

M/s. Jaipuria Brothers Co., Appellants

Vs

State of Uttar Pradesh & Others

Civil Appeal No. 830 of 1963

(J. C. Shah, S. M. Sikri, K. Subha Rao JJ)

21.10.1964

JUDGMENT

SHAH J.

The appellant - a public limited Company - having its registered office at Calcutta, was, with effect from October 5, 1946, appointed sole agent for sale of goods manufactured by the Swadeshi Cotton Mills Company Ltd. On March 20, 1952, the sales Tax Officer, Kanpur issued a notice under s. 21 of the U.P. Sales Tax Act, 1948 calling upon the appellant Company to file a return of its turnover for the assessment year 1948-49 on the ground that the turnover had escaped assessment. On March 31, 1952, the Sales Tax Officer made a "best judgment" assessment and determined the taxable turnover of the appellant Company at Rs. 50 lakhs for the year 1948-49 and determined the appropriate tax liability.

In the appeal to the Judge (Appeals) Sales Tax, the order passed by the Sales Tax Officer, was set aside, that authority holding that the appellant Company was not a dealer within the meaning of s. 2(c) of the Act. But the order of the appellate authority was set aside by the Judge (Revisions) Sales Tax, by order dated March 28, 1955 and the case was remanded to the Sales Tax Officer for "fresh assessment". In the view of the Judge (Revisions) Sales Tax, it was necessary to determine "the ownership of the goods at the time of their sale."

The Sales Tax Officer then issued a notice calling upon the appellant Company to produce its books of account and other relevant documents on July 23, 1955 for the purpose of assessment for the year 1948-49. The appellant Company contended that as the original assessment under s. 21 had been set aside by the Judge (Revisions) Sales Tax, no proceeding in connection with that assessment was pending and re-assessment was barred because more than three years had elapsed since the end of the year of assessment. The Sales Tax Officer rejected the contention of the appellant Company and insisted that the books of account and other documents be produced as directed earlier. The appellant Company then petitioned on September 2, 1955 to the High Court of Allahabad under Art. 226 of the Constitution for a writ in the nature of prohibition restraining the Sales Tax Officer, Kanpur, from proceeding with the assessment of the appellant Company for the assessment year 1948-49 and for a writ of certiorari quashing the order dated September 2, 1955 of the Sales Tax Officer, Kanpur and the proceeding taken for re-assessment in pursuance thereof. Chaturvedi J., held that assessment sought to be made by the Sales Tax Officer pursuant to the order of the Judge (Revisions) Sales Tax "was clearly barred by the law of limitation" prescribed in that behalf by s. 21 of the U.P. Sales Tax Act. It was in the view of the learned Judge immaterial whether assessment was being made by the Sales Tax Officer suo motu or under the direction of a superior authority if at the time of making the re-assessment the period prescribed by s. 21 had expired. The order passed

by Chaturvedi J., was reversed in appeal by a Division Bench of the High Court. The High Court held that the Sales Tax Officer was competent in view of the order of remand which directed "fresh assessment" to commence fresh assessment proceedings against the appellant Company and in commencing and continuing those proceedings he was acting in compliance with the directions given under ss. 9 and 10 of the Act which he was bound to carry out and to such assessment proceedings the period of limitation prescribed by s. 21 of the Act did not apply. Against the order passed by the High Court reversing the order passed by Chaturvedi J., this appeal has been preferred with special leave.

The material provisions of the U.P. Sales Tax Act are briefly these : s. 9 conferred a power upon the designated authority to entertain an appeal against the order passed by the Sales Tax authority, and by sub-s. (3) of s. 9 it was provided :

"The appellate authority may, after giving the appellant a reasonable opportunity of being heard,

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the assessing authority to pass a fresh order after such further inquiry as may be directed, or

(c) ##

By sub-s. (3) of s. 10 as it stood at the relevant time, it was provided :

"The Revising authority may in his discretion at any time suo motu or on the application of the Commissioner of Sales Tax or the person aggrieved, call for and examine the record of any order made by any Appellate or Assessing Authority under this Act, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order as he thinks fit :

Provided that no such application shall be entertained in any case where an appeal lay against the order, but was not preferred."

Section 21 as it stood at the relevant time provided :

"Where the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax in any year, the Assessing Authority "may, at any time within three years from the expiry of such years, and after issuing notice to the dealer and making such enquiry as may be necessary, assess the tax payable on such turnover."

In the view of the High Court s. 21 which imposed upon the Assessing Authority duty to exercise his power to assess turnover which escaped assessment within three years from the end of the year of assessment applied only to the order which the Assessing Authority made suo motu : where, he was directed to proceed by an order of the appellate or revisional authority under ss. 9 and 10 of the Act to re-assess, the period of limitation has no application.

In our view the High Court was in error in so limiting the operation of s. 21. That section imposes a restriction upon the power of the Sales Tax Officer : that officer is competent within three years next succeeding the date to which the tax relates to assess tax payable on the turnover which has escaped

assessment. But the section does not provide expressly, nor is there any implication, that the period within which re-assessment may be made applies only to those cases where the Sales Tax Officer acts on his own initiative and not pursuant to the directions of the appellate or the revisional authority. In our view the principle of the judgment of the Privy Council in Commissioner of Income-tax Bombay Presidency and Aden v. Khemchand Ramdas (a firm) ((1938) L.R. 65 I.A. 236) applies to this case. In Khemchand's case ((1938) L.R. 65 I.A. 236) the tax-payer was assessed as a registered firm to income-tax by order dated January 17, 1927 for the year 1926-27 under s. 23(4) of the Income-tax Act. Under the Act as it then stood, a registered firm was not liable to pay super-tax and was liable to income-tax at the maximum rate. On January 9, 1928 the Commissioner of Income-tax in exercise of powers of revision under s. 33 of the Act issued a notice to the assessee requiring him to show cause why the order of the Income-tax Officer granting registration of the firm and assessing it on that footing should not be set aside, and by order dated February 13, 1928, ordered cancellation of registration and directed the Income-tax Officer to take necessary action thereupon. On May 4, 1929, the Income-tax Officer assessed to super-tax the assessee on the footing that its registration was cancelled. The authority of the Income-tax Officer to assess was challenged. It was held by the Judicial Committee that as the as the Income-tax Officer had made the order imposing super-tax on the assessee more than one year after the earlier demand in respect of income-tax, the order was without jurisdiction. The Judicial Committee pointed out that once a final assessment has been made, it cannot be reopened by the Income-tax Officer of his own motion, or at the direction of the Commissioner exercising his powers under s. 33 of the India Income-tax Act, 1922, except in the circumstances and within the time prescribed by ss. 34 and 35 of the Act. They observed that ss. 34 and 35 were exhaustive and prescribed the only circumstances in which, and the only time in which, such fresh assessments could be made and fresh notices of demand could be issued. As the Income-tax Officer took no fresh step within one year under the statute, he was "hopelessly out of time whichever of the two sections was applicable".

But the order of the High Court must still be confirmed, because during the pendency of the proceeding in the High Court s. 21 was extensively amended. The section as amended by Act 19 of 1956 from May 28, 1956 reads as follows :

"(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for any year, the assessing authority may, after issuing notice to the dealer, and making such enquiry as may be necessary, assess or re-assess him to tax :

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment, or full assessment, as the case may be.

Explanation. - Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

(2) No order of assessment under sub-section (1) or under any other provision of this Act shall be made for any assessment year after the expiry of four years from the end of such year.

Provided that where the notice under sub-section (1) has been served within such four years the assessment or re-assessment to be made in pursuance of such notice may be made within one year of the date of the service of the notice even if the period of four years is thereby exceeded :

Provided further that nothing contained in this section limiting the time within which any assessment or re-assessment may be made, shall apply to an assessment or re-assessment made in consequence of, or to give effect to, any finding or direction contained in an order under section 9, 10, or 11.

Explanation. -"

Under the terms of s. 21(1) as amended where the assessing authority has reason to believe that any part of the turnover has for any reason escaped assessment to tax for any year, he may make assessment within four years from the end of the year in which the turnover has escaped assessment. The rule is, however, subject to two exceptions : (1) when notice under sub-s. (1) has been served within four years the assessment or re-assessment to be made in pursuance of such notice may be made within one year of the date of the service of the notice even if the period of four years is thereby exceeded; and (ii) that nothing contained in s. 21 which limits the time within which any assessment or re-assessment is to be made applies to assessment or re-assessment made in consequence of, or to give effect to, any finding or direction contained in an order under ss. 9, 10 or 11. Therefore where the Sales Tax Officer proceeds in pursuance of a direction given by the appellate or revising authority or under an order made by the High Court in a reference under s. 11, the period of limitation prescribed by sub-s. (2) of s. 21 does not apply. This section was incorporated in the Act by s. 15 of the amending Act, which enacted :

"For section 21 of the Principal Act the following shall be and be always deemed to have been substituted."

The amended section was therefore to be deemed to be in operation at all material times since the enactment of the U.P. Sales Tax Act 15 of 1948. The Legislature has given a clear retrospective operation to the amended section as from the date on which the Principal Act came into operation, and correctness of the order of the Sales Tax Officer holding that there was not bar of limitation to the making of a fresh assessment pursuant to the order of the appellate revising authority had to be adjudged in the light of s. 21 as amended by Act 19 of 1956. The words used by the Legislature are precise and admit of only one interpretation that proceedings taken for assessment or re-assessment in consequence of, or to give effect to an order of the appellate or revising authority or an order passed by the High Court under s. 11 may be taken notwithstanding the expiry of the period prescribed by sub-s. (2) of s. 21.

Mr. Pathak on behalf of the appellant Company pleaded that even if that be the true interpretation of s. 21 as amended, the section could only apply to proceedings which were pending at the date on which the Act was amended, but in law no proceeding was pending because to Judge (Revisions) Sales Tax had no power to direct after the expiry of the period prescribed under s. 21 as it originally stood to make a fresh assessment in respect of the year 1948-49. There are two clear answers to this plea, either of which is sufficient to reject it. The revisional authority had under s. 10(3) power to make such order as he thought fit after calling for and examining the record of any order made by an appellate or an assessing authority and after satisfying himself as to the legality or propriety of such order. Even assuming that the revisional authority came to a conclusion which was erroneous in law, it was still an order which he had jurisdiction to make and that order unless set aside in a proper proceeding could not be ignored on the ground of lack of jurisdiction. There was, therefore, a proceeding pending before the Sales Tax Officer in pursuance of the direction given by the Judge (Revisions) Sales Tax who had directed the Sales Tax Officer to make a fresh assessment. whether in pursuance of this direction, a fresh assessment could be made under s. 21 before it was amended,

need not detain us. We are concerned with the jurisdiction of the revising authority to make the order that he did under the section as it stood amended, and not with the competence of the assessing authority to pass an order for assessment under the statute before it was amended. The other ground is also equally decisive. By s. 15 of Act 19 of 1956, s. 21 of the Act as amended, must be deemed to have been on the statute book on the date on which the revising authority passed his order, and under that amended provision the power of the assessing authority to assess or re-assess pursuant to an order of the revising authority was not lost when the period prescribed by sub-s. 2 of s. 21 for assessment or re-assessment expired. Under s. 21, before it was amended, there could be no order of assessment or re-assessment either by the Sales Tax Officer suo motu, or pursuant to the direction of the appellate or revising authority after the expiry of the period of three years prescribed by the statute, but under s. 21 as amended, the power may be exercised by the Sales Tax Officer suo motu within four years for assessment or re-assessment. That power could be exercised under the first proviso within a further period of one year if a notice under sub-s. (1) was served within four years of the end of the year of assessment and without limit of time when it was made in consequence of, or to give effect to, any finding or direction contained in an order of the appellate or revisional authority or under an order of the High Court under s. 11. In initiating proceeding for assessment, pursuant to the direction of the revising authority, the Sales Tax Officer was, by virtue of s. 21 as amended, subject to no restrictions as to the period within which the order of assessment could be made. The order passed by the High Court must therefore be confirmed.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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