

(1978) 09 AHC CK 0021
In the Allahabad High Court
Case No : S.T.R. No. 1235 of 1976

Lit Light Company

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Income Tax Act, 1961 — Section 34
Income Tax Act, 1961 — Section 34
Income Tax Act, 1961 — Section 34

Citation : (1979) 43 STC 449

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

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

Judgement

C.S.P. Singh, J.—The question that calls an answer in this revision is as to whether the Sales Tax Officer would have issued a notice u/s 21 based on an anonymous complaint which arises in the following circumstances.

2. The assessee's assessment under Rule 41(5) was completed. At that time, the Sales Tax Officer had received information from an informer that the assessee had imported kerosene oil. He, however, did not act on this information and accepted the affidavit filed by the assessee's authorised representative that during the assessment year 1963-64 all the purchases of kerosene oil had been made within the State. Sixteen days later, after making the assessment order on 23rd March, 1968, an anonymous complaint was received by the Sales Tax Officer by a person declaring himself to be a "nationalist of Allahabad". This was in the form of a letter, which read:

I assure you that this company which is owned by moneyed man have purchased kerosene oil from Calcutta in the year 1963-64. This can be verified from the railway records which you must do at once. This company had sold kerosene oil valuing lacs in the year 1963-64.

3. No inquiry was made by the Sales Tax Officer on receiving this complaint from the railway. This was done later on. On the basis of this letter, notice u/s 21 was issued. The taxing authority has held that the information contained in the letter can form the basis for a valid notice u/s 21.

4. The relevant part of Section 21 runs :

If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer... has escaped assessment to tax....

5. It is settled that before an assessment u/s 21 can be made it has to be preceded by a valid notice. A notice u/s 21, as is obvious, can be issued only in case the assessing authority has "reason to believe" that the turnover has escaped the assessment.

6. In the present case, at the time when the original assessment was made, the Sales Tax Officer had information that the assessee had imported oil, but chose not to act on it. As has been seen, he has acted on the letter received by him after the assessment was made. Counsel for the assessee urged that the information on the basis of which a notice u/s 21 can be issued, should have been received after the assessment. He has drawn my attention to the decision of the Bombay High Court in *M.R. Dalal (By his Legal Representative) Vs. Commissioner of Income Tax, Bombay City II*, , the decision of the Supreme Court in the case of *Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others*, , and that of the Calcutta High Court in the case of *Diamond Sugar Mills Ltd. Vs. Income Tax Officer, "C" Ward and Others*, . These cases decided under the Income Tax Act undoubtedly lay down that the information on the basis of which an Income Tax Officer can reopen an assessment u/s 34 of the Act must have come into his possession subsequent to the assessment order. However, this Court interpreting Section 21 of the Act has held in the case of *Suwa Lal Pooran Mal v. Commissioner of Sales Tax* [1963] 14 S.T.C. 456 and in the case of *Standard Refinery Co. v. Sales Tax Commissioner, U.P.* [1963] 14 S.T.C. 529, that it was not necessary u/s 21 that the information should have been obtained after the assessment order.

7. Counsel for the assessee urged that these decisions require reconsideration in view of the pronouncement of the Supreme Court in *Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others*, . In the view that I propose to take, it is not necessary to go into this question.

8. Section 21 confers jurisdiction on the Sales Tax Officer to issue a notice u/s 21 only in case he has reason to believe that the turnover has escaped assessment. This means that the belief must be of a reasonable and a prudent man. It must be based on some relevant material, and not based on suspicion, gossip or rumour. See *Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta*, and *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, . These cases arose under the Income Tax Act, but the material provisions of Section 21 being in *pari materia*, they have been applied to proceedings arising under the Act in

the case of Mohd. Yakub & Sons v. Sales Tax Officer, Fatehgarh [1972] 30 S.T.C. 406. Judging from these principles, the letter received by the Sales Tax Officer was one which would create a mere suspicion on which he may have started an inquiry. It could not form the basis of a reasonable belief required by Section 21 to initiate the proceedings. It is worthwhile noticing that similar information existed at the time of the original assessment but no action was taken thereon. The character of the information being the same, it could not on the second occasion instill a reasonable belief in the Sales Tax Officer, without further inquiry, that turnover has escaped assessment.

9. For the foregoing reasons, the question referred is answered in the negative, in favour of the assessee, and against the department. The assessee is entitled to its cost, which is assessed at Rs. 200.