

State of Mysore

v.

Circo

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE VAIDYNATHIER
RAMASWAMI HON'BLE JUSTICE V. BHARGAVA

Civil Appeal No. 396-399 Of 1965 | 23-09-1966

SHAH, J.

1. Circo's Coffee Company - hereinafter called "the assessee" - is a partnership carrying on business of grocers in the town of Bangalore. For the quarters ending June 30, 1955, September 30, 1955, December 31, 1955 and March 31, 1956, the Sales Tax Officer, 1st Circle, Bangalore, in assessing the assessee to pay sales tax granted exemption in respect of certain sales in coffee seed. The Deputy Commissioner of Commercial Taxes, Bangalore Division, purporting to act under section 15(1)(i) of the Mysore Sales Tax Act (46 of 1948) commenced proceedings suo motu for revision of assessment of the assessee, and by order dated December 8, 1958, revised the assessment for the four quarters. This order was set aside by the Mysore Sales Tax Appellate Tribunal on the view that the Deputy Commissioner had no authority on December 8, 1958, to revise the order of the Sales Tax Officer purporting to act under section 15(1)(i) of the Mysore Sales Tax Act, 1948. Thereafter the Deputy Commissioner commenced fresh proceedings for revising the assessment under section 15(1)(i) of the Mysore Sales Tax Act (46 of 1948) read with section 40(1) of the Mysore Sales Tax Act, 1957, and by order dated July 10, 1959, revised the order of assessment. He held that the Sales Tax Officer had wrongly granted exemption in respect of certain sales, and ordered that the price received in respect of those transactions be included in the taxable turnover of the assessee. Against the order of the Deputy Commissioner of Commercial Taxes, the assessee appealed to the Sales Tax Appellate Tribunal in respect of the four quarters. The Tribunal held that the Deputy Commissioner of Commercial Taxes had not recorded any "independent finding of his own" and that he had passed the order revising the assessment merely on the basis of the order passed by the Inspecting Officer. The Tribunal accordingly allowed the appeals filed by the assessee. Against the order passed by the Tribunal, the State of Mysore preferred revision petitions to

the High Court of Mysore under section 23(1) of the Mysore Sales Tax Act, 1957. The High Court remanded the cases to the Tribunal for disposal according to law, holding that the Tribunal had acted improperly in disposing of the appeals filed by the assessee on a technical ground and without going into the merits of the dispute raised by the assessee. At the hearing before the Tribunal on remand, the assessee sought to raise contentions, two out of which had originally been raised before it and had been rejected, and which were not pressed before the High Court in the revision petitions, and certain new contentions. The Tribunal apparently declined to allow those contentions to be raised and held that since the assessee was not a second dealer in coffee within the State he was not exempt from liability to pay sales tax. Against that order, revision applications were again filed to the High Court. Before the High Court, counsel for the assessee did not challenge the finding recorded by the Tribunal on the question whether the assessee was a second dealer, but sought to re-argue questions which were either decided at the first hearing before the Tribunal and were not pressed at the first hearing before the High Court, and new questions which were not raised before the Tribunal in the revision petitions. The High Court declined to allow those questions to be argued, observing that counsel for the assessee had given up at the earlier hearing the two contentions which were raised before the Tribunal, and which were rejected, and that the only question which was left open to be determined on remand to the Tribunal related to the merits of the dispute. Accordingly the revision petitions filed before the High Court were dismissed. With special leave, the assessee has appealed to this Court. Under the Mysore Sales Tax Act (46 of 1948) the Deputy Commissioner and the Commissioner were authorised by section 15 to call for and examine the record of any order passed or proceeding recorded by any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of such order. Proceeding in this behalf could be commenced either suo motu or on an application preferred to those officers. The assessment orders in respect of the four quarters were made by the Sales Tax Officer between December 19, 1955, and June 28, 1956. The Deputy Commissioner commenced proceeding under section 15(1)(i) for revision of those orders of the Sales Tax Officer. The Mysore Sales Tax Act (46 of 1948) was repealed by the Mysore Sales Tax Act (25 of 1957) as from October 1, 1957. By section 40(1) of the repealing Act, several Acts including the Mysore Sales Tax Act (46 of 1948) were repealed, but it was expressly enacted that the repeal shall not affect -

(a) the previous operation of the said enactments or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; or

(d) any investigation, legal proceeding (including assessment proceeding) or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act had not been passed. It is clear that by virtue of section 40(1) the proceedings of assessment which were commenced by the Sales Tax Officer were liable to be continued notwithstanding the repeal of the Mysore Act 46 of 1948, and the proceeding for assessment must mean the entire process of assessment commencing from the submission of the return and ending in the final decision relating to the liability of the assessee to pay tax. It appears that the Government of Mysore issued a notification on June 26, 1958, authorizing the Commissioner of Commercial Taxes alone to exercise the powers of revision under section 15 of the Mysore Sales Tax Act (46 of 1948). Whether as a result of the notification the power of the Deputy Commissioner was divested is a question which we are not called upon to decide in these appeals. On December 18, 1958, the Government of Mysore issued a fresh notification restoring the power to the Deputy Commissioner under section 15(1) of the Act. It may be recalled that the Deputy Commissioner passed his first order on December 8, 1958, revising the order of the Sales Tax Officer and imposing liability for additional tax. The Tribunal in appeal at the instance of the assessee accepted the contention that the Deputy Commissioner had no authority on December 8, 1958, to exercise the revisional powers under section 15(1)(i) of the Act and on that account set aside the order. After the power of the Deputy Commissioner was restored, that officer again commenced proceeding for revising the assessment of the Sales Tax Officer and he passed the order which has given rise to these appeals.

2. Before the Tribunal the assessee raised four contentions :

(1) that the Deputy Commissioner was incompetent to exercise revisional powers a second time in respect of the same assessment order;

(2) that the earlier order of the Tribunal setting aside the order of the Deputy Commissioner was final and the revisional proceedings commenced by the Deputy Commissioner thereafter were illegal;

(3) that the Deputy Commissioner did not give fresh findings on the basis of the materials on the record, but merely proceeded to pass the order at the instance of the Inspecting Officer;(4) that on the facts established the assessee was only a second dealer in coffee.

3. At the first hearing the first two contentions were negatived by the Tribunal, and the fourth was not decided. The Tribunal however set aside the order of the Deputy Commissioner on the third contention and vacated the orders revising the assessment. In appeal by the State, the learned Judges of the High Court set aside the order passed by the Tribunal observing that the assessee did not challenge the findings of the Tribunal on the first two questions and that they were called upon to consider only the correctness of the decision on the third question which was decided by the Tribunal. The High Court disagreed with the Tribunal on the third contention and remanded the case for disposal according to law. The use of the expression "disposal according to law" apparently gave an opportunity to the assessee to raise contentions which were either raised and negatived or were not raised at the earlier hearing before the Tribunal. The assessee sought to re-agitate the two contentions which were previously raised and negatived by the Tribunal, and also sought to contend that the Deputy Commissioner could not exercise the power under section 15 of Act 46 of 1948 after the repeal of that Act, because the case of the assessee did not fall within the terms of section 40(1)(d) of the Mysore Sales Tax Act, 1957, and that it had not incurred any liability or obligation under the Mysore Sales Tax Act, 1948. It was also contended that section 40(2) of the Mysore Sales Tax Act, 1957, was ultra vires and beyond the competence of the State Government, that the Deputy Commissioner erred in basing its order on the report of the Inspecting Officer which was extraneous to the record of assessment, that the assessee was not

granted a reasonable opportunity by the Deputy Commissioner to set up its case and that the procedure adopted by the Deputy Commissioner was opposed to law. The two contentions which were raised previously raised and rejected were, as already pointed out, not raised before the High Court and could not be again canvassed before the Tribunal after remand. The other contentions which were sought to be raised before the Tribunal were apparently not permitted to be raised by the Tribunal. Normally a party approaching a Court in appeal or in revision is restricted to the grounds raised by him in the memo. of appeal or revision. It is true that the Court has the power to allow him to raise new questions which have not been included in the memo., but the Court is not bound to do so. At the first hearing, four grounds were raised and they were considered by the Tribunal. After the remand two out of those four grounds and some new grounds were sought to be raised and the Tribunal apparently did not allow those grounds to be raised. The High Court in exercise of its revisional jurisdiction also did not allow those contentions to be raised. The question was one of discretion of the Tribunal and the High Court, and this Court in an appeal with special leave will certainly not interfere with the discretion of the Tribunal and the High Court. It is true that the High Court observed that the order of remand made at an earlier stage restricted the scope of the enquiry to the merits of the dispute between the parties and no fresh questions could be raised before the Tribunal. Assuming that the High Court was not strictly right in the view that it took, if the Tribunal did not allow the assessee to raise the questions which it sought to raise, there is no ground on which this Court will be justified in allowing those new contentions to be raised and to remand the case to the Tribunal for hearing on those questions. It is true that a question as to the vires of section 40(2) of the Sales Tax Act, 1957, was raised, but it is now settled by decisions of this Court that the question as to the vires of a statute which a taxing officer has to administer cannot be raised before him. The appeals therefore fail and are dismissed with costs. One hearing fee.

4. Appeals dismissed.