The Provincial Government of Madras

Vs

J. S. Basappa

Civil Appeals Nos. 494-496 of 1962

(A. K. Sarkar, M Hidayatullah, J. C Shah JJ)

20.11.1963

JUDGMENT

HIDAYATULLAH, J. –

This judgment will dispose of Civil Appeals Nos. 494 to 496 of 1962. The State of Andhra Pradesh which now stands substituted for the Provincial Government of Madras is the appellant. The respondent is one J.S. Basappa, a groundnut-oil merchant of Kurnool who was selling oil within the Province and also exported it to extra-Provincial points. These three appeals concern sales-tax for the years 1944-45, 1945-46 and 1946-47. They arise out of three suits filed by Basappa against the Provincial Government of Madras now represented by the Government of Andhra Pradesh, the details of which are given below.

For the year 1944-45, Basappa was assessed to sales-tax amounting to Rs. 12,983-2-2 of which, according to him, a sum of Rs. 1,594-1-5 only represented sales within the Province. He claimed that the remaining sales took place outside the Province of Madras. He submitted that property in the goods remained with him till the export of the goods to an extra-Provincial point and till payment of price after export. He claimed that these sales could not be included in his turnover under the Madras General Sales-tax Act, 1939 (Act No. IX of 1939) and sales-tax was wrongly demanded from him. In respect of this assessment, he filed O.S. No. 14 of 1950 (original No. O.S. 40 of 1949) in the Court of the Subordinate Judge, Kurnool for refund of Rs. 11,389-0-9 ps. The Madras State Government in a written statement traversed all the allegations and stated that delivery of the goods was made in Kurnool when the goods were booked and further that the goods were despatched at buyer's risk and remained at buyer's risk through out. It also contended that the notice under s. 80 was not proper and the suit was not in accordance with that notice and was not maintainable because the orders under the Sales-tax Act were made final by s. 11(4) of the Sales-tax Act and because Basappa had not exhausted his other remedies under the Sales-tax Act. Lastly, it contended that the suit was barred by time not having been filed within six months from the date of the act complained of as required by s. 18 of the Sales-tax Act or within one year as required by Art. 16 of the Indian Limitation Act.

In respect of the year 1945-46, Basappa filed O.S. No. 44 of 1949 claiming a refund of Rs. 8,356/- on similar grounds, and in respect of the year 1946-47 he filed O.S. No. 23 of 1949 for a declaration that the levy of Rs. 9,233-6-7 was illegal and without jurisdiction and for a permanent injunction to restrain the taking authority from collecting the tax. In this suit, in addition to the defences also taken in the other suits it was contended that the suit was incompetent as a revision application was pending with the Board of Revenue.

These suits were disposed of by the Subordinate Judge, Kurnool by a common judgment dated February 22, 1951. The main points which were decided were :- (1) whether the suits were not maintainable as (a) the civil court had no jurisdiction and (b) the assessee had not exhausted his other remedies, (2) whether the suits were barred by time, and (3) whether the sales took place outside the Province of Madras and the levy of the tax in respect of some of the transactions was illegal. The Subordinate Judge held that there was nothing in the Sales-tax Act to exclude the jurisdiction of the civil court and that the finality spoken of by s. 11 of the Sales-tax Act was a finality arising under the Sales-tax Act and had no reference to the jurisdiction of the civil court. He also held that Basappa was not required to exhaust his other remedies before moving the civil court by suit. On the second point, the Subordinate Judge held that O.S. No. 14 of 1950 and 44 of 1949 were barred by time under s. 18 of the Sales-tax Act or Art. 16 of the Limitation Act whichever might be applied. The learned Subordinate Judge held that Art. 62 of the Limitation Act was not applicable because Basappa had not pleaded in these two suits that payment of the tax was made under a mistake. The Subordinate Judge, however, held that O.S. No. 23 of 1949 was in time. In O.S. No. 14 of 1950 and 44 of 1949, he recorded findings that tax amounting to Rs. 7,203-12-9 in respect of O.S. 14 of 1950 and Rs. 5,370-7-0 in respect of O.S. No. 44 of 1949 were wrongly levied, because those amounts concerned sales which took place outside the Province of Madras. In O.S. 23 of 1949, he held that sales of the value of Rs. 79,465/- took place outside the Province and tax in respect of them at 1% (which was the uniform rate applicable to all the three years) was not demandable. A declaration to this effect was granted and an injunction was issued restraining the State Government from recovering Rs. 793-10-6 from Basappa. In the result, O.S. No. 14 of 1950 and 44 of 1949 were dismissed with costs and O.S. No. 23 of 1949 was partially decreed with proportionate costs.

Basappa appealed in all the three suits against the decision of the Subordinate Judge, Kurnool. The Government of Madras objected in the appeal of Basappa from the decision in O.S. No. 23 of 1949 in respect of the decree for Rs. 793-10-6. In the High Court, applications were made in the appeals for urging an additional ground that the whole assessment was invalid because it included an illegal levy which was not severable from the legal demand. This ground was based upon the decision of this Court in M/s. Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax and others [[1955] 2 S.C.R. 483.]. This request was not opposed and permission was granted to Basappa. The High Court differed from the Subordinate Judge on the question of limitation and held that neither s. 18 of the Sales-tax Act nor Art. 16 of the Limitation Act was applicable to the suits, which were governed by Art. 62 of the Limitation Act. The High Court accordingly held that O.S. 14 of 1950 and O.S. 44 of 1949 which were dismissed as barred by time were not barred. On the main question, the High Court classified all the sales into four categories which were :

1. Where the plaintiff himself was the consignor as well as the consignee,
2. Where the plaintiff himself was the consignor and the buyer the consignee,
3. Where the buyer was the consignor as well as the consignee, and
4. Where a third party was shown as the consignor, the consignee being the plaintiff.

The Subordinate Judge had held that sales-tax was properly demandable in respect of categories 2 and 3 but not in respect of categories 1 and 4. The second part of the decision was not assailed before the High Court. The High Court again considered categories 2 and 3 and held that sales coming under those categories were properly assessable to sales-tax as the sales took place within

the Province of Madras. The High Court, however, acting upon the decision of this court in Ram Narain's case [[1955] 2 S.C.R. 483.] held that the legal and the illegal levies were so mixed up that the entire demand for tax was rendered illegal and void. In the result, the appeals filed by Basappa were allowed and the cross-objection filed by the Provincial Government of Madras was dismissed. The High Court certified these cases and the present appeals have been filed.

Three questions are raised by Mr. A. V. Viswanatha Sastri. They are, (1) that the civil court had no jurisdiction to try these suits, (2) that the suits O.S. 14 of 1950 and 44 of 1949 were barred by time under s. 18 of the Sales-tax Act and (3) that the High Court was wrong in holding that the assessments were not capable of being split up and in declaring the total assessments to be void.

The first two points give no trouble at all. Section 18 of the Act reads :

> "No suit shall be instituted against the Government and no suit, prosecution or other proceeding shall be instituted against any Officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of."

This section applies to suits for damages and compensation in respect of acts under the Act. It is worded in familiar language by which authorities, including Government, are protected and indemnified in respect of bona fide acts done or purporting to be done under powers conferred by the statute. The period of limitation prescribed in the section does not apply to the kind of suits which were filed by Basappa. This point has no substance and was not even pressed in the High Court.

Similarly, the first point must also be decided against the State of Andhra Pradesh, because of a recent decision of this court in Firm of Illuri Subhayya Chetty Sons v. The State of Andhra Pradesh [[1964] 1 S.C.R. 752.] That case was decided under s. 18A of the Madras General Sales-tax Act which was inserted by s. 10 of the Madras General Sales-tax Amendment Act, 1951 which came into force on May 15, 1951. That section reads :

> "No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any Court to set aside or modify any assessment made under this Act."

The present appeals have to be decided without the assistance of s. 18A, because the suits were filed in the Court of Subordinate Judge, Kurnool and were decided by him before the amendment came into force. Prior to the insertion of s. 18A there was no specific provision taking away the jurisdiction of the civil court except s. 11(4) by which a finality attached to orders passed in appeal. Under that section, appeals were provided in respect of orders of assessment and there was also a provision for revision in s. 12. It was provided by sub-s. (4) of s. 11 that "every order passed in appeal under this section, shall, subject to the powers of revision conferred by s. 12, be final." While enacting s. 18A the Legislature added an elaborate machinery which did not exist earlier for correcting assessments.

Mr. Sastri contends that in deciding whether the civil court's jurisdiction is barred, we must take into account the provisions of s. 11 and s. 12, because these provisions which provide adequate remedies "march with the construction" of s. 11(4). He submits that the finality which was conferred on the appellate order subject to a revision must necessarily be a finality against determination of the same

question by the civil court. It is pointed out by this court in Chetty's case [[1964] 1 S.C.R. 752.] that the exclusion of the jurisdiction of the civil court is not to be readily inferred and that even if a provision giving the orders a finality was enacted, civil courts still have jurisdiction to interfere where fundamental provisions of the Act are not complied with, or where the statutory Tribunals do no act in conformity with the fundamental principles of judicial procedure. Gajendragadkar, J. speaking for the court on that occasion summed up the law as follows :

> "In dealing with the question whether Civil Courts' jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of Civil Courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute."

Referring to the remarks of Lord Thankerton in Secretary of State represented by the Collector of South Arcot v. Mask & Co. [67 I.A. 222 at 236.] - "it is also well-settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure", - it was observed :

> "It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question."

It was thus held that the civil court's jurisdiction may not be taken away by making the decision of a tribunal final, because the civil court's jurisdiction to examine the order, with reference to fundamental provisions of the statute, non-compliance with which would make the proceedings illegal and without jurisdiction, still remains, unless the statute goes further and states either expressly or by necessary implication that the civil court's jurisdiction is completely taken away.

Applying these tests, it is clear that without a provision like s. 18A in the Act, the jurisdiction of the civil court would not be taken and at least where the action of the authorities is wholly outside the law and is not a mere error in the exercise of jurisdiction. Mr. Sastri says that we must interpret the Act in the same way as if s. 18A was implicit in it and that s. 18A was added to make explicit what was already implied. We cannot agree. The finality that statute conferred upon orders of assessment,

subject, however, to appeal and revision, was a finality for the purposes of the Act. It did not make valid an action which was not warranted by the Act, as for example, the levy of tax on a commodity which was not taxed at all or was exempt. In the present case, the taxing of sales which did not take place within the State was a matter wholly outside the jurisdiction of the taxing authorities and in respect of such illegal action the jurisdiction of the civil court continued to subsist. In our judgment the suits were competent.

The last question is whether the assessment as a whole must fail or only in respect of the part which was outside the jurisdiction of the sales-tax authorities. We have already reproduced the four categories into which all the transactions of sale were classified. The High Court and the Court below found that categories 1 and 4 represented transactions of sale which could not be taxed at all by the authorities as those transactions took place outside the State. It may be mentioned that the Sales-tax Act did not then contain any provision which established a nexus between the sales and the Province. That provision came later. The High Court relying upon Ram Narain's case [[1955] 2 S.C.R. 483.] held that the assessments as a whole must fail. In Ram Narain's case a portion of the assessment was invalid under Art. 286 of the Constitution and the question was whether the total assessment must fail. This Court observed :

> "The necessity for doing so is, however obviated by reason of the fact that the assessment is one composite whole relating to the pre-Constitution as well as the post-Constitution periods and is invalid in toto. There is authority for the proposition that when an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid in toto."

This Court cited with approval a passage from Bennett & White (Calgary) Ltd. and Municipal District of Sugar City No. 5 [[1951] A.C. 786 at 816.] where the Judicial Committee observed :

> "When an assessment is not for an entire sum, but for separate sums, dissected and earmarked each of them to a separate assessable item, a court can sever the items and cut out one or more along with the sum attributed to it, while affirming the residue. But where the assessment consists of a single undivided sum in respect of the totality of property treated assessable and when one component (not dismissible as 'de minimis') is on any view not assessable and wrongly included, it would seem clear that such a procedure is barred and the assessment is bad wholly. That matter is covered by authority. In Montreal Light Heat & Power Consolidated v. City of Westmount (1926) S.C.R. (Can.) 515 the court (see especially per Anglin C.J.) in these conditions held that an assessment which was bad in part was infected throughout and treated it as invalid. Here their Lordships are of opinion, by parity of reasoning, that the assessment was invalid in toto."

It is urged by Mr. Sastri that the tax here is at the uniform rate of 1% and as all the returns and documents necessary to separate the bad part from the good are available, there is no need to cancel the whole assessment. He contends that these cases are rather governed by the other rule that where the assessment is for separate sums, only that portion need be declared illegal which is void. It is necessary to explain the distinction between the two classes of cases and how they are to be distinguished. A difference in approach arises only in those cases where the assessment of many matters results in amounts of tax which though parts of the whole assessment, stand completely

separate. There the court can declare the "separate dissected and earmarked" items illegal and excise them from the levy. In doing so, the court does not arrogate to itself the functions of the taxing authorities; but where the tax is a composite one and to separate the good part from the bad, proceedings in the nature of assessment have to be undertaken, the civil court lacks the jurisdiction. Here, the amount of tax is a percentage of the turnover and the turnover is a mixed one and it is thus not merely a question of cutting off some items which are separate but of entering upon the function of assessment which only the authorities under the Sales-tax Act can undertake. Cases of assessment based upon gross valuation such as the case from Canada referred to by the Judicial Committee afford a parallel to a case of assessment of a composite turnover such as we have here. Just as in the Canadian case it was not possible to separate the valuation of movable properties from that of immovable properties, embraced in a gross valuation roll, so also here, it is not possible to separate from the composite turnover transactions which are validly taxed, from those which are not, for that must pertain to the domain of tax officers and the courts have no powers within that domain. In our opinion, the High Court was right in declaring the total assessment to be affected by the portion which was illegal and void.

In the result, these appeals fail and are dismissed with costs, one set only.

Appeals dismissed

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