(1971) 08 AHC CK 0006

In the Allahabad High Court

Case No : Sales Tax Reference No. 543 of 1970

Singhal Electric Works APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 03-08-1971

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 21
Uttar Pradesh Sales Tax Rules, 1948 — Rule 77(a)

Citation : (1971) 41 AWR 721 : (1973) 30 STC 112

Hon'ble Judges : S.N. Dwivedi, J;R.L. Gulati, J

Bench : Division Bench

Advocate : S.P. Gupta, for the Appellant; The Standing Counsel, for the Respondent

Judgement

S.N. Dwivedi, J.—This is a reference u/s 11(4) of the U. P. Sales Tax Act on a direction by this court to the Judge (Revisions). The reference is made at the instance of the assessee. The questions referred are these :

(1), Whether on the facts and circumstances of the case, the notice u/s 21, U. P. Sales Tax Act, was validly served on the assessee ?

(2) Whether the notice requiring the assessee to attend on 26th March, 1964, was validly served on the assessee?

(3) Whether the assessment order and the notice of demand were duly served on the assessee ?

2. We are concerned with the assessment year 1959-60. The assessee was assessed ex parte on 21st March, 1964, by the Sales Tax Officer, Allahabad.

3. It appears that the assessee is ordinarily doing business at Lucknow. But he got a certain contract at Allahabad in the relevant assessment year. So he opened an office at No. 2, Sapru Road, Allahabad, under the name and style of M/s. Singhal Electric Works, Allahabad. The proprietor of the works is P. D. Singhal.

4. The notice issued u/s 21 was served on Bhrigu Prakash Saxena and not on the proprietor. It was served sometime in 1962. P. D. Singhal, however, sent an application to the Sales Tax Officer, Allahabad, alleging that he could not be assessed at Allahabad. Another notice u/s 21 thereafter was served on one Ram Swarup. He signed the acknowledgement on behalf of Singhal Electric Works. No one appeared on the date fixed in the notice before the Sales Tax Officer. A third notice was then sent. It was served on Kanti Devi. Still no one appeared on behalf of the assessee before the Sales Tax Officer on the date fixed. So the Sales Tax Officer made an ex parte assessment on 21st March, 1964. Thereafter, the Sales Tax Officer issued an assessment order and the notice of demand. It was served on Ram Swarup on 26th March, 1964. Ram Swarup signed the acknowledgement "for P. D. Singhal".

5. The assessee then filed an appeal against the assessment order. The appeal was filed long after the expiry of thirty days from the date of service of the assessment order and the notice of demand on Ram Swarup on 26th March, 1964. Accordingly, the appellate authority dismissed the appeal as time-barred. The assessee went in revision. But the revision was also dismissed. The Judge (Revisions), who heard the revision, affirmed the view of the appellate authority on the question of limitation.

6. Standing Counsel raises a preliminary objection that the first, two questions do not arise out of the order of the Judge (Revisions) because the revision was dismissed in limine. We think that there is force in this preliminary objection. In the circumstances of this case, it cannot be said that the first two questions arise out of the order of the Judge (Revisions). So we shall not answer those two questions.

7. The third question has a bearing on the issue of limitation. The appellate authority and the Judge (Revisions) both have held that Ram Swarup, who received the assessment order and the notice of demand on 26th March, 1964, was either a manager or agent of P.O. Singhal and that accordingly, service of the order and the notice of demand on him is sufficient service on P.D. Singhal in accordance with Rule 77(a) of the U.P. Sales Tax Rules. They have also held that service is sufficient under Rule 77(b) as well.

8. Rule 77. pertinently reads :

The service of any notice...or order under the Act or the rules may be effected in any of the following ways, namely-

(a) by giving or tendering a copy thereof to the dealer or licensee, or his manager or agent; or

(b) if such dealer or licensee or his manager or agent cannot easily be found, by leaving a copy thereof at his last known place of business or residence, or by giving or tendering it to some adult male member of his family...

9. It may be pointed out here that the Judge (Revisions) has described M/s.

Singhal Electric Works, Allahabad, as "revisionist" in his order. The word "revisionist" is wrongly used in the order. It means a person who is in favour of revising opinions; it does not mean a person who is an applicant in a revision.

10. The finding is that the notice of demand and the assessment order were tendered to Ram Swarup. Clause (b) of Rule 77 cannot apply for two reasons. Firstly, there is no finding that the assessee or his manager or agent, if any, could not be easily found. In the absence of this finding, Clause (b) will not at all apply. Secondly, Clause (b) provides that when the assessee or his manager or agent, if any, cannot easily be found, a copy of the notice or the order may be left at his last known place of business or residence or it may be given or tendered to some adult male member of his family. There is no finding that Ram Swarup was an adult male member of the family of P.D. Singhal. Nor is there any finding that the copy of the order and the notice of demand were left at No. 2, Sapru Road, Allahabad. The finding is that they were tendered to Ram Swarup. So the other requirement of Clause (b) is also not fulfilled.

11. Clause (a) of Rule 77 permits service of notice or order on the manager or agent of an assessee. The finding of the Judge (Revisions) is that Ram Swarup was either a manager or an agent of the assessee. The finding is not based on any direct evidence of the appointment of Ram Swarup as manager or agent by P.D. Singhal. It is based on merely circumstantial evidence.

12. The Judge (Revisions) has relied on three circumstances. Firstly, the first notice u/s 21 of the Sales Tax Act was served on one Bhrigu Prakash Saxena on 23rd March, 1962. Bhrigu Prakash Saxena accepted the notice "for P.D. Singhal". Thereafter, P.D. Singhal sent an application to the Sales Tax Officer on 4th February, 1962 (sic). In this application, he has admitted that he has received the notice from Bhrigu Prakash Saxena. This circumstance may be used as evidence for proving that Bhrigu Prakash Saxena was an agent of P.D. Singhal. It cannot be evidence for proving that Ram Swarup was an agent of P.D. Singhal. The other two circumstances on which the Judge has relied are the receipt of the notice u/s 21 by Ram Swarup on behalf of P.D. Singhal on 1st August, 1962, and the receipt of the assessment order and the notice of demand by him in March, 1964. The issue before the Judge (Revisions) was whether Ram Swarup received the assessment order and the notice of demand in March, 1964, as an agent of P.D. Singhal. It is rather strange that that very circumstance should be considered to be evidence for proving agency. As counsel for the assessee put it, it is really begging the question. The other circumstance will prove only the fact that Ram Swarup purported to receive a notice u/s 21 on behalf of P.D. Singhal. By itself it cannot prove that P.D. Singhal had authorised Ram Swarup to receive his correspondence.

13. Agency is created by a bilateral agreement. It is constituted by the mutual consent of two or more persons. There is no evidence on record to show that P.D. Singhal had consented to the act of receiving his correspondence by Ram Swarup. The two circumstances relied on by the Judge (Revisions) will show only

that Ram Swarup had voluntarily accepted notices on two occasions. From those circumstances, no inference can be drawn about the consent of the assessee to Ram Swarup''s acting as his agent or manager.

14. "No one can become the agent of another person except by the will of that other person. His will may be manifested in writing or orally, or simply by placing another in a situation in which, according to the ordinary rules of law, or perhaps it would be more correct to say, according to the ordinary usages of mankind, that other is understood to represent and act for the person who has so placed him ; but in every case it is only by the will of the employer that an agency can be created" : (Bowstead on Agency, 1968 Edition, page 11). "Agreement between principal and agent may be implied in a case where a reasonable man, examining the conduct and situation of both the parties, would conclude that one party had authorised the other to act as agent, and that the other had agreed so to act" : (Ibid, page 22). These two passages show that in order to prove agency there should ordinarily be evidence also of the conduct of the alleged principal. The conduct of the alleged agent alone will not establish agency between two persons. Ram Swarup and P. D. Singhal are apparently strangers. There is no finding that Ram Swarup was dealing as an agent in the normal course of his business or that he was looking after the business of P.D. Singhal or was his employee. So there is no evidence in support of the rinding.

15. In our opinion, the assessment order and the notice of demand were not duly served on the assessee. We answer the reference accordingly. The assessee shall get his costs which we assess at Rs. 100.

