(2017) 01 AHC CK 0303

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 160 of 2011

M/S Mahajan Tanners Ltd. APPELLANT

Vs

Commissioner of Commercial Tax RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 186

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Piyush Agrawal, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—The assessee is aggrieved by initiation of reassessment proceedings under Section 21 of the U.P. Trade Tax Act, 1948, which has culminated in passing of an ex-party adverse order of assessment against it, which has been affirmed in First Appeal and Revision. It transpires that proceedings of reassessment were initiated against the revisionist in respect of assessment year 1998-99, and notices are stated to have been served under Section 21. Since none appeared pursuant to such notices, as such, an ex parte order of assessment was passed against the revisionist. This order was passed in the name of M/s Mahajan Traders Limited, whereas the name of revisionist concerned is M/s Mahajan Tanner Limited. This mistake was rectified by taking resort to proceedings under Section 22 of the Act.

2. The proceedings have been challenged before the authorities essentially on the ground that no notice had been served upon the dealer, in terms of requirement contained under section 21 read with Rule 77, and therefore all consequential proceedings, including the order of reassessment is bad in law. This contention, however has been repelled by the authorities with the finding that the notices had been served upon one Sri Narsi Lal, who had also submitted reply to the notice issued under Section 22. The authorities, therefore, have held

that service of notice upon Sri Narsi Lal would be sufficient compliance of the service of notice in terms of Section 21 of the Act read with Rule 77.

3. Sri Piyush Agrawal, learned counsel for the revisionist, contend that the jurisdiction to pass an order under Section 21 emanates from issuing of a valid notice to dealer, and unless such a notice is served upon the dealer in the manner contemplated under Rule 77, the authorities would have no jurisdiction to initiate the proceedings.

4. Learned Standing Counsel, on the other hand, submits that in the facts of the present case, notices had been served upon the dealer.

5. Section 21(1) of the U.P. Trade Tax Act 1948 confers jurisdiction upon the assessing authority to resort to reassessment proceedings , if he has reason to believe that the whole or any part of the turnover of a dealer has escaped assessment of tax or has been under assessed or has been assessed to tax at a rate lower than what is assessable under the Act. The Assessing Authority may, after issuing notice to the dealer and making such inquiry as it considers necessary assess or reassess the dealer to tax according to law. Since service of notice is a pre condition for assumption of jurisdiction under Section 21 of the Act, as such, any proceedings undertaken without service of due notice, would be contrary to law. A division Bench of this Court in M/s National Chemical Products, Firozabad v. State of U.P. and Others, 2006 U.P.T.C. 125 has considered the import of provisions after relying upon full Bench judgement in M/s. Laxmi Narain Anand Prakash v. Commissioner Sales Tax, 1980 UPTC 125. Following observations have been made in Para 16 of the judgement:-

The invalidity of the notice goes to the very root of the matter. The service of notice under Section 21 of the Act is a condition precedent to assume the jurisdiction of reassessment. The jurisdiction can be conferred only by Statute and not by consent or acquiescence, even if the assessee has taken part in the reassessment proceedings, in the absence of valid notice being served, the entire proceedings will be without jurisdiction and void and even consent on the part of the assessee would confer no jurisdiction.

6. In the facts of the present case, it is to be noticed that an specific objection had been raised on behalf of the revisionist that notice in terms of Rule 77 had not been served upon it. It was also emphasized that Sri Narsi Lal was actually accountant of a different firm and had merely been authorised to collect form-31, and that he had otherwise no authority to receive notice in terms of Rule 77. The Tribunal although has held that notice has been served, but it has not taken note of the specific objections raised by the assessee, nor a finding has been returned that service of notice upon Sri Narsi Lal would amount to valid service of notice in terms of Rule 77 of the Rules. It has not been found that Sri Narsi Lal had any authority to receive notice nor is it held that he was otherwise covered under category of persons upon whom service of notice would be treated to be service upon the dealer under rule 77 of the Rules.

7. The Tribunal, therefore has not examined the question in correct perspective, and the finding returned by it falls short of the requirement of law, in view of the parameters laid, as noticed above. The order of the Tribunal dated 27.10.2010, in such circumstances, cannot be sustained, and is set aside.

8. Consequently, the revision succeeds and is allowed. Matter is remitted back to the Tribunal for passing appropriate orders, afresh, in accordance with law.

