(2009) 11 AHC CK 0283

Allahabad High Court

Case No: None

Commissioner of Trade Tax		APPELLANT
	Vs	
Jai Shree Tyres and Rubber Products		RESPONDENT

Date of Decision: Nov. 4, 2009

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 21

Citation: (2010) 30 VST 320

Hon'ble Judges: Abhinava Upadhya, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Abhinava Upadhya, J.
Heard Shri B.K. Pandey, learned standing Counsel for the applicant. None is present for the respondent.

2. The respondent-dealer carries on the business of manufacture and sale of cycle tyre and tubes. The respondent-dealer admitted tax for a sum of Rs. 7,94,000, but in the original assessment year tax was imposed to the tune of Rs. 8,92,493. Against the aforesaid imposition of tax, first appeal was filed before the first appellate authority, and the first appellate authority reduced the tax liability to Rs. 8,36,381. Upon receiving certain information, the Assistant Commissioner (Assessment) passed an order dated September 26, 1989, u/s 21 of the Trade Tax Act, and imposed further tax to the tune of Rs. 16,800 on the transaction which had allegedly escaped assessment. Against the order dated September 26, 1989, the respondent-dealer preferred a first appeal, which was partly allowed vide order dated February 5, 1990, by which imposition of further tax pursuant to the order passed u/s 21 of the Trade Tax Act, was set aside, and the matter was remanded back to the assessing officer to pass fresh order according to the observations made

in the order of the first appellate authority. This order of the first appellate authority was affirmed by the Tribunal. Upon such remand the assessing officer passed a fresh order imposing the tax to the tune of Rs. 14,70,466. Against the aforesaid order, again a first appeal was filed and the matter was again remanded back to the assessing officer. The assessing officer again passed an order imposing the tax to the tune of reduced from the assessed amount of Rs. 14,66,265. Being dissatisfied by the aforesaid reduction, the Department filed a second appeal before the Tribunal. Against this order, again a First Appeal No. 141 of 1994 was filed which was partly allowed and Rs. 6,30,000 was reduced from the assessed amount of Rs. 14,66,265. Being dissatisfied by the aforesaid reduction, the Department filed a second appeal before the Tribunal.

3. While considering the second appeal of the Department, there arose difference of opinion between the Members and the matter was referred to a third Member. The difference of opinion was that after the remand of the case u/s 21 of the U.P. Trade Tax Act whether the entire assessment could be reopened or only with respect to the transaction which has been alleged to have escaped assessment. The third Member opined that the assessment can be reopened only to the extent of escaped assessment and the entire assessment could not be reopened. Aggrieved by the aforesaid order, the present revision has been preferred. Learned standing Counsel appearing for the Department has relied upon a decision of the apex court in the case of Kundan Lal Srikishan v. Commissioner of Sales Tax, U.P. reported in [1987] 65 STC 62 : [1987] UPTC 404 which is as follows (at page 72 of STC):

We do not find any merit in the submission made on behalf of the Department that the order passed on January 18, 1980 should be understood as an order discharging the notice issued u/s 21 of the Act and not an order of reassessment as such. This is obvious from the language of Section 21 itself. Section 21 authorises the assessing authority to make an order of assessment or reassessment. It says that if the assessing authority has reason to believe that the whole or any part of the turnover of the dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under the Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary assess or reassess the dealer or tax according to law. The assessing authority gets jurisdiction to make the reassessment by issuing a notice to the dealer as provided by Section 21 of the Act. When once the notice is issued under that Section the original order of assessment gets reopened and thereafter any order made u/s 21 of the Act alone would be the order of assessment in respect of the period in question. Section 21 of the Act does not require the assessing authority to pass an order deciding whether it is necessary to proceed with the inquiry under that Section or not before passing an order of assessment or reassessment under that section. The only order which the assessing authority is required to make u/s 21 after a notice is issued to the

dealer under that Section is an order of assessment or reassessment. It is not required to pass first an order whether it should proceed with the reassessment proceedings or not. Such a preliminary order is not contemplated u/s 21 of the Act. Hence the order dated January 18, 1980 has to be treated as an order of assessment even though it is not in the form in which an order of assessment has to be passed and not as an order merely on the question whether the reassessment proceedings u/s 21 of the Act should be proceeded with or not. In other words, it should be held that the assessing authority had adopted the earlier order as the order of assessment passed at the conclusion of the proceedings u/s 21 of the Act. The period of limitation for the application for rectification should, therefore, be calculated from the date of the order u/s 21 of the Act. We cannot, therefore, subscribe to the view of the High Court expressed in its observation that since no fresh order of assessment had been passed after examining the accounts of the assessee the ''original assessment order should be considered to remain intact as nothing is added or altered in pursuance of the order u/s 21 of the Act''.

4. Therefore, under the facts and circumstances, it would be appropriate that the matter be remanded back to the Tribunal to decide the issue afresh in the light of the aforesaid judgment of the apex court in the case of Kundan Lal Srikishan [1987] 65 STC 62 : [1987] UPTC 404.

5. In view of the above, the revision is allowed. The order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the issue afresh in the light of the observations made above.