Addy Pharmacy Vs. the State of Bombay

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Court : Sales Tax Tribunal STT Mumbai

Decided On : Jan-13-1956

Reported in : 19567STC340Tribunal

Judge : K Sen, M Vakil, R Mehta

Appellant : Addy Pharmacy

Respondent : The State of Bombay

Judgement :
1. These revision applications are concerned with three periods of assessment, viz. 1st July, 1947, to 2nd March, 1948 ; 3rd March, 1948, to 13th April, 1949, and 14th April, 1949, to 6th November, 1949.

During the first period the transactions of the applicants' firm were being conducted by one Gulbai. She transferred the said firm to one Ratanshi Sojpal on 3rd March, 1948. During the second period, Ratanshi Sojpal did not get himself registered as a dealer, and therefore obtained no registration certificate. On 6th November, 1949, the business was transferred to the present partners one of whom, M.V.Kothari, has signed the three revision applications. Gulbai furnished no returns nor paid any tax. During the second period nothing was done by Ratanshi Sojpal by way of filing any returns or payment of tax. On 2nd December, 1949, notices in Forms XIV and XXIII were sent by ordinary post to the applicants' firm, Addy Pharmacy, at Khodadad Circle, Dadar, Bombay, calling upon the assessees to appear before the Sales Tax Officer on 13th December, 1949. The applicants state that they did not receive those notices. Before the issue of the said notices the present partners had obtained a registration certificate on 17th November, 1949. On 21st January, 1950, a reminder was issued to Addy Pharmacy addressed at Harganaga Mahal, Khodadad Circle, Bombay 14, and an endorsement was made thereon that the letter would be delivered by the Sales Tax Inspector at 56, Portuguese Church, Dadar, which appears to be the address of Ratanshi Sojpal. It was, however, received by Shri P.C. Mehta, one of the present partners of the firm. The said reminder called upon the firm to attend with their accounts on 28th January, 1950. On the said date, 28th January, 1950, one of the partners of the firm appeared and stated that Addy Pharmacy was under a new management and gave the address of their transferor, viz., Ratanshi Sojpal. Thereupon the said reminder appears to have been taken back by the Sales Tax Officer and kept on his file along with the office copy thereof. On 3rd September, 1950, the assessment order was made. It was thereafter served on the firm as at present constituted. On 17th December, 1952, the applicants wrote a letter to the Sales Tax Officer stating that the prior owners of the concern Ratanshi Sojpal and Gulbai Shapurji were liable to pay the sales tax as they had recovered the same from their customers. The applicants also furnished the address of those two persons. In reply to this letter, the Sales Tax Officer, in his letter dated 25th January, 1953, stated that as. the transferee of Sojpal, they were liable to pay the sales tax dues under Sub-section (1) of Section 18 of the Bombay Sales Tax Act, and demanded payment of the same.

2. It was contended by Shri D.V. Patel for the applicants that the notice dated 2nd December, 1949, was never received by his clients and that if the reminder be regarded as a notice, the fact that it was taken back by the Sales Tax Officer shows that the notice was withdrawn and that thus his clients had no opportunity of representing their case to the Sales Tax Officer. Rule 51 of the Bombay Sales Tax Rules, 1946, prescribes two methods by which a notice may be served under the Act, viz. "(i) by delivery to the addressee or his agent, by hand of a copy of the notice, (ii) by post". Sub-rule (3) of the said rule reads thus : "When service is made by post, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post the notice and, unless the contrary is proved, the service shall be deemed to have been effected at the time at which the

notice would be, delivered in the ordinary course of post." This provision substantially reproduces the provisions of Section 28 of the Bombay General Clauses Act, 1904. In this case the notice was not sent by registered post but by the ordinary post. As the applicants deny having received the notice, the presumption indicated by the words "shall be deemed to have been effected" in the said provision cannot, in our opinion, arise in this case, and there having been a special provision as to the circumstances in which the services shall be deemed to have been effected, we do not think that it is open to us to presume under the general provisions of Section 114 of the Indian Evidence Act that in this case the notice was duly served on the applicants. As regards the reminder dated 21st January, 1950, it was no doubt received by P.C. Mehta, one of the present partners of the firm. When it was taken back by the Sales Tax Officer, apparently on a representation made by a partner who appeared on the 28th January, 1950, it must, in our opinion, be held that the notice ceased to be effective as it was withdrawn. Therefore, in our opinion, the applicants never had proper notice of the proceedings before the assessment was made. The absence of such notice and the omission to give the applicants an opportunity to be heard by the Sales Tax Officer who made the assessment, as held in our decision in Revision Application No. 19 of 1955, dated 27th July, 1955, must be held to have vitiated the proceedings held by the said officer so far as the applicants are concerned and the order of the assessment cannot, therefore, be allowed to stand against them. We, accordingly, allow the application and set aside the order of the Sales Tax Officer, the order in appeal made by the Assistant Collector of Sales Tax and the order of the Additional Collector of Sales Tax.