

Regional Assistant Commissioner of Sales Tax, Indore

Vs

Malwa Vanaspati & Chemical Company Ltd.

Civil Appeal No. 770 of 1966

(J. C. Shah, V. Bhargava, V. Ramswami-I JJ)

24.11.1967

JUDGMENT

SHAH, J. -

The Malwa Vanaspati & Chemical Company Ltd. - hereafter called 'the respondent' - is a public limited company which carries on the business of manufacturing and selling hydrogenated oil and is registered as a dealer under the Madhya Bharat Sales Tax Act, 1950, and also under the Central Sales Tax Act, 1956. For the four quarters of 1958-59 the respondent submitted returns of turnover from its inter-State sale transactions. The Madhya Bharat Sales Tax Act, 1950, was repealed with effect from April 1, 1959 by the Madhya Pradesh General Sales Tax Act 2 of 1959, but it is common ground that assessment in this case is governed by the provisions of the Madhya Bharat Sales Tax Act, 1950.

After certain infructuous attempts made to tax the turnover of the respondent under Act 2 of 1959, the Additional Assistant Commissioner of Sales Tax, Indore Region, by notice dated September 17, 1962, called upon the respondent to show cause why the transactions included in the taxable turnover of the respondent be not taxed at the full rate. The respondent then presented a petition under Art. 226 of the Constitution in the High Court of Madhya Pradesh for an order quashing the proceeding for assessment, contending, inter alia, that since the assessment was not completed within three years from the last day of the year of assessment as provided by s. 10 of the Madhya Bharat Sales Tax Act, 1950, the Sales Tax Officer had no power to continue the proceeding. Following their judgment in Malwa Vanaspati & Chemical Co. Ltd. v. The Regional Assistant Commissioner of Sales Tax, Indore [Misc. Petition No. 356 of 1963], the High Court quashed the proceeding for assessment and directed the appellant to forbear from proceeding with the assessment. With special leave, the appellant has appealed to this Court.

These proceedings relate to the levy of sales tax under the Central Sales Tax Act 74 of 1956 by virtue of s. 9 of that Act, Central sales tax is liable to be assessed and recovered in the manner provided by the law of the State from which the movement of the goods commences. The relevant provisions of the Madhya Bharat Sales Tax Act, 1950, may first be read :

"S. 7(1) Every dealer liable to pay tax shall furnish returns of his turnover for the prescribed periods in the prescribed form, in the prescribed manner and within the prescribed time, to such an authority as may be prescribed.

#(2).....(3).....##

S. 8(1)(a) Assessment of taxable turnover and determination of tax due for any year, shall be made after the returns for all the periods of that year have become due :

Provided.....

(b) Notwithstanding anything contained in clause (a) if any dealer fails to submit a return under Section 7(1) for the prescribed period within the prescribed time, the assessing authority shall, after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard determine the turnover of the dealer for the said period to the best of his judgment and assess the tax on the basis thereof. This assessment subject to the provisions of Section 10 and to such orders as may be passed in appeal or revision, shall be final for the period.

Provided.....

(c) If the assessing authority, after such enquiry, as he considers necessary, is satisfied that the returns furnished by a dealer are correct and complete he shall assess the tax on the basis thereof.

(2) If the assessing authority is not satisfied without requiring the presence of the person who made the returns or the production of evidence that the returns are correct and complete, he shall serve on such person a notice requiring on a date and place to be therein specified -

(i) to appear in person, or by an agent duly authorised in writing; or

(ii) to produce or cause to be produced, any evidence on which such person may rely, in support of the returns; or

(iii) to produce or cause to be produced such accounts or documents pertaining to the assessment year and to three years preceding as the assessing authority may require.

(3) On the day specified in the notice under sub-section (2) or as soon afterwards as may be, the assessing authority after hearing such evidence as such person may produce and such other evidence as the assessing authority may require on specified points, shall, by an order in writing, assess the taxable turnover and determine the tax payable on basis of such assessment.

(4) If a dealer -

(a) having furnished returns fails to comply with all the terms of a notice issued under sub-section (2); or

(b) has not regularly employed any method of accounting, or, if the method employed is such that, in the opinion of the assessing authority, assessment cannot properly be made on the basis thereof.

the assessing authority shall assess the dealer to the best of his judgment and determine the tax payable on the basis of such assessment.

#(5). . . .##

S. 10 If for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to the tax, or if the licence fee, registration fee or exemption fee has escaped levy or has been assessed at to low a rate in any year, the assessing authority at any time within a period of three years next succeeding that to which the tax or the licence fee, registration fee or the exemption fee related, assess the tax payable on the turnover which has escaped assessment of levy the correct amount of licence fee, registration fee or exemption fee, after issuing a notice to the dealer and after making such enquiry as he considers necessary."

The High Court quashed the proceeding for assessment on the ground that the sales tax authority is not competent to issue a notice under sub-s. (2) of s. 8 after expiry of three years prescribed by s. 10. In their view, if a proceeding for assessment of tax under the Madhya Bharat Sales Tax Act, 1950, is not completed within three years from the last day of the year of assessment, the turnover is deemed to have escaped assessment to tax within the meaning of s. 10, and no step may after the expiry of the period be taken under sub-s. (2) of s. 8 to bring the turnover to tax. In so holding the High Court followed their judgment in Malwa Vanaspati & Chemical Co.'s case [Misc. Petition No. 356 of 1963] which, in its turn, was based upon the judgment of the same Court in Firm Jagmohandas Vijaykumar v. The Additional Assistant Commissioner of Sales-tax, Indore Region, Indore [Misc. Petition No. 37 of 1963]. It may at once be observed that it was not brought to the notice of the High Court that in Firm Jagmohandas Vijaykumar's case [Misc. Petition No. 37 of 1963] no returns at all had been filed, and the case was clearly one in which the turnover of the dealer had escaped assessment. It may be recalled that returns for all the four quarters had been filed by the respondent, and the respondent had even paid the advance tax according to the Rules. In Firm Jagmohandas Vijaykumar's case [Misc. Petition No. 37 of 1963] the High Court observed that the period of limitation prescribed by s. 10 should be imported into s. 8 and that since the assessment under s. 8(1)(b) had to be made within three years from the end of the year of assessment and if that "was not done it could not be done at all".

There is no doubt that where the dealer has not filed the prescribed return of his turnover, the case is clearly one of "escaped assessment," and the proceeding for assessment must commence in respect of that turnover within the period prescribed by s. 10. Where however a return is filed by a dealer under s. 7, a proceeding for assessment, commences, and a notice under sub-s. (2) of s. 8 is a step in the proceeding for completing the assessment. The Act contains no provision that the proceeding shall be completed within any fixed period : the assessing authority is therefore entitled to complete the proceeding properly commenced without any restriction as to time. If a proceeding for assessment is completed, and it is found that any turnover has escaped assessment, the proceeding for bringing to tax that turnover must be commenced within three years next succeeding the year to which the tax relates. Since in the present case the proceeding for assessment had already commenced when the respondent filed the return, that proceeding could be completed by the assessing authority at any time, and the issue of a notice under sub-s. (2) of s. 8 does not, in our judgment, attract the bar of s. 10 of the Madhya Bharat Sales Tax Act, 1950.

But counsel for the respondent contended that this Court in Ghanshyam Das v. Regional Assistant Commr. of Sales Tax [[1964] 4 S.C.R. 436] in interpreting the provisions of the C.P. & Berar Sales Tax Act, 1947, of which the scheme is substantially the same as that of the Madhya Bharat Sales Tax Act, 1950, has taken a different view. According to counsel in Ghanshyam Das's case [[1964] 4 S.C.R. 436] it was held that every step taken for the purpose of bringing the turnover which has

escaped assessment to tax must be taken within the period prescribed under the Act for commencing the proceeding for bringing to tax turnover which has escaped assessment and therefore a notice issued under sub-s. (2) of s. 11 of the C.P. & Berar Sales Tax Act more than three years after the last day of the year of assessment is unauthorised, and no further proceeding for assessment may thereafter be had even in respect of the return duly submitted by the dealer. In our view the contention is wholly misconceived. In Ghanshyam Das's case [[1964] 4 S.C.R. 436] the Court was dealing with a proceeding for assessment under the C.P. & Berar Sales Tax Act, 1947, the relevant provisions whereof relating to assessment and re-assessment are similar to, but not identical with, the provisions of the Madhya Bharat Sales Tax Act, 1950. This Court held in that case that a proceeding for assessment of sales-tax remains pending from the time when it is initiated until it is determined by a final order of assessment, and the turnover or any part thereof of a dealer has not escaped assessment so long as the assessment proceeding is not completed; that a proceeding of assessment commences against a registered dealer when he files his return, and against an unregistered dealer when the Commissioner calls upon him to file the return of his turnover; and that where the registered dealer has not filed a return the proceeding commences when the Commissioner issues a notice either under s. 10(3) under s. 11(4) of the C.P. & Berar Sales Tax Act, and not till then. Under s. 11-A of the C.P. & Berar Sales Tax Act, 1947, the Commissioner is entitled to re-assess or assess the turnover within three years from the expiry of the period for which the tax is due and the turnover has either escaped assessment or has been under-assessed. This Court in Ghanshyam Das's case [1964] 4 S.C.R. 436] in dealing with the case of a registered dealer under the C.P. & Berar Sales Tax Act, 1947, decided that the Sales Tax Authority had no jurisdiction to issue a notice of assessment after the expiry of three years in respect of the quarter other than that covered by the return made by the dealer, or in respect of the quarters beyond three years from the date of the issue of the notice where no return had been filed by the dealer. There is nothing in the judgment in Ghanshyam Das's case [1964] 4 S.C.R. 436] which supports the view that if the dealer has made a return of his turnover, the assessing authority is incompetent to proceed to assess the turnover by issuing a notice calling upon the dealer to produce evidence to explain or support the return, after the expiry of the period prescribed under s. 11-A of the C.P. & Berar Sales Tax Act.

The following observation on which counsel relied :

"It is manifest that in the case of a registered dealer the proceedings before the Commissioner starts factually when a return is made or when a notice is issued to him either under s. 10(3) or under s. 11(2) of the Act"

is the result of a typographical error. Section 10(3) of the C.P. & Berar Sales Tax Act in so far as it relates to a registered dealer authorises the Commissioner to impose a penalty upon the dealer who has failed to furnish a return as required by s. 10(1). Section 11(2) of that Act authorises the Commissioner to call upon a dealer registered or unregistered, by notice to appear in person or by agent, and to produce evidence in support of his return. Section 11(4) authorises the Commissioner after giving notice to a registered dealer to record a "best judgment" assessment, if the dealer has failed to submit a return, or having filed a return has failed to comply with a notice under s. 11(2) or has not regularly employed any method of accounting or the method of accounting is such that assessment cannot properly be made on the basis thereof. Reading ss. 10(1), 10(3) and 11(2) and 11(4) of the C.P. & Berar Sales Tax Act together, it is clear that against a registered dealer the proceeding for assessment commences when he submits a return, and if he does not submit a return the proceeding for assessment commences when a notice under s. 10(3) or under s. 11(4) is issued. In our view, the words "S. 10(3) or under s. 11(2)" in the judgment in Ghanshyam Das's case [1964] 4 S.C.R. 436] should have been "S. 10(3) or under s. 11(4)(a)". This is made clear in the earlier

paragraph where Subba Rao, J., observed :

"Even in a case where no return has been made, but the Commissioner initiated proceedings by issuing a relevant notice either under s. 10(3) or under s. 11(4), the proceedings will be pending thereafter before the Commissioner till the final assessment is made."

There is nothing in the judgment in Ghanshyam Das's case [1964] 4 S.C.R. 436] which supports the contention that a proceeding already commenced by the filing of a return by a registered dealer under s. 10(1) commences afresh when a notice under s. 11(2) of the C.P. & Berar Sales Tax Act, 1947, is issued. The notice under s. 11(2) is only a step in the proceeding for assessment and does not disturb the continuity of the proceeding. Therefore when the Sales Tax Officer issued a notice against the respondent under s. 8(2) of the Madhya Bharat Sales Tax Act, 1950, a fresh proceeding to assess turnover which has escaped assessment was not commenced, and s. 10 of the Act was not attracted thereto.

The order passed by the High Court is therefore set aside. The appeal is allowed. The petition filed by the respondent is dismissed with costs in this Court and in the High Court.

Appeal allowed.

</html