respect to the assessment year 1997-98 and 1998-99 (Collectively filed as Annexure-5 to the writ petition).

3. Now Assistant Commissioner (Assessment) Trade Tax, Padrauna, District - Kushinagar has issued four notices relating to the assessment years 1994-95 to 1998-99 fixing December 20, 2005 as the date fixed in the matter. The validity of these notices are impugned in the present petitions. Copy of such notices have been filed as Annexure-6 to the writ petitions.

4. At the outset it may be pointed out that the petitioner has been described (in memorandum of the writ petition) as "Krishna Kumar and Jai Prakash" and Krishna Kumar is the son of Jai Prakash who expired on 18th of August, 2005 (vide para-3 of the writ petition).

5. Shri Kunwar Saxena, learned Counsel for the petitioner, on objection being raised that "Krishna Kumar and Jai Prakash" is not a legal entity, the petition on behalf of a non-existent entity is not maintainable, submitted that this petition may be treated on behalf of Krishna Kumar alone. On that premise we proceeded to hear the petitions.

6. By means of the present petition, the petitioner has sought a writ in the nature of Certiorari for quashing the notice issued u/s 21(4-A) of U.P. Trade Tax Act filed as Annexure-6 to the writ petition and the consequential reliefs on the ground that the notice in question being a jurisdictional notice was not validly served. Consequently, the respondent No. 2 has wrongly assumed the jurisdiction and therefore the notice is liable to be quashed. Elaborating the argument it was submitted that in view of Rule 77 of Rules framed under the U.P. Trade Tax Act, the service of notice by affixation as ordered by the concerned authority in the case of nonavailability of the addressee is no service in the eyes of law. It was further submitted that Section 21(1) of the Act should be read along with Sub-section (2) and Sub-section (4-A) of the Act. He submitted that as soon as the normal period prescribed for completing the assessment expires, any assessment order which has passed though may be within special/specific period of limitation falls in the category of "reassessment order" and therefore, to appreciate the validity of service of notice in question, there is no option but to resort Rule 77 of the Rules. Reliance has been placed by him on a decision of this Division Bench in the case of National Chemical Products v. State of U.P. and

Ors. 2006. U.P. Tax Cases.

7. During the course of argument it was accepted by the learned Counsel for the petitioner that 22nd of March, 2006 is the next date fixed before the Assessing Authority and yet no assessment order/reassessment order in pursuance of the impugned notice has been passed.

8. To appreciate the controversy it is apt to reproduce the copy of the impugned notice which reads as follows:

LoZJh d`".k dqekj o Jh t; izdk"k fuoklh&fl/kkou] fifjkbZp] xksj[kiqj A la[;k % O;kikj LFky&dl;k] dq"kkhuxj A

vkids o"kZ 94&95 /kkjk 21 ?4&d? IEcU/kh ekax dh lquokbZ ds fy, rkfj[k 20&12&05 le; 11&00 cts esjs nQrj iMjkSuk LFkku ij fuf"pr gq;h gSA

2& d`i;k vki ;g le> ysa fd ;fn vki fuf"pr rkjh[k ij u vk;s rks vkids fo:) ,di{kh; dk;Zokgh dh tk;sxh A

gLrk{kj vLi"V

9. It is being argued that the said notice is issued u/s 21(4-A) of the Act, therefore, it is in the nature of reassessment notice, u/s 21 of the Act.

10. The precise question which falls for determination is whether the impugned notice can be construed as a reassessment notice or it is a notice simplicitor to make assessment. In other words, "Is it a notice u/s 21(1) for reassessment?" or "it is a notice for fresh assessment u/s 7 of the Act?" is the principal question to be decided in these matters. If it is a notice u/s 21(1) of the Act, then question of its service in accordance with Rule 77 of Rules framed under the Act, assumes great importance for the simple reason that such notice is treated as "jurisdictional notice", otherwise, the petitioner having acquired the knowledge of the assessment proceedings if the proceedings is u/s 7 of the Act question of service of notice is of little consequence, as also admitted by Shri Kunwar Saxena, learned Counsel for the petitioner.

11. The scheme of the Act is that every dealer who is liable to pay tax under the Act is required to submit return or returns of his turnover at such intervals (monthly returns) to the Assessing Authority and the Assessing Authority, after close of the assessment year and after making such enquiry as he considers necessary, shall determine the correctness and completeness of the returns filed by a dealer and shall assess the tax on the basis thereof, as provided u/s - 7 of the Act. The power to assess the turnover is vested in the Assessing Authority irrespective of the fact whether the dealer has submitted the requisite return within time or the said return is correct or complete. The Assessing Authority is required to frame the assessment order after making such enquiries as he may consider necessary and for the purpose of making enquiry a notice is given under Rule 41(8) of the Rules framed under the Act. The exercise to complete the assessment is to be completed within the prescribed period of limitation as per

Section 21(2) of the Act. Such assessments are popularly known as "regular assessment". u/s 21 of the Act like, other fiscal statutes, power has been given to the Assessing Authority to assess or reassess the dealer or tax if he has reason to believe that whole or any part of the turnover of the dealer for any assessment year or part thereof has escaped assessment to tax. Assessment orders passed in exercise of such powers are called "reassessment orders" and the proceedings are popularly known as "reassessment proceedings" for the simple reason that after the assessment has been made, the finality to an order is attached. But in fiscal Statutes, to protect the interest of Revenue, limited power to reopen final assessment orders is conferred on Assessing Authorities generally circumscribed by two limitations No. (1), the Assessing Authority has reason to believe that the turnover of dealer has escaped assessment or there is underassessment and (2) notice to initiate the reassessment proceeding (which has been held by catena of decisions as jurisdictional notice) has been validly served on such dealer.

12. Before proceeding further it is desirable to consider Section 21 of the Act around which controversy revolves. Section 21 of the Act is reproduced below:

Section 21.

(1) If the assessing authority has reason to believe that the whole or any part of the turnover of the dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer or tax according to law;

Provided that the tax shall be charged at the rate at which it would have been charged had the tit mover not escaped assessment, or full assessment as the case may be.

Explanation I:

Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

Explanation II:

For the purposes of this section and of Section 22, "assessing authority " means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

Explanation III:

Notwithstanding the issuance of notice under this sub-section, where an order of assessment or reassessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by an order of

assessment or re-assessment made under this section in pursuance of such notice.

(2) Except as otherwise provided in this section, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:

Provided that if the Commissioner on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do authorizes the assessing authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid but not after the expiration of six years from the end of such year or March 31, 2002, whichever is later notwithstanding that such assessment or reassessment may involve a change of opinion:

Provided further that the assessment or reassessment for the assessment year 1987-988 may be made by March 31, 1993:

Provided also that if the eligibility certificate granted u/s 4-A has been amended or cancelled by the Commissioner under Sub-section (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or canceling the aforesaid certificate or by March 31, 1995, whichever is later:

Provided also that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995.

(3) Where the notice under Sub-section (1) for any assessment year has been served within the period specified in Sub-section (2), the order of assessment or reassessment in pursuance thereof may be made within six months, after the expiration of such period.

(4) If an order of assessment is set aside and the case is remanded for reassessment by any authority under the provisions of this Act or by a competent Court, the order of reassessment may be made within one year from the date of receipt by the Assessing Authority of the copy of the order remanding the case, or by December 31, 1982, whichever is later.

(4-A) If an order of assessment is quashed on the ground of want of jurisdiction of the assessing authority or any other like ground, by any competent authority or Court, fresh order of assessment may be made by the assessing authority having jurisdiction within one year from the date of receipt by the assessing authority whose order is so quashed, of the copy of order of such authority or court by March 31, 1993 whichever is later.

(5) If an order of assessment or re-assessment for any assessment year is set aside u/s 30, a fresh order of assessment or re-assessment for that year may be made within months from the date on which such earlier order was set aside.

(5-A) ...

(6) ...

(6-A) ...

(7) ...

13. Close reading of Sub Sections (1), (4), (4-A) & (5) would clearly show that the said section contemplates two situations. Under Sub-section (1) of Section 21 the notice for reassessment can be issued only by "Assessing Authority", on fulfillment of certain conditions specified therein. Sub-section (4) of Section 21 deals with the situation when a reassessment order has been set aside by a competent court or authority and the case is remanded for reassessment, the reassessment order may be made within one year from the date of receipt by the "Assessing Authority". Therefore, on a conjoint readings of Sub Sections (1) and (4) of Section 21 it is clear that it deals with the power of the "Assessing Authority" to initiate and pass reassessment order and to deal with a case after remand order passed by a Competent Court or Authority to the Assessing Authority.

14. Coming to Sub-section (4-A) of Section 21, it is clear that if an order of assessment is quashed on ground of lack of jurisdiction of the Assessing Authority or any other like ground by any Competent Authority or Court, "fresh order of assessment may be made by the Assessing Authority having jurisdiction within one year from the date of receipt by the Assessing Authority whose order is so quashed." On a close reading of Sub-section (4-A) two things are clear. One, it talks about passing of "fresh order of assessment". This "expression" clearly talks about passing of "fresh assessment order" and does not say "reassessment" as submitted by the petitioner. To put it differently, it does not say that the order passed after assessment, when the earlier assessment order has been set aside or quashed on ground of want of jurisdiction of the Assessing Authority or any other like ground, the Competent Authority will pass "reassessment order". The use of words "fresh order of assessment" clearly indicates the intention of legislature that an order passed in the circumstances as mentioned under Sub-section (4-A) is not in the nature of reassessment order as commonly understood in Taxing Statutes.

15. It is well settled principle of law as laid down by the Supreme Court in the case of Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another, while interpreting certain provisions of Income Tax, that a Court cannot read any thing in statutory provision which is plain and unambiguous. A Statute is a edict of legislature. Language employed in Statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of legislation must be found in the words used by legislation itself. The question is not what may be supposed and has been intended but what has been said.

16. The Apex Court in its Constitution Bench decision in the case of A.V. Fernandez Vs. The State of Kerala, has held as follows:

It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the sale tax authorities.

17. In that case Apex Court noted with approval, the following observations of Lord Russell of Killowen in *Inland Revenue Commissioners v. Duke of Westminster* 1936 A.C.I. 24:

I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a court's view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy but only by the plain words of a statute applicable to the facts and circumstances of his case.

18. The observations of Lord Russell in the aforementioned case were also referred by the privy council in the *Bank of Chettinad v. Income Tax Commissioner* AIR 194 P.C. 183. The privy council did not accept the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position.

19. A similar view was taken in *Commissioner of Wealth Tax, Gujarat-III, Ahmedabad Vs. Ellis Bridge Gymkhana*, in which it was observed "the rule of construction of a charging section is that before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

20. In the case of *COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD.*, the Apex Court has referred to the view expressed by Justice G.P. Singh in his famous book *Principle of Statutory Interpretation* while holding that the taxing statute should be strictly construed in the following words:

...the well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means : "The subject is not to be taxed without clear words for that purpose; and also that every Act of

Parliament must be read according to the natural construction of its words "In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be, On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute". VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used" Relying upon this passage LORD UPJOHN said : "Fiscal measures are not built upon any theory of taxation".

21. In the case of The Federation of Andhra Pradesh Chambers of Commerce and Industry and Others Vs. State of Andhra Pradesh and Others Etc. Etc., the Apex Court has held as follows:

It is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In the classic passage from Cape Brandy Syndicate (1921 1 KB 64) which was noticed in the judgment under appeal, it was said:

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment there is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used.

This view has been reiterated by this Court time and again. Thus, in The State of Bombay v. Automobile and Agricultural Industries Corporation, Bombay (1961) 12 STC 122 Bom, this Court said:

But the Court in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature.... If the legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.

22. In the case of Hansraj and Sons Vs. State of Jammu and Kashmir and Others, . the Apex Court after referring to its earlier decisions has held that Courts have to interpret provisions of fiscal statute strictly so as to give benefit of doubt to the litigants which is well established and admits of no doubt.

23. Ordinarily, the rule of benevolent construction has been applied while construing the welfare legislations or provisions relating to the relationship

between weaker and stronger contracting parties.

24. In the case of Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd., the Apex Court has held that it is settled law that the expression used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation and it is to be read and understood according to its language and logic alone will not be determinative of a controversy arising from a taxing statute.

25. In the case of AIR 2003 SC 2103 the Apex Court has held as follows:

11. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said, "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them"(See *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). This view was reiterated in *Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama*,

12. In *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

13. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.*, The legislative casus omisus cannot be supplied by judicial interpretative process...

26. Taking help from the above dictums of the Apex Court, it is clear that in Sub-section (4-A) of Section 21 the legislative intent by the use of words "fresh order of assessment" is clear. They have been used in the sense of framing of an assessment order in exercise of power u/s 7 of the Act.

27. The argument of the petitioner proceeded on the premises that proceedings u/s 7 of the Act are something different from the assessment proceedings in consequence of an order of remand. He, therefore, submitted that original proceedings is finalised the moment an order u/s 7 of the Act assessing the turnover is passed. The fact that the said order was set aside subsequently being

an exparte order u/s 30 of the Act or on the ground of lack of jurisdiction of the Assessing Authority or on any other ground the matter is remanded to the Assessing Authority by higher court or authority, the order, thus, passed consequent of remand order or u/s 30 is an order to determine the escaped turnover of the dealer and can be assessed only by invoking 21(1) of the Act. The said argument does not borne out from the plain language either of Section 30 or of the Sub-sections (3), (4), (4-A) and (5) of Section 21 of the Act. However, this controversy need not detain us any longer in view of a Full Bench Judgment of this Court in the case of Ram Dayal Harbilas v. 1979 UPTC CST 999. The Full Bench in para 23 of the judgment which is reproduced below, repelled the aforesaid contention:

It appears to us that Sri Gupta has developed the entire argument on the assumption that original assessment proceedings u/s 7 of the Sales Tax Act are different from assessment proceedings in consequence of the order of remand. We are unable to accept this as correct position in law. When the assessment is set aside in appeal and the case is sent back to the assessing authority for making afresh assessment, the original proceedings u/s 7 are revived. As a consequence of the remand order, the assessing authority passes afresh assessment order in original proceedings u/s 7 of the Act. The earlier assessment does not survive and so long as the fresh assessment is not made and the proceedings for the assessment are continuing no question of any turnover escaping assessment as contemplated by Section 21 of the Act can possibly arise. It is different that the limitation for making the assessment is done away with because it is now being made in consequence of the order of remand made by the Appellate Authority. Once the foundation for the argument disappears the rest does not follow.

28. The aforesaid view has been reiterated by a Division Bench in the case of Narain Soap Works v. Additional CTT 2005 U.P.T.C. 1078.

29. Sub-section (4-A) contemplates situation when an order of assessment has to be passed by an Authority other than who had earlier assumed as of Assessing Authority. It embraces a situation where earlier assessment order having been set aside being passed by an authority for want of jurisdiction, the "fresh assessment order" has to be framed by "such authority or court". Meaning thereby, it contemplates situation where the order in pursuance of assessment order is to be passed other than an authority which originally passed the assessment order. The language of Section 21 of the Act in no uncertain terms classify cases, who originally passed the order and where the order of assessment has to be passed afresh by an authority other than the authority who passed the assessment order earlier.

30. The argument of the learned Counsel that in view of Sub-section (2) of Section 21, any order of assessment passed after the expiry of period of two years from the end of the assessment year, which is the normal period of limitation to conclude the assessment proceedings, shall necessarily be a

reassessment order, is meritless and is liable to be rejected. Sub-section (2) of Section 21 opens with the words "except as otherwise provided in this Section", no order for any assessment year shall be made after expiration of two years, does not provide an overriding effect to Sub-section (4-A) of Section 21. On the other hand this itself provides an exception to Sub-section (4-A). Subject to "other provisions" means that if there is an irreconcilable conflict between the two provisions, the latter will prevail. Reference can be made in support of above, to the following cases:

1. Punjab Sikh Regular Motor Service, Moudhapara Vs. The Regional Transport Authority, Raipur and Another,
2. The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad,
3. The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another,
4. Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.,
5. Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram,
6. Raichand Amulakh Shah Vs. Union of India (UOI), and
7. Ram Lal and Another Vs. State of Jammu and Kashmir,

It may be noted here that under above both the Sub Sections, different period of limitations have been provided for and they operate in different fields. When a case is covered under Sub-section (4-A), the provisions of Sub-section (2) of Section 21, providing a different period of limitation cannot be pressed into service.

31. Apart from above what we have said, the problem can be viewed with a different angle. It is not in dispute that no assessment has taken place after order of assessment passed by the Trade Tax Tribunal and the assessment of turnover has to take place by the Competent Assessing Authority within a period of one year, as provided for under the Act. The period of one year has not yet expired. Meaning thereby the assessment proceedings are still open before the Competent Assessing Authority. (See Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax (1963) 14 STC 976; Modi Industries Limited v. CST 1980 U.P.T.C. 156 and Narayan Soap Works v. Additional Commissioner Trade Tax 2005 U.P.T.C. 1078)

32. In view of the above by no stretch of imagination the impugned notice can be treated as notice for reassessment u/s 21(1) of the Act.

33. In reassessment proceedings recording of reasons to believe that the turnover has escaped assessment is sine qua non. The notice on the face of it does not show that it has been issued in the purported exercise of jurisdiction u/s 21(1) of the Act for reassessment as it does not record or refer reasons for

escapement of turnover. It is also not the case of the petitioner that the notice is bad, as it does not record any reason. Viewed from this angle also, we are of the opinion that the impugned notice is a simple notice for "fresh assessment" in the light of the order passed by the Trade Tax Tribunal, which allowed the appeals filed by the petitioner on the limited questions of territorial jurisdiction of the Assessing Authority.

34. Much capital was tried to be made out on account of the fact that in the notice, the Assessing Authority has mentioned Section 21(4-A) of the Act. An attempt was made by the petitioner's counsel to buttress his submission that proceedings are in the nature of reassessment proceedings are in the nature of reassessment proceedings. But we find that the said argument is wholly misconceived and does not advance the case of the petitioner.

35. The upshot of the above discussion is that the impugned notices in the writ petitions are simply notices for fresh assessment and they cannot be termed as notices for reassessment u/s 21(1) of the Act. The case of the petitioner, therefore, stands on a different footing, and the reliance placed on National Chemical Products v. State of U.P. 2006 U.P.T.C. 125 which is a case relating to service of notice in reassessment proceedings, is distinguishable and misplaced one.

36. We find no merit in the writ petition. All the writ petitions are dismissed.

37. No order as to costs.