
(1970) 11 AHC CK 0017
In the Allahabad High Court
Case No : Sales Tax Reference No. 308 of 1967

Sri Krishna Chandra

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 19-11-1970

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1972) 29 STC 635

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

R.L. Gulati, J.—This is a reference u/s 11(1) of the U.P. Sales Tax Act.

2. The assessee did not file any return for the assessment year 1957-58. An action was taken against him u/s 21 of the Act. A notice was issued by the Assistant Sales Tax Officer u/s 21 which was served by affixation on the dealer on 17th February, 1962. Thereafter the Sales Tax Officer formed the opinion that the Assistant Sales Tax Officer was not competent to issue the notice. He accordingly vacated the earlier notice and issued a fresh one on 30th March, 1962. Subsequently, on 29th March, 1963, an order of assessment was passed u/s 21 of the Act. The assessee appealed and contended before the appellate authority that the service of the notice by affixation on 30th March, 1962, was not valid-, because service by affixation was permissible after all other modes of service had been exhausted. The Assistant Commissioner (Judicial) did not accept this contention, but remanded the case for a fresh assessment on the ground that the case had not been properly scrutinised by the Sales Tax Officer. The assessee then applied in revision and reiterated his objection that there had been no valid service upon him of a notice u/s 21, inasmuch as the service by affixation on 30th March, 1962, was invalid, because other modes of service had not been exhausted. The Judge (Revisions) did not accept this submission, because he was of the opinion that the telegram sent by the dealer on 15th

March, 1963, seeking adjournment showed that he had knowledge of the proceedings u/s 21 of the Act, with the result that the assessment order under that provision could not be challenged on the ground that the same was passed without notice to the assessee. Thereafter the assessee applied u/s 22 for the rectification of the mistake in the revisional order. It was stated in the application that the telegram dated 15th March, 1963, asking for an adjournment did not relate to proceedings u/s 21, but related to some other proceedings in respect of which a notice had been served upon him on 8th March, 1963. This application was also rejected by the Judge (Revisions). He, however, allowed the assessee's application u/s 11(1) and submitted a statement of the case with regard to the following question of law:

Whether under the circumstances of this case affixation service on 30th March, 1962, was sufficient and whether that had apprised the applicant of the proceedings u/s 21 or to the contrary there was no appraisal of the proceedings u/s 21, but a telegram sent on 15th March, 1963, was in pursuance to a subsequent notice issued on 8th March, 1963, and not connected with any appraisal in pursuance to affixation service dated 30th March, 1962.

3. When the reference came up for hearing, this court by its order dated 17th March, 1969, called for a supplementary statement of the case u/s 11(4) of the Act. The Judge (Revisions) was required to state as to whether there were some other proceedings pending before the Sales Tax Officer and whether any notice in respect of these proceedings had been issued to the assessee on 8th March, 1963. The supplementary statement has now been submitted by the Judge (Revisions) which says that a notice had in fact been issued to the assessee on 8th March, 1963, in respect of an enquiry with regard to a booklet of "C" forms issued on 9th September, 1957, in the name of M/s. Har Narain Har Govind. The telegram dated 15th March, 1963, was sent on behalf of the assessee in response to that notice. The Judge (Revisions) has, however, stated that the Sales Tax Officer had remarked in the notice that it had come to his knowledge that the assessee had been doing business during the assessment year 1957-58 in nine fictitious names. That clearly referred to the proceedings u/s 21 of the Act. The assessee had appeared before the Sales Tax Officer on 16th March, 1963, and had participated in the proceedings. From these facts the Judge (Revisions) has inferred that the assessee had the knowledge of the proceedings u/s 21 and therefore the assessment u/s 21 could not be said to be without notice.

4. It is now settled law that a notice u/s 21 of the U.P. Sales Tax Act like a notice u/s 147 of the Income Tax Act, 1961, is a jurisdictional notice so that no assessment or reassessment in respect of any escaped turnover can be made, unless a valid notice u/s 21 is issued and served upon the assessee within the time prescribed in that behalf. Merely because the assessee had the knowledge of the proceedings u/s 21 cannot take the place of the service of a valid notice u/s 21. In the instant case on the department's own showing the notice u/s 21 had

been served upon the assessee by affixation on 30th March, 1962. The question is as to whether that notice had been validly served.

5. Rule 77 prescribes the modes of service of a notice. The first mode is by giving or tendering a copy of the notice to the dealer or its manager or agent. The second mode is by sending the notice to some other adult male member of the family or by leaving a copy of the same at the last known place of business of the assessee, where the assessee or his manager or agent cannot be easily found and the third mode is by registered post where the address of the assessee is known to the Sales Tax Officer. The last mode is by affixation. Clause (d) of Rule 77, however, provides :

If none of the modes aforesaid is practicable, by affixation of a copy thereof in some conspicuous place at his last known place of business or residence.

6. Obviously the mode of service by affixation can be resorted to only if none of the other modes is practicable. In the instant case service by affixation was resorted to in the first instance without trying the other modes. Such a service, therefore, cannot be held to be valid, being contrary to Rule 77.

7. That being the position, the department cannot rely upon the telegram sent by the assessee on 15th March, 1963, to show that the assessee had the knowledge of the proceedings u/s 21. It is not the mere knowledge of the proceedings but the actual service of the notice which is contemplated by the law. The service having been found to be invalid, the assessment u/s 21 cannot be sustained. Moreover, we are also not satisfied that any knowledge of the proceedings u/s 21 can be imputed to the assessee on the basis of the notice of 8th March, 1963, because there was no reference in that notice to any proceeding u/s 21 having been initiated.

8. For the reasons stated above, we answer the question by saying that the service of the notice u/s 21 on 30th March, 1962, was not valid, and the further question as to whether the assessee could be said to have had the knowledge of the proceedings u/s 21 is immaterial. Similarly the assessee's telegram dated 15th March, 1963, sent in pursuance of a subsequent notice issued on 8th March, 1963, does not alter the position. In the circumstances we make no order as to costs.