(1997) 05 AHC CK 0075

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2 of 1983

Narendra Kumar APPELLANT

Vs

Addl. Sales Tax Officer and Another RESPONDENT

Date of Decision : 14-05-1997

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 21

Citation : (2003) 133 STC 511

Hon'ble Judges : P.K. Jain, J;Om Prakash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard counsel for the parties.

2. The petitioner seeks quashing of the proceedings initiated u/s 21 of the U.P. Sales Tax Act, 1948 (briefly "the Act") and the order dated September 21, 1982 (annexure "4" to the writ petition) passed u/s 21 of the Act.

3. The case relates to the assessment year 1977-78, the financial year for which ended on March 31, 1978. It is said by the counsel for the petitioner that the firm M/s. Gopal Iron Industries in respect of which impugned order has been passed u/s 21 of the Act, stood dissolved on March 31, 1978, that is, at the end of the financial year relating to 1977-78.

4. In para 4 of the writ petition, it is averred that after the dissolution of the firm, the tenancy of the shop in which the aforesaid firm continued the business, also stood terminated and the shop had been let out by the land-lord Abdul Rauf and others to one Sri Uma Shankar, who had no concern with the aforesaid firm. The shop was in the tenancy of Sri Ram Gopal one of the partners of the firm, who is said to have died in November, 1980. Notice u/s 21 of the Act was properly issued on March 25, 1982.

5. The contention of the petitioner is that when the firm stood dissolved on

March 31, 1978 and the shop in which the business was continued had been let out to some one else who had nothing to do with the firm, the notice could not have been served upon the firm at whose address that was sent. These averments have not been specifically denied in the counter-affidavit. In para 12 of the counter-affidavit, the respondents simply averred that the notice u/s 21 of the Act was legally served on the petitioner''s firm. It is not stated as to who received the notice on behalf of the firm.

6. In para 11 of the petition, it is stated that the notice is said to have been affixed on the premises of the firm. In para 13 of the counter-affidavit, averments made in para 11 of the writ petition is admitted. The question is whether in the circumstances of the case, the service of the notice could have been effected by affixation. Service by affixation is the weakest type of service and that can be resorted to only when the partners of the firm illegally avoided the service of the notice. The case of the petitioner is that the firm was dissolved on March 31, 1978 and thereafter the premises on which the notice is said to have been affixed, were never used for the purpose of the firm and that the shop in which the firm had run the business, had been let out to one Sri Uma Shankar. This fact is not categorically denied in the counter-affidavit.

7. On these facts, the contention of the petitioner that service by affixation could not have been legally effected on the premises where the firm continued its business in the past cannot be rejected.

8. Ordinarily, orders having been passed u/s 21 of the Act being appealable, we would not have made any interference but the facts as stated in the counter-affidavit are so glaring which do not. create any doubt in accepting the version of the petitioner.

9. Notice u/s 21 is a jurisdictional notice and unless that is proved to have been duly served by the respondents, no order under that provision could legally be passed by the assessing officer.

10. For the reasons, the writ petition succeeds and is allowed. Impugned order passed u/s 21 of the Act on September 21, 1982 (annexure "4" to the writ petition) is, therefore, quashed.