
(1982) 10 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 286 of 1982

Sidh Nath Iron Traders and Another

APPELLANT

Vs

The Sales Tax Officer and Another

RESPONDENT

Date of Decision : 04-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 54 STC 127

Hon'ble Judges : R.M. Sahai, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.C. Sharma, for the Appellant; Standing Counsel, for the Respondent

Judgement

H.N. Seth, J.—By this petition under 226 of the Constitution, the petitioners question the validity of the assessment order dated 25th September, 1981, (in respect of the assessment year 1976-77) made u/s 21 of the U.P. Sales Tax Act as also the consequential recovery proceedings.

2. As both the parties have filed their counter and rejoinder affidavit, we are proceeding to dispose of this petition at the preliminary stage.

3. So far as the petitioners' grievance against the validity of the assessment order passed u/s 21 is concerned, the petitioners have an alternative remedy by way of appeal against that order. As an alternative remedy is available to them in respect of that order, We do not think that this is a fit case for exercise of jurisdiction under Article 226 of the Constitution for going into the validity of that order.

4. Coming now to the validity of the recovery proceedings, the contention of the learned counsel for the petitioners is that even though according to the respondents the copy of the assessment order shall be deemed to have been served on the petitioners (which fact is not admitted by the petitioners) the recovery proceedings stand vitiated as no demand notice there for was ever

served upon the petitioners. We have gone through the counter-affidavit and have perused the record. The record produced by the sales tax authorities shows that the requisite assessment order and the demand notice were despatched for service upon the petitioners on 30th September, 1982. The notices issued were returned without being served upon the petitioners. Accordingly fresh attempt was made to serve the petitioners with a copy of the assessment order. The notice which was despatched to the petitioners this time only mentioned that a copy of the order u/s 21 was being despatched for service but it did not make any mention about the demand notice. The report of the process server indicates that the petitioners refused to accept the copy of the assessment order. It may be that in view of the report of the process-server, it can be taken that a copy of the assessment order was served upon them but then the contents of the said notice as also the report of the process-server cannot be construed as indicating that requisite demand notice was also sent to and served upon each of the petitioners. It is well-established that recovery of tax assessed cannot be resorted to unless the demand notice there for has been served upon the assessee in accordance with law. In this view the petitioners are, in our opinion, entitled to the relief prayed for in so far as recovery proceedings are concerned.

5. Before parting with the case, we may also observe that there is some dispute before us with regard to the service of the assessment order on the petitioners. It is not necessary for us to express any opinion on that controversy at this stage. Needless to say that when the department further proceeds to recover the money from the petitioners, it will see to it that no lacuna on this account remains and that it will proceed only in accordance with the provisions contained in Rule 45 of the Sales Tax Rules.

6. In the result the petition succeeds and is allowed in part. The proceedings for recovery of the tax in pursuance of the recovery certificate (annexure 2 to the writ petition) are quashed. Parties shall bear their own costs.