

M/s. Daluram Pannalal Modi

Vs

The Assistant Commissioner of Sales Tax Etc.

Civil Appeal No. 870 of 1962

(K. N. Wanchoo, A. K. Sarkar, K. C. Das Gupta JJ)

08.03.1963

JUDGMENT

SARKAR J. -

The appellant had been assessed to sales tax for the year 1957-58 under the Madhya Bharat Sales Tax Act, 1950. This Act was repealed on April 1, 1959, by the Madhya Pradesh General Sales Tax Act, 1958. On December 31, 1960, a notice was issued to the appellant by an Assistant Commissioner of Sales Tax under the 1958 Act wherein it was stated, "I am satisfied that your sale during the period from 1-4-1957 to 31-3-58..... has escaped assessment and thereby rendered yourself liable to be reassessed under s. 19(1) of the Act." Pursuant to this notice fresh assessment proceedings were started by the Assistant Commissioner in respect of the sales in the year 1957-58 and on March 31, 1961, he made an order imposing an additional tax on the appellant of Rs. 31,250/- for that year and a penalty of Rs. 15,000/-. The appellant moved the High Court of Madhya Pradesh for a writ of certiorari to quash the order but was unsuccessful. It has now appealed to this Court against the judgment of the High Court.

We will first set out the material portion of s. 19(1) of the Act of 1958 under which the assessment was made :

"Where an assessment has been made under this Act and the Commissioner, in consequence of any information which has come into his possession, is satisfied that any sale or purchase of goods chargeable to tax under this Act, during any year.... has escaped assessment... the Commissioner may,..... after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed, in such manner as may be prescribed, to re-assess the tax payable on such sale or purchase and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount."

It is necessary also to refer to s. 30 of the Act which authorises the Commissioner to "delegate any of his powers and duties under this Act", subject to certain restrictions and exceptions which do not require consideration in this case, to Assistant Commissioners and certain other officers. The Commissioner made an order under this section on April 1, 1959, delegating to Assistant Commissioners his "powers and duties specified in column (3) of the table" set out in the order. That column was headed "Description of Powers" and contained the following : To make an assessment or re-assessment of tax or penalty..... and to exercise all other powers u/s. 18, 19 and 21."

It was said that the power to re-assess conferred by s. 19(1) on the Commissioner was subject to various duties one of which was that he had to be satisfied that sales had escaped assessment, without the performance of which duties the power could not be exercised. It was contended that though provision had been made by s. 30 for the delegation of duties, the Commissioner had by his order of April 1, 1959, delegated only his power under s. 19 but not the duties. Therefore, it was argued, that the Assistant Commissioner to whom the power had been delegated, could validly exercise that power only after the Commissioner had been satisfied personally that sales had escaped assessment. It was lastly said that as the Assistant Commissioner had exercised the power to re-assess on his own satisfaction that sales had escaped assessment, the exercise of the power was void.

Section 19(1) no doubt required that the Commissioner had to be satisfied that sales had escaped assessment before he could proceed to exercise his power to re-assess. It is true that without such satisfaction there could be no re-assessment. But we do not think that by this requirement the section imposed any duty on the Commissioner. The Commissioner's satisfaction was necessary only if he wanted to exercise his power to re-asses and was really a condition or limitation of the exercise of that power. Apart from the exercise of such power it had no purpose and no existence. Even if the requirement as to satisfaction was to be considered as a duty, it was a duty which had been created only as an adjunct to the exercise of the power, a duty which passed necessarily with the delegation of the power. That seems to us to be also commonsense for when a power is delegated it is intended that the delegate would exercise it and therefore it must have been intended that he would perform all the conditions precedent to the exercise of the power.

The view that we have taken of this case was taken by the Judicial Committee of a similar statute in the case of *Mungoni v. Attorney General* [[1960] A.C. 336.], and that case was cited with approval by this Court in *Hazrat Syed Shah Mastershid Ali Al Qaudari v. Commissioner of Wakfs, West Bengal* [[1961] 3 S.C.R. 759.], where it was observed, "Where powers and duties are inter-connected and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties." The duty of being satisfied - if at all it was one - being inseparably connected with the power to re-assess and passing to a delegate along with it, was not a duty which could be independently delegated and was not, therefore, a duty the delegation of which could be made under s. 30. We, therefore, think that the Assistant Commissioner, as the delegate of the power to reassess, duty exercised the power on his own satisfaction that sales had escaped assessment.

Then it was said that *Mungoni's case* [[1960] A.C. 336.], and the cases taking the same view, some of which were mentioned in the judgment of the High Court, were of no assistance for the statutes in those cases required only one thing to be done before the power conferred could be exercised, whereas s. 19(1) of the Act of 1958 required a number of things to be so done. It was, therefore, contended that it could not be said in the present case that the things which had to be done before the power could be exercised were not duties which could be delegated under s. 30. In *Mungoni's case* [[1960] A.C. 336.], no doubt there was only one condition precedent and we will assume that in the cases referred to in the judgment of the High Court, the position was the same. We will also assume that sub-s. (1) of s. 19 required a number of things to be done before the power to re-assess could be exercised though as at present advised, we doubt if it did. We are however wholly unable to appreciate how the number of conditions precedent could lead to the view that they were independent duties which could be separately delegated. It seems to us that inspite of their number, they remain nonetheless conditions precedent and therefore conditions or limitations of the exercise of the power. They had, like a single condition precedent, no independent existence. If in the case of a single condition precedent it has to be held on the authority of *Mungoni's case* [[1960] A.C. 336.],

that the requirement of its performance passed with the delegation of the power to which it was attached we think that a delegation of a power would take with it all the conditions precedent attached to it whatever be their number. We are unable to distinguish the present case from Mungoni's case [[1960] A.C. 336.].

The other objection to the validity of the order is that it was in respect of sales which had earlier been assessed under the Act of 1950 as sales by one Gajanand Satyanarayan and could not therefore be assessed again. This earlier assessment had been canceled by an order made under s. 39(2) of the Act of 1958. But it was said that that order could not cancel the assessment which was under the 1950 Act, for under s. 39(2) only an order under the 1958 Act could be cancelled. It seems to us that in order to uphold the validity of the re-assessment order made in this case it is not necessary that the assessment order made on Gajanand Satyanarayan should have been cancelled. We will assume that the sales covered by the order against Gajanand Satyanarayan were the same as those with which the order in hand is concerned. In the re-assessment proceedings however it was found as a fact that Gajanand Satyanarayan was a name only and that no real person bearing that name ever existed. That finding cannot be challenged in the present proceedings and that being so, it seems to us that the assessment order upon Gajanand Satyanarayan was a nullity. Obviously, no assessment could be made under the Act on a non-existent person. If that order was a nullity - and the learned counsel has not been able to show how it could have been otherwise - it could not stand in the way of the re-assessment of the appellant at all. The second challenge to the impugned order must, therefore, also be rejected.

Learned counsel for the appellant had sought to raise two other points but he was not permitted to do so because these points were not mentioned in the petition for the writ nor raised at any earlier stage. We will however state them here but without expressing any opinion of our own as to their tenability. The first of these points was that under s. 19(1) of the 1958 Act only those sales could be re-assessed which were chargeable to tax under that Act and the sales brought to tax under the present order were of sugar, a commodity the sale of which was not chargeable under the Act. The other point was that penalty had been imposed by the impugned order under s. 14 of the Act of 1950 but this was illegal since the 1950 Act had been repealed and the right to impose a penalty under the repealed Act had not been saved by the saving section, namely, s. 52.

In the result this appeal must fail and it is, therefore, dismissed with costs.

Appeal dismissed.

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