(1974) 04 AHC CK 0010

In the Allahabad High Court

Case No : S.T.R. No. 253 of 1972

Sri Malik Faqir Chand — APPELLANT

Vs

Sales Tax Officer — RESPONDENT

Date of Decision : 03-04-1974

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(4), 21

Citation : (1975) 35 STC 228

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; The Standing Counsel, for the Respondent

Judgement

Satish Chandra, J.—On receiving information that some turnover had escaped assessment for the assessment year 1956-57, the Sales Tax Officer issued notice to the assessee u/s 21 of the U. P. Sales Tax Act on 7th September, 1960. Subsequently, on 27th March, 1961, another notice u/s 21 was issued requiring the assessee to file his return by 30th March, 1961. The assessee, however, did not file any return. The Sales Tax Officer, on 24th March, 1962, passed an ex parte assessment order determining the escaped turnover at Rs. 10,00,000 and assessing the assessee to a tax of Rs. 31,250.

2. The assessee felt aggrieved and went up in appeal. The Appellate Assistant Commissioner (Judicial) held that the assessment order was passed within the prescribed period of time. He took note of the plea raised on behalf of the assessee that he did not do any business during the year 1956-57 and found that the Sales Tax Officer had not adequately dealt with this question. The assessee pleaded that the information with regard to the draft in the sum of Rs. 73,411-9-6 in the possession of the Sales Tax Officer was misconceived. He held that the assessee should have been confronted with this information before drawing an adverse conclusion against him. He consequently set aside the order of the Sales Tax Officer and remanded the case back for a fresh investigation into

the points mentioned by him and after giving full opportunity to the assessee to rebut the case of the department. The appellate order of remand was confirmed in revision.

3. At the instance of the assessee the revising authority has referred the following questions of law for the opinion of this court u/s 11(4) of the U. P. Sales Tax Act:

(1) Whether, upon the material before the Assistant Commissioner (Judicial), he exercised the power of remand in accordance with the provisions of law and in the sound exercise of his judicial discretion ?

(2) Whether the Sales Tax Officer had jurisdiction to issue the second notice u/s 21 in the circumstances of the case and whether that notice can be taken into consideration in determining whether the assessment order dated 24th March, 1962, was made within limitation''?

4. In our opinion, the second question deserves to be considered first and we proceed to do so.

5. It appears that the notice dated 7th September, 1960, returned back unseved. The report of the process-server was :

Shrimanji...Yah notice in hone lene say inkar kar diya...Lihaza hukam ke mutabiq ek kita notice inki dukan say chaspa kar diya.

6. On this report the Sales Tax Officer passed the following order :

Refused to take notice. Reserved for ex parte action.

7. Thereafter, nothing seems to have happened till 27th March, 1961, when another Sales Tax Officer took up the file. He passed the following order on the order-sheet :

Since the dealer has not filed returns the notice should have been issued u/s 21. Issue notice and call the dealer on 30th March, 1961, finally. Issue at once.

8. It appears that on the same day the Sales Tax Officer passed another order to his peshi clerk. This order does not find place in the order-sheet. The same was passed on a chit of paper to the following effect:

The service of the process-server dated 19th September, 1960, is incomplete as it does not show as to who refused to accept the notice. The dealer has not filed returns and hence issue a fresh notice u/s 21. Issue today please.

9. It appears that the Sales Tax Officer took the view that the notice issued on 7th September, 1960, could not be deemed to have been validly served. We are in entire agreement with this opinion. The report of the process-server did not in any manner indicate that he contacted the assessee or his authorised agent and that the assessee or his authorised agent did dot accept the notice. It was difficult to hold that the assessee had refused to take notice. The order passed

by the Sales Tax Officer on that report, namely, refused to take notice, also does not show that he had held that the assessee had refused to take notice. In the circumstances, the notice issued on 7th September, 1960, could not be held to have been validly served. In this view it was incumbent upon the Sales Tax Officer to issue another notice u/s 21 of the Act before he could proceed to take action for the imposition of tax. The notice dated 7th September, 1960, not having been held to have been properly served, the second notice u/s 21 of the Act was valid and will be deemed to have been validly served for the purposes of computation of period of limitation u/s 21(1) of the Act for completion of the assessment proceedings. The order passed u/s 21 of the Act on 24th March, 1962, was within time.

10. It was urged that only one order dated 27th March, 1961, finds place in the order-sheet. The other order came to notice only when the appeal was being heard before the Appellate Assistant Commissioner (Judicial). The burden of this pica seems to be that the second order was not genuine or that it was manipulated subsequently. We are, however, not prepared to entertain any such plea because if the assessee was not satisfied about the genuineness or otherwise of the second order he should have asked for a specific question on that point. The genuineness of that order is not within the purview of any of the questions referred to us. Neither the appellate authority nor the revising authority have recorded any finding in regard to this question. We, therefore, refrain from entering into this controversy.

11. The Sales Tax Officer appears to have passed the order on the order-sheet in ignorance of the earlier proceedings. When the report of the process-server came to his notice he immediately passed another order holding that the service of the earlier- notice was incomplete and that fresh notice should be issued.

12. In our opinion, the Sales Tax Officer had jurisdiction to issue the second notice u/s 21 and that notice could validly be taken into consideration for determining the period of limitation.

13. The other question relates to the validity of the order of assessment. It appears that the Sales Tax Officer came to know that the amount of Rs. 73,411-9-6 was remitted by draft through National Bank of Lahore to Messrs. India Leather House, Calcutta, the assessee. The assessee had not been originally assessed at all for the relevant assessment year 1956-57. On receipt of this information, he felt that the turnover had escaped assessment. In appeal the assessee took the plea that during the year in question he had not carried on any business in the name of Messrs. India Leather House. The Appellate Assistant Commissioner (Judicial) held that this plea ought to have been determined by the Sales Tax Officer, which appears not to have been done. The assessment order was vague on this point. The assessee also denied having received the draft for the sum of Rs. 78,411-9-6. The Assistant Commissioner felt that this matter also required to be enquired into more thoroughly after confronting the assessee with the information and before any adverse inference was drawn

against him. The Assistant Commissioner felt that the fixation of turnover was also not sound and since several points required consideration it would not be safe to affirm the determination of the turnover. On this finding the assessment order was set aside and the case was remanded for a fresh assessment. In our opinion, the remand order was occasioned upon the pleas raised by the assessee in appeal. It may be noticed that the assessee did not appear before the Sales Tax Officer in spite of service of notice. The appellate authority thought it fit in the interest of justice to afford another opportunity to the assessee to establish his point and meeting the information in the possession of the Sales Tax Officer. In the circumstances, the exercise of power of remand was, in our opinion, sound and in accordance with the exercise of judicial discretion.

14. In the result, both the questions are answered in the affirmative, in favour of the department and against the assessee. The Commissioner of Sales Tax is entitled to costs which we assess at Rs. 100.