

(1985) 08 AHC CK 0016

Allahabad High Court

Case No: Sales Tax Reference No. 280 of 1984

Pramod and Company

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision: Aug. 8, 1985**Acts Referred:**

- Uttar Pradesh Sales Tax Act, 1948 - Section 21

Citation: (1986) 62 STC 56**Hon'ble Judges:** Anshuman Singh, J**Bench:** Single Bench**Advocate:** R.K. Agarwal, for the Appellant;**Final Decision:** Dismissed

Judgement

Anshuman Singh, J.

This revision has been preferred by the assessee against the judgment dated 14th May, 1984, passed by the Sales Tax Tribunal, Aligarh, dismissing its appeal. Briefly stated the facts of the case are that the assessee is a partnership firm carrying on the business of purchases and sale of cement, etc. It submitted its return for the year 1975-76 disclosing the gross and net turnovers of Rs. 9,97,947.32 and nil respectively. The Sales Tax, Officer, Sector-II, Hathras, after examining all the account books accepted the purchase of the cement made by the assessee within the State of U.P. from M/s. Faridabad Manufacturing Engineer Products Private Limited, Ghaziabad, and exempted from payment of tax. Subsequently the assessee is alleged to have received a notice dated 30th July, 1980, through which it was called upon to appear before the assessing authority on 8th August, 1980, in respect of certain proceedings for the assessment year in question. The assessee appeared before the Sales Tax Officer and contested the said notice u/s 21 of the U.P. Sales Tax Act (hereinafter referred to as the Act), on the ground that the notice was invalid and beyond time and also on merit it was liable to be dismissed. The Sales Tax Officer assessed tax u/s 21 of the Act for the year in question. The assessee went up

in first appeal before the Assistant Commissioner (Judicial) who set aside the order of the assessing authority and remanded the case back to the Sales Tax Officer for deciding it again on merit inasmuch as according to him the facts were not properly appreciated by the assessing authority. Being aggrieved against the aforesaid order of the Assistant Commissioner (Judicial) the assessee preferred a second appeal before the Tribunal which dismissed the same. The assessee has come to this Court in the instant revision.

2. I have heard Sri R. K. Agarwal, counsel for the assessee, and the learned standing counsel appearing for the revenue. Counsel for the assessee firstly raised the point regarding the service of notice u/s 21 of the Act and contended that no valid notice u/s 21 of the Act was served upon the assessee and in the absence of a valid notice the proceedings were wholly void. He also contended that the notice dated 28th March, 1980, which was issued u/s 21 of the Act was not served on the assessee and the notice dated 30th July, 1980, could not be said to be a notice u/s 21 of the Act and as such on the basis of the aforesaid notice the proceedings were without jurisdiction. This fact has not been disputed by the counsel for the assessee that the notice dated 30th July, 1980, was served upon the assessee on 6th August, 1980. In the aforesaid notice it was mentioned :

Aap ke varsh 7-5-76, yoo/section 21 sambandhi mamle ki sunvayee ke liye dhinank 8-8-80, ko samay 11 baje mere dhaphthar bikri kar karyalay Hadhras mem nischichath hooyee hei.

3. It is also not disputed that the assessee appeared before the Sales Tax Officer on 8th August, 1980, in pursuance of the notice dated 30th July, 1980, which specifically mentioned Section 21 of the Act. This fact clearly indicates that the assessee was to appear in proceedings initiated u/s 21 of the Act. Learned counsel for the assessee contended that the notice dated 30th July, 1980, was a mere intimation of the adjourned date of hearing and was not a notice u/s 21 of the Act. In this connection it may be mentioned that the requirement of law is that the assessee must be informed of the nature of the proceedings and assuming that the notice dated 30th July, 1980, in the instant case was merely an intimation regarding the adjourned date of hearing, the mention of Section 21 in the body of the notice was clearly indicative of the fact that the assessing authority proposed to initiate proceedings u/s 21 of the Act. In this connection a reference may be made to the observation of Honourable C. S. P. Singh, J., in Commissioner of Sales Tax v. Martand, Pharmacy, Baraut, Meerut (printed at page, 59 infra); 1980 ATJ 40, which is as follows :

Does the mention of 6th March, 1962, inform the assessee that proceedings u/s 21 are being taken against him and call upon him to put in appearance ? It undoubtedly does. The notice specifically mentions Section 21 of the Act, and intimation to the assessee that the proceedings have been adjourned to 17th March, 1962. A reasonable and prudent assessee, from this notice, would have no difficulty in concluding that proceedings u/s 21 have been started by the Sales Tax

Officer against him, and they have been adjourned to 17th March, 1962, on which date he should put in appearance. As is apparent from the order sheet, the assessee did put in appearance and objected to the proceedings both on facts and law. This being so, the notice of 6th March, 1962, though only intimating the adjourned date of hearing of the proceedings u/s 21, can be treated as a notice u/s 21.

4. In view of the said proposition of law the contention raised on behalf of the assessee is not sustainable and is liable to be rejected inasmuch as the notice clearly mentioned Section 21 of the Act and it was a sufficient information about the nature of proceedings in which the assessee was to appear.

5. Counsel for the assessee then contended that even if the notice u/s 21 of the Act was a valid one, it was barred by time inasmuch as no proceedings had been initiated within four years from the end of the year in question. This contention of the assessee is also fallacious. In order to appreciate the aforesaid controversy it is necessary to refer to the relevant provisions of Section 21 of the Act, which read :

21. (1)...

(2) Except as otherwise provided in this section, no order of assessment or reassessment under any provision of this Act for any assessment year shall be made after the expiration of four years from the end of such year :

Provided that the assessment or reassessment for the assessment years 1974-75, 1975-76 and 1976-77 may be made by December 31, 1982.

(3) Where the notice under Sub-section (1) for any assessment year has been served within the period specified in Sub-section (2), the order of assessment or reassessment in pursuance thereof may be made within six months after the expiration of such period :

Provided that where such notice has been served before April 1, 1978, such order may be made within one year after the expiration of the period of four years referred to in Sub-section (2)....

6. Section 21 of the Act was also amended by Act No. 2 of 1980. By means of the aforesaid amendment the assessment for the year 1975-76, i.e., the year in dispute could have been completed by 31st March, 1982. The provisions of Sub-sections (2) and (3) of Section 21 of the Act were substituted by the U.P. Sales Tax (Amendment and Validation) Ordinance, 1981, and the substitution was made effective from 1st November, 1978. As a result thereof the word and figures in Sub-section (2) "March 31, 1982" were substituted by the word and figures "December 31, 1982" and since in the instant case notice u/s 21 was issued to the assessee on 30th July, 1980, the requirement of law was that the assessment for the year 1975-76 should have been completed by 31st December, 1982, and in the instant case the assessment order was passed on 30th August, 1980, and as such the contention that the proceedings u/s 21 were barred by time is misconceived and deserves to be rejected.

7. As regards the merits of the case the Assistant Commissioner (Judicial) has remanded the case to the assessing authority for deciding the matter afresh on the basis of the material evidence which has not been properly scrutinised. It would still be open to the assessee to press before the Sales Tax Officer that on the basis of the material on record the notice was liable to be dismissed on merit also and since the matter has been remanded to the assessing authority I do not want to express any opinion on merits.

8. In the result the revision fails and is accordingly dismissed. However, the parties shall bear their own costs.