

**Nohar Chand Bhim Sen Vs. the Assistant Excise and Taxation Officer (Assessing Authority)**

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**Court :** Punjab and Haryana

**Decided On :** Mar-08-1963

**Reported in :** [1964]15STC60(P& H)

**Judge :** Mahajan, J.

**Appeal No. :** Civil Writ No. 953 of 1962

**Appellant :** Nohar Chand Bhim Sen

**Respondent :** The Assistant Excise and Taxation Officer (Assessing Authority)

**Advocate for Def. :** S.M. Sikri, Adv. General

**Advocate for Pet/Ap. :** Atma Ram, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Mahajan, J.**

1. This is a petition under Article 226 of the Constitution and is directed against the reassessment proceedings initiated by the Sales Tax authorities vide notice dated 2nd March, 1962, under Section 11A(1) of the Punjab General Sales Tax Act, 1948, served upon Shri Hari Madho Singal, Advocate, on the ground that the service of notice on the Advocate was no service on the petitioner and as no notice had been served on the petitioner within three years following the close of the year for which the turnover was proposed to be reassessed, the whole proceedings were illegal and without jurisdiction. It is common ground that if the service of the notice on the counsel is held to be good and valid service, the reassessment proceedings would be in order and also within limitation. The word 'agent' is defined in Rule 2(a) of the Rules made under the Act in these terms:-

2(a). 'Agent' means a person authorised by a dealer in writing to appear on his behalf before an Assessing Authority, a Deputy Excise and Taxation Commissioner, the Commissioner, the Financial Commissioner, or any other officer appointed by the State Government to assist the Commissioner Under Section 3(1) of the Act, being-

(i) a relative of the dealer ; or

(ii) a person regularly employed by the dealer ; or

(iii) a Barrister-at-Law or Solicitor or any other person entitled to plead in any court of law in the Indian Dominion; or

(iv) a person who has been enrolled as a Registered Accountant in the Register of Accountants maintained by

the Central Government under the Auditors' Certificate Rules, 1932, or holds a restricted certificate under the Restricted Certificate Rules, 1932, or has passed any accountancy examination recognised in this behalf by the State Government or is a bonafide Income-tax practitioner.

2. The Advocate would be an agent within the meaning of the rule provided he has been authorised by the assessee to appear on his behalf before the Assessing Authority etc. Annexure A-I is the power of attorney executed by the assessee in favour of the Advocate authorising him to act, appear, conduct and plead etc. Therefore, it is obvious that this power of attorney authorises him to appear before the Assessing Authority. Rule 66 of the Rules, which is in these terms :-

66. Service of any notice, summons or order under the Act or these Rules may be effected in any of the following ways:-

(a) by sending it to the person concerned under a certificate of posting; or

(b) by giving or tendering it to the person concerned or his manager or agent, if any; or

(c) if the person concerned or his manager or agent, if any, cannot be found by leaving it at the last known place of business or residence of the person concerned or by giving or tendering it to some adult male member of his family ; or

(d) if none of the methods aforesaid is practicable by affixing it in some conspicuous place at the last known place of business of the person concerned,

provides that the service of notice on the agent would be good service vis-a-vis the principal. It is also common ground that the power of attorney in favour of the Advocate was not cancelled before the notice for reassessment was served on the Advocate. All that the learned counsel for the petitioner contends is that in the power of attorney there is no authority given to the Advocate to receive notice. This is so, but then this is wholly beside the point. The provisions of Rule 2 do not mention about the receipt of a notice. The agent is an agent the moment he is authorised by the dealer to appear on his behalf before the Assessing Authority etc. What he is further authorised to do is wholly beside the point. The moment a dealer has an agent, service on him would be good service for purposes of the Act. Mr. Atma Ram, however, relies on the following decisions, *Batna v Deva Singh* A.I.R. 1928 Lah. 733 : *Gopiram Bhagwan Das v. Commissioner of Income-tax, Bihar* [1956] 30 I.T.R. 8 and *Commissioner of Income-tax v. Baxiram Rodmal* [1934] 2 I.T.R. 439, for the contention that service of notice on the agent is not good service. All these cases have no relevancy so far as the present matter is concerned. These cases were not concerned with the interpretation of the rules which are in point in the present case. In these cases, there was no rule similar to rules 2 and 66 of the rules made under the Act. That being so, no assistance can be derived from these authorities.

3. For the reasons given above, this petition fails and is dismissed. The respondent will have his costs which are assessed at Rs. 32.

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