

(2006) 03 AHC CK 0184

In the Allahabad High Court

Case No : Trade Tax Revision No's. 1280, 1812, 2551, 2555, 2590 and 2611 of 2004

The Commissioner, Trade Tax

APPELLANT

Vs

S/s Tripathi Trading Co.

RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 15A(1), 21, 21(2)

Uttar Pradesh Trade Tax Rules, 1948 — Rule 77, 77(1), 77(5)

Citation : (2006) 03 AHC CK 0184

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : C.B. Yadav and S.C. for the Appellant; G.M. Tripathi, K. Saksena and M.K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present 6 revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the orders of Tribunal dated 03.02.2004, 27.02.2004, 22.05.2004 and 25.05.2004 for the assessment years 1990-91, 91-92, 92-93, 93-94, 94-95 and 95-96., by which Tribunal has deleted the penalty levied u/s 15-A(1)(a) of the Act.

2. Brief facts of the case referred in the order of the Tribunal are that after obtaining the approval from the Additional Commissioner, Trade Tax under the Proviso to Section 21(2) of the Act, notice u/s 21 of the Act was issued on 24.03.1999. It appears that the notice could not be served by the process server and, thereafter on the order of the officer, notice was served by affixation. Tribunal held that the service of notice u/s 21 of the Act was improper and were not in accordance to Rule 77. Tribunal held that the notice was not signed by the officer. Before the order for the affixation, other modes as provided under Rule 77 has not been adopted and it has not been recorded that the dealer/opposite party (hereinafter referred to as "Dealer") was avoiding the service before

passing the order for affixation.

3. Learned Standing Counsel is not able to assail the findings recorded by the Tribunal. Learned Counsel for the dealer submitted that while making the affixation, no witness has been taken. Lie submitted that on the facts of the case stated in the order of the Tribunal notice has rightly held to have not been served upon the dealer. In support of his contention he relied upon the decision of this Court in the case of M/s Jain Coal Traders, Moradabad v. CTT reported in 2005 NTN (27) 316, M/s National Chemical Products v. State of U.P. and Ors. reported in 2006 NTN (29) 120. It is settled principal of law that the notice u/s 21 of the Act is jurisdictional notice and by serving the notice u/s 21 of the Act the authority assumes the jurisdiction to proceed. Thus, proper service of the notice u/s 21 of the Act is condition precedent for the valid proceeding u/s 21 of the Act.

4. Rule 77 of U.P. Trade Tax Rules contemplates mode of service, which reads as follows:

77. Method of service. - (1) The service of any notice, summons or order under the Act or the Rules may be effected by any of the following methods, namely:

(a) by giving or tendering a copy thereof to the dealer or person concerned or to his manager, munim, accountant or agent, or to one of his employees or to any audit member of his family residing with him];

(b) by registered post:

Provided that if, upon an attempt having been made to serve any such notice, summons order by either of the above said methods, the authority concerned has reasonable ground to believe that the addressee is evading service or that, for any other reason which in the opinion of such authority is sufficient, service cannot be effected by any of the above said methods, the said authority shall, after recording the reasons therefore, cause the notice, summons or order to be served by affixing a copy thereof?

(i) if the addressee is a dealer, on some conspicuous part of the dealer's place of business or the building in which the dealer's place of business is located, or upon some conspicuous part of the place of the dealer's business last intimated to the said authority by the dealer or of the place where the dealer is known to have last carried on business or the place where the dealer resides; or

(ii) if the addressee is not a dealer on some conspicuous part of his residence or office or the building in which his office or residence is located;

and such service shall be deemed to be as effectual as if it had been made on the addressee personally.

(2) When a process server, peon or any other employee of the Trade Tax Department delivers or tenders any notice, summons or order to the dealer or addressee personally or to any of the persons referred to in Clause (a) of Sub-rule (1) he shall require the persons to whom the notice, summons or order is

delivered or tendered to sign an acknowledgement of the service of the notice, summons or order.

(3) Where the person to whom the notice, summons or order is tendered as aforesaid refuses to accept the same or refuses to sign the acknowledgement after its acceptance the process server, peon or employee shall submit a report to the concerned authority stating facts about such refusal and the name, address of the person, if any, present at the time of such refusal. Such report shall be verified on oath by the process server, peon or employee. The concerned authority may, having regard to the facts and circumstances and after making such further enquiry in the matter, if any, as it thinks fit, consider such refusal to be proof of the service.

(4) When service is made by post, or acknowledgement purporting to have been signed by the addressee or his manager, munim, accountant or agent or an employee or member of his family or an endorsement by a postal employee that the addressee or his manager, munim, accountant or agent or employer or member of his family refused to take delivery may be deemed by the concerned authority to be proof of service.

When the notice, summons or order is served by affixing a copy thereof in accordance with the first proviso to Sub-rule (1), the official serving it shall return the original to the authority concerned with report endorsed thereon or annexed thereto stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or residence or the building in which his office or residence is located or his place of business was identified, and on whose presence by the copy was affixed. The said official shall also obtain the signature or thumb-impression of the person identifying the addressee's residence or office or building or place of business to his report.

5. Rule 77 provides service by giving or tendering copy thereof to the dealer and by registered post, and if upon an attempt having been made to serve any Such notice by the above method, the authority concerned has reasonable ground to believe that the addressee is evading service or that, for any other reason which in the opinion of such authority is sufficient, service can not be effected by any of the above such methods, the said authority shall after recording the reasons therefor, cause the notice, summons or order to be served by affixing a copy thereof. Sub-rules (5) provides that when the notice is served by affixing a copy thereof, it shall return to the authority with report endorsed thereon stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressees' office or residence or the building in which his office or residence is located or his place of business was identified, and on whose presence the copy was affixed. The said official shall also obtain the signature or thumb impression of the person identifying the addressee's residence or office or building or place of business to his report. In the present case, process server has reported as follows:

fd ^^Jheku~ tks uksfVI ysdj fn;s x;s irs ij x;k] cgqr iwNrKdN djus ij QeZ o QeZ ekfyd dk irk ugha pykA vr% uksfVI okil** ;g mYys[kuh; gS fd bl uksfVI esa ekfyd dk uke irk vafdr ugha gSA bl uksfVI ds okil dk;kZy; esa izkfIr gksus ds ckn vf/kdkjh vkns" k fn;k fd] pLik fof/k ls rkehy dj;k tk;sA iqu% uksfVI ysdj pijklh ekSds ij x;k] ftlus fnukad 30-3-99 dks vafdr fd;k fd ekfyd ds u feyus ij ,d izfr fn;s x;s irs ij pLik fd;kA

6. The aforesaid report reveals that before resorting the process of affixation notice was not sent by registered post. The authority has also not recorded any reason as required under the proviso of Rule 77(1). Tribunal observed that there was no signature of any officer in the notice. The name of the witness before whom notice was affixed has also not been given. In this view of the matter, it is apparent that the notice has not been properly issued and served upon the dealer in accordance to Rule 77. Tribunal has rightly upheld the order of the first appellate authority quashing the proceedings u/s 21 of the Act as has been held in the case of M/s Jain Coal Traders, Moradabad v. CTT (Supra)

7. In the result, all the revisions fail and are accordingly, dismissed.