State of Madras

Vs

Madurai Mills Co., Ltd.

Civil Appeal No. 539 of 1965

(J. C. Shah, V. Ramaswami-I, V. Bharagava JJ)

04.10.1966

JUDGMENT

RAMASWAMI, J.

This appeal is brought by special leave against the judgment of the Madras High Court dated the 13th September, 1961 in T.C. 162 of 1958.

The Madurai Mills Co., Ltd., (hereinafter called the respondent) is a dealer in yarn, purchasing raw material like cotton staple-fibre, etc., manufacturing them into yarn and selling the yarn. In the assessment year 1950-51, the respondent showed a return of Rs. 15,27,61,883-8-4 before the Deputy Commercial Tax Officer, Madurai who after scrutiny of the account books determined the net turnover at Rs. 15,44,09,109-3-11. The respondent preferred an appeal before the Commercial Tax Officer, Madurai South. It was contended on behalf of the respondent that a sum of Rs. 1,44,294-14-4 was wrongly included by the first assessing authority in the purchase value of cotton purchased by it for production of yarn as that amount only represented the commission paid by it to Comorin Investment Trading Company Limited for the purchase. It was also contended that another sum of Rs. 81,546-0-1 which represented sale proceeds realised by selling empty drums etc. was not realisation in the course of its business. The Commercial Tax Officer upheld the first contention of the respondent and excluded the sum of Rs. 1,44,294-14-4 from the total turnover on the ground that the amount was commission paid by the respondent for the purchase of cotton, but rejected their second contention with regard to the sum of Rs. 81,546-0-1. The Deputy Commercial Tax Officer thereafter issued a revised assessment. The respondent presented a revision petition before the Deputy Commissioner of Commercial Taxes and the only objection which the respondent raised was that it should not have been assessed to tax on amounts collected by it by way of tax amounting to Rs. 6,57,971-4-9. The respondent did not raise any other objection regarding the order of assessment of the Deputy Commercial Tax Officer or the Commercial Tax Officer. By his order, dated the 21st August, 1954, the Deputy Commissioner of Commercial Taxes dismissed the revision petition holding that the respondent was not entitled to raise the contention for the first time and that even otherwise the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1954, permitted the inclusion of tax in the taxable turnover. On the 4th August, 1958, the Board of Revenue issued a notice to the respondent stating that it proposed to revise the assessment of the Deputy Commercial Tax Officer, Madurai, by including in the net turnover the sum of Rs. 7,74,62,706-1-6 as that amount was wrongly excluded by the assessing authority. The respondent objected to the proposed revision on the ground that the proceeding was barred by limitation under s. 12 of the Madras General Sales Tax Act. The respondent also submitted that there was no wrong exclusion of the sum of Rs. 7,74,62,706-1-6 by the Deputy Commercial Tax Officer in making the assessment. By its order, dated the 25th August, 1958, the Board of Revenue over-ruled both these

contentions of the respondent and fixed the net taxable turnover as Rs. 23,17,15,948-15-2. The respondent preferred an appeal to the Madras High Court against the order of the Board of Revenue dated the 25th August, 1958. The High Court allowed the appeal holding that the Board of Revenue could not invoke its revisional jurisdiction after the expiry of the period of limitation under s. 12(4)(b) of the Madras General Sales Tax Act. The order of the Board of Revenue, dated the 25th August, 1958 was accordingly set aside.

The question of law to be determined in this appeal is :- whether the order of the Board of Revenue dated the 25th August, 1958 was illegal because there was a contravention of the rule of limitation laid down by s. 12(4)(b) of the Madras General Sales Tax Act inasmuch as the order of the Board of Revenue was made after a period of 4 years from the date on which the order of the Deputy Commercial Tax Officer was communicated to the assessee.

> Section 12 of the Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939) (hereinafter called the Act) provides :-
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> "(1) The Commercial Tax Officer may -
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> (i) suo motu, or
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> (ii) in cases in which an appeal does not lie to him under section 11, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit.
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> (2) The Deputy Commissioner may -
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> (i) suo motu, or
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> (ii) in respect of any order passed or proceeding recorded by the Commercial Tax Officer under sub-section (1) or any other provision of this Act and against which no appeal has been preferred to the Appellate Tribunal under section 12-A, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit.
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> (3) The Board of Revenue may -
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> (i) suo motu, or
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> (ii) in respect of any order passed or proceeding recorded by the Deputy Commissioner under sub-section (2) or any other provision of this Act and against which no appeal has been preferred to the Appellate Tribunal under s. 12-A, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to it, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as it

thinks fit.

(4) In relation to an order of assessment passed under this Act -

(a) The power of the Commercial Tax Officer under clause (i) of sub-section (1) shall be exercisable only within a period of three years from the date on which the order was communicated to the assessee;

(b) The power of the Deputy Commissioner under clause (i) of sub-section (2) and that of the Board of Revenue under clause (i) of sub-section (3) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee".

It was contended on behalf of the appellant that the order revised by the Board of Revenue was the revisional order of the Deputy Commissioner of Commercial Taxes dated the 21st August, 1954 and not the order of the Deputy Commercial Tax Officer and therefore the power of revision by the Board of Revenue was not exercised beyond the period of limitation provided by s. 12(4)(b) of the Act. We are unable to accept this argument as correct. The only subject-matter of the revision proceedings before the Board of Revenue was the revised assessment order of the Deputy Commercial Tax Officer, Madurai dated the 28th November, 1952. The objection taken by the Board of Revenue was with regard to the question of exemption allowed on the value of the cotton purchased from outside the State of Madras. The exemption was allowed by the Deputy Commercial Tax Officer in his order of assessment. The question was not raised before the Deputy Commissioner of Commercial Taxes and the only point raised before him was with regard to the inclusion of the amount of tax to the extent of Rs. 6,57,971-4-9 in the taxable turnover. It is manifest that the subject-matter of the revision proceedings before the Board of Revenue was the revised assessment order of the Deputy Commercial Tax Officer, Madurai dated the 28th November, 1952. It follows that the order of the Board of Revenue was made beyond the limit of four years prescribed by s. 12(4)(b) of the Act and it is, therefore, invalid. On behalf of the appellant, the argument was put forward that if a statutory appeal is provided against an order passed by a Tribunal, the decision of the appellate authority is the operative decision in law. It was said that if the appellate authority modifies or reverses the order of the Tribunal, there was a merger of the latter order with the appellate order and it was the appellate order alone that is effective and can be enforced. But if the appellate order affirms the order of the Tribunal, there is a merger of the original order in the appellate order and it is the appellate order alone which is operative and capable of enforcement. In support of this argument reliance was placed upon the observation of Gajendragadkar, J., as he then was in Commissioner of Income-tax, Bombay v. Amritlal Bhogilal & Co. [[1959] S.C.R. 713 : 34 I.T.R. 130 at 136.]. But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal on revision, there is a fusion of merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. In our opinion, the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. For example in Amritlal Bhogilal & Co's. [[1959] S.C.R. 713 : 34 I.T.R. at 136.] case it was observed by this Court that the order of registration made by the Income-tax Officer did not merge in the appellate order of the Appellate Commissioner, because the order of registration was not the subject-matter of appeal before the appellate authority. It should be noticed that the order of assessment made by the Income-tax Officer in that case was a composite order viz., an order

granting registration of the firm and making an assessment on the basis of the registration. The appeal was taken by the assessee to the Appellate Commissioner against the composite order of the Income-tax Officer. It was held by the High Court that the order of the Income-tax Officer granting registration to the respondent must be deemed to be merged in the appellate order and that the revisional power of the Commissioner of Income-tax cannot, therefore, be exercised in respect of it. The view taken by the High Court was over-ruled by this Court for the reason that the order of the Income-tax Officer granting registration cannot be deemed to have merged in the order of the Appellate Commissioner in an appeal taken against the composite order of assessment. Similarly, in The State of Uttar Pradesh v. Mohammed Nooh [[1958] S.C.R. 595], it was held by this Court that the principle of merger cannot apply in the case of an order of dismissal of a public servant which was made by the departmental Tribunal on the 20th April, 1948 and against which the appeal was dismissed by the Appellate Authority on the 7th May, 1949, and the revisional application was rejected on the 22nd April, 1950. In the circumstances of the present case, it cannot be said that there was a merger of the order of assessment made by the Deputy Commercial Tax Officer dated the 28th November, 1952 with the order of the Deputy Commissioner of Commercial Taxes dated the 21st August, 1954 because the question of exemption on the value of yarn purchased from outside the State of Madras was not the subject-matter of revision before the Deputy Commissioner of Commercial Taxes. The only point that was urged before the Deputy Commissioner was that the sum of Rs. 6,57,971-4-9 collected by the respondent by way of tax should not be included in the taxable turnover. This was the only point raised before the Deputy Commissioner and was rejected by him in the revision proceedings. On the contrary, the question before the Board of Revenue was whether the Deputy Commercial Tax Officer, Madurai was right in excluding from the net taxable turnover of the respondent the sum of Rs. 7,74,62,706-1-6 which was the value of cotton purchased by the respondent from outside the State of Madras. We are therefore, of opinion that the doctrine of merger cannot be invoked in the circumstances of the present case.

For these reasons, we hold that the judgment of the High Court is right and this appeal must be dismissed with costs.

V.P.S.

Appeal dismissed.

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