

Swastik Oil Mills Ltd.

Vs

H. B. Munshi, Deputy Commissioner of Sales Tax, Bombay

Civil Appeal No. 637 of 1967

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

29.11.1967

JUDGMENT

BHARGAVA, J. -

The Swastik Oil Mills Ltd., appellant, carries on business of manufacturing vegetable oils, soaps and other products and selling them in India as well as exporting them outside India. It was registered as a dealer under the various Sales Tax Acts in force in Bombay. The first of these Acts was the Bombay Sales Tax Act 5 of 1946, which was replaced by the Bombay Sales Tax Act 3 of 1953. The third and the latest Act now in force in Bombay is the Bombay Sales Tax Act 51 of 1959. The appellant was assessed to sales tax on its turnover for the periods from 1st April, 1948 to 31st March, 1950 and from 1st April, 1950 to 31st March, 1951 on the basis of Returns of turnover submitted by it. In these Returns, the appellant claimed exemption from tax in respect of the turnover representing the despatches or transfer of goods from its Head Office Bombay, to its various Depots or Branches in other States in India, and also exemption in respect of sales which were alleged to have taken place in the course of inter-State trade after 26th January, 1950. The Sales Tax Officer in his order of assessment dated 2nd January, 1954 rejected both these claims. The appellant went up in appeal before the Assistant Collector of Sales Tax, who, in his appellate order dated 29th October, 1956, accepted the claim of the appellant in respect of the despatches to its various Depots or Branches in other States in India, but disallowed the claim in respect of the alleged inter-State sales. As a result of partially allowing the claim of the appellant, the Assistant Collector reduced the tax imposed by a sum of Rs. 19,240-15-6 for the period between 1st April, 1948 to 31st March, 1950, and Rs. 97,208/- for the second period between 1st April, 1950 to 31st March, 1951, and directed refund of these amounts to the appellant. The revisions filed by the appellant against the rejection of its claim in respect of inter-State sales were still pending, when, on 7th January, 1963, a notice was issued by the Deputy Commissioner of Sales Tax, Bombay City Division, in Form XXIV under Section 31 of the Bombay Sales Tax Act, 1953, intimating the appellant that he proposed to revise suo motu the appellate orders passed by the Assistant Collector of Sales Tax insofar as he had allowed deduction in respect of the entire goods despatched to its Branches in other States outside Maharashtra, because, in so doing, he had overlooked the provisions contained in proviso (b) to sub-clause (ii) of Rule 1 under sub-section (3) of Section 6 of the Bombay Sales Tax Act, 1946 as amended by the Bombay Sales Tax Amendment Act 48 of 1949. On receipt of this notice, the appellant put in appearance before the Deputy Commissioner, who is the respondent in this appeal, and raised several objections against the proposed revisional proceedings, making a request that the proceedings be dropped. Since the respondent did not accept this request, the appellant filed a petition under Article 226 of the Constitution in the High Court of Bombay challenging the notice dated 7th January, 1963, with the prayer that the notice be quashed and the respondent be restrained from taking any action against the appellant in pursuance thereof.

The petition was dismissed by the High Court and, now, on certificate granted by that Court, the appellant has come up in this appeal to this Court.

In this appeal, Mr. S. T. Desai, appearing on behalf of the appellant, urged the same objections against the notice which were the basis of the prayer for writ in the High Court, and we proceed to deal with them in the order in which he has put them forward before us in his submissions. The first point urged by learned counsel was that, in exercise of the revisional powers, the Deputy Commissioner of Sales Tax, whether acting under the Sales Tax Act of 1946, or of 1953, or of 1959, could only proceed to take action on the basis of the material already present on the record and was not entitled to act on conjecture or to institute any enquiry so as to include additional material in order to judge the correctness of the order sought to be revised. In support of this proposition, learned counsel referred us to a decision of the Andhra Pradesh High Court in *State of Andhra Pradesh v. T. G. Lakshmaiah Setty & Sons* [12 S.T.C. 663]. In that case, the Deputy Commissioner, in exercising the revisional jurisdiction, was found by the High Court to have based his assessment on guess-work, and the Court held that "this conjecture could not be a justification for seeking to revise the order of the assessing authority. If the Deputy Commissioner could, on the material before him, find data for revising the assessment, it was open to him to do so. It must be made clear that he has no jurisdiction to travel beyond the record that is available to the assessing authority and the basis should be found on the record already in existence." We are unable to accept this principle laid down by that High Court as correct. Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose, admit additional material. The proceedings for revision, if started suo motu, must not, of course, be based on a mere conjecture and there should be some ground for invoking the revisional powers. Once those powers are invoked, the actual interference must be based on sufficient grounds and, if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority holding a further enquiry or directing such an enquiry to be held by some other appropriate authority. This principle has been clearly recognised by this Court in *The State of Kerala v. K. M. Cheria Abdulla and Company* [[1965] 1 S.C.R. 601]. In that case, sub-section (2) of s. 12 of the Madras General Sales Tax Act, 1939, which came up for interpretation, empowered the Deputy Commissioner, suo motu or under certain circumstances on an application, to call for and examine the record of any order passed or proceeding recorded under the provisions of that 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 to pass such order with respect thereto as he thought fit. This Court held :-

"There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceeding, he cannot make or direct any further enquiry."

It was further held :-

"It is, therefore, not right baldly to propound that, in passing an order in the exercise

of his revisional jurisdiction, the Deputy Commissioner must, in all cases, be restricted to the record maintained by the officer subordinate to him, and can never make enquiry outside that record."

While thus explaining the scope of the revisional power, the Court also indicated the limitations within which such power can be exercised, holding :-

"It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested by rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a taxpayer. Similarly, the power to make a best judgment assessment is vested by Section 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to the revising authority to assume that power." (p. 887).

In the present case, the notice issued by the Deputy Commissioner of Sales Tax, on the face of it, discloses the reasons which led him to take proceedings for exercising his revisional powers suo motu, and it cannot be said on those facts that he was acting merely on conjecture. The Deputy Commissioner has not yet proceeded further under the notice to make the assessment. We have no doubt that, when the Deputy Commissioner does make an enquiry, if any, for the purpose of exercising his revisional powers, he will keep within the limitations indicated by this Court in the case cited above. The notice cannot be quashed or the proceedings restrained merely on the ground that the Deputy Commissioner may have to hold some enquiries in order to properly exercise his revisional jurisdiction. Mr. Desai on behalf of the appellant emphasised the circumstance that in s. 12(2) of the Madras General Sales Tax Act, which was considered by this Court, the Deputy Commissioner's power was expressed by stating that he may pass such order as he thinks fit, while no such words occur in the corresponding provisions in the Bombay Sales Tax Acts with which we are concerned, but we do not think that this circumstance makes any difference. A revising authority necessarily has the power to make such order as, in the opinion of that authority, the case calls for when the authority is satisfied that it is an appropriate case for interference in exercise of revisional powers. In fact, in s. 12(2) of the Madras General Sales Tax Act, the Deputy Commissioner, when exercising his powers, was to call for the record of the order or proceeding before passing any order which he thought fit, so that there was an expression used which could have been interpreted as limiting his powers to the examination of the record only without holding any further enquiry, and, yet, this Court held that the Deputy Commissioner could not be restricted to the record and was empowered to make an enquiry outside that record. In the provisions relating to revisions in the three Bombay Sales Tax Acts, there are no such words indicating any limitation; and that would be an additional reason for holding that there can be no bar to an appropriate enquiry being held by the Deputy Commissioner when seeking to exercise his revisional powers suo motu.

The next point urged by learned counsel was that the notice in question was issued on the 7th January, 1963, when the Act of 1959 had already come into force and the Act of 1953 had been repealed, so that if any revisional jurisdiction could be exercised by the Deputy Commissioner, it could only be under the Act of 1959 and not under the Act of 1953. On this basis, advantage was sought to be taken of the circumstance that, under the Act of 1959, the revisional powers conferred by s. 57 can be exercised within five years from the date of the order sought to be revised and, at the

relevant time in 1963, could only be exercised within two years from the date of that order. The order sought to be revised was passed on 29th October, 1956, so that the notice to exercise revisional powers was being issued more than 6 years after that order had been passed. It appears to us that this submission is adequately met by the provisions contained in s. 77 of the Act of 1959. The Act of 1953 was repealed by s. 76 of the Act of 1959 and then s. 77 lays down :

"(1) Notwithstanding the repeal by s. 76 of any of the laws referred to therein, -

(a) those laws (including any earlier law continued in force under any provisions thereof), and all rules, regulations, orders, notification, forms and notices issued under those laws and in force immediately before the appointed day shall, subject to the provisions of s. 42 continue to have effect for the purposes of the levy, assessment, reassessment, collection, refund or set-off of any tax, or the granting of a draw-back in respect thereof, or the imposition of any penalty, which levy, assessment, reassessment, collection, refund, set-off draw-back or penalty relates to any period before the appointed day, or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid;

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(3) Without prejudice to the provisions contained in the foregoing sub-sections and section thereto, Section 7 of the Bombay General Clauses Act, 1904, shall apply in relation to the repeal of any of the laws referred to in Section 76 as if the law so repealed had been an enactment within the meaning of Section 7 of that Act."

(We have only quoted the portions of s. 77 with which we are concerned).

The effect of s. 77(1)(a) is to continue in force the Bombay Sales Tax Act of 1953 as well as the Bombay Sales Tax Act of 1946 to the extent to which they were in force when this Act of 1959 came into force for the purposes mentioned in that clause. These purposes included levy, assessment, reassessment and collection of sales-tax, so that the proceedings against the appellant, which had been initiated under the Act of 1946, continued to be governed by the provisions of that Act. Section 7 of the Bombay General Clauses Act I of 1904, which was made applicable by s. 77(3) to the repeal of the Act of 1953, includes the following provisions :-

"Where this Act, or any Bombay Act, or Maharashtra Act, made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

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(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

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(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, 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 repealing Act had not been passed."

Very clearly, the repeal of the Act of 1953 by the Act of 1959 did not affect the rights and liabilities of the assessee to tax under the Act of 1953 or the Act of 1946 in respect of the turnover which became liable to sales-tax under the Act of 1946. The effect of clause (e) of s. 7 of the Bombay General Clauses Act further is that any legal proceeding in respect of levy, imposition or recovery of that tax is to continue and any fresh investigation, legal proceeding or remedy could be instituted as if there had been no repeal by the Act of 1959. Consequently, the repeal of the Act of 1953 did not in any way affect the power of the Deputy Commissioner to institute proceedings for revision suo motu against the appellate order of the Assistant Collector which had been passed in exercise of his powers under the Act of 1946. It is true, as urged by Mr. Desai in the alternative, that, in fact, the proceedings should have been taken not under s. 31 of the Act of 1953, but under s. 22 of the Act of 1946. This is so, because when the Act of 1946 was repealed by the Act of 1953, similar provisions were made in the Act of 1953 to continue in force the provisions of the Act of 1946 in respect of rights and liabilities which may have accrued or have been incurred under the Act of 1946. Section 48(2) and s. 49(1) clearly contained provisions indicating that, in respect of a liability to tax under the Act of 1946, the rights and liabilities of the assessee had to be determined in accordance with the provisions of the Act of 1946 and all legal proceedings or remedies in respect thereof had also to be taken under the same Act. Consequently, the Deputy Commissioner, in seeking to exercise revisional powers against the order of the Assistant Collector passed under the Act of 1946, had to proceed under s. 22 of the Act of 1946. That, however, is not at all material, because the provisions of s. 22 of the Act of 1946 are quite similar to those of s. 31 of the Act of 1953. The mere incorrect mention of s. 31 of the Act of 1953 in the notice is immaterial. The Deputy Commissioner has the jurisdiction and power to revise the order under s. 22 of the Act of 1946 and, consequently, the proceedings initiated by him are not without jurisdiction.

The last submission made by Mr. Desai was that, if it be held that the revisional powers are sought to be exercised under the Act of 1946, it should be held that the proceedings sought to be instituted are barred by time, because limitation of a reasonable time, within which the revisional powers are to be exercised, must be implied in the statute itself. Section 22 of the Act of 1946 and s. 31 of the Act of 1953 do not lay down any limitation for exercise of the power of revision by a Deputy Commissioner suo motu, and we are not prepared to accept that any such limitation must be necessarily read in the two Acts. In support of his proposition that such a limitation must be read by us, Mr. Desai referred to the decision of this Court in the State of Orissa v. Debaki Debi and Others [15 S.T.C. 153]. That case, however, has no relevance at all, because, in the Orissa Sales Tax Act, there was a proviso in general terms laying down that no order "assessing the amount of tax shall be passed after the lapse of 36 months from the expiry of the period", and it was held that this provision was, in substance, not a real proviso to the section in which it was placed, but was, in fact, a period of limitation prescribed for all orders of assessment made under any other provision of the Act. In the Bombay Sales Tax Acts of 1946 and 1953, there is no such general provision prescribing a period of limitation for making an assessment and, even though the effect of the order of the Dy. Commissioner passed in revision may be to bring about an assessment to tax of turnover which was set aside by the Assistant Collector in appeal, such an assessment does not come under any provision relating to limitation.

The decision of the Bombay High Court in Commissioner of Income-tax, Bombay City I v. Narsee & Nagsee Co. [31 I.T.R. 164] is also similarly inapplicable. In that case, Section 11 of the Business Profits Tax Act, 1947, which had no limitation prescribed for an order of assessment, was held to be

governed by the 4 years' period of limitation which was prescribed under s. 14 for issue of a notice for reassessment. The decision in that case turned on the fact that, if proceeding for reassessment could not be started after the expiry of four years from the end of the chargeable accounting period concerned, it would be totally unreasonable to hold that the first assessment of tax can be made after the expiry of that period. The case before us relates to exercise of revisional powers and does not deal with the question of the first assessment to be made when the Return is initially filed by an assessee. In fact, when a revisional power is to be exercised, we think that the only limitations, to which that power is subject, are those indicated by this Court in *K. M. Cheria Abdulla & Co.'s*(2) case. These limitations are that the revising authority should not trench upon the powers which are expressly reserved by the Acts or by the Rules to other authority and should not ignore the limitations inherent in the exercise of those powers. In the present case, the Deputy Commissioner, when seeking to exercise his revisional powers, is clearly not encroaching upon the powers reserved to other authorities. Under the Act of 1946, the first assessment is made by the Sales-Tax Officer under s. 11. If information comes into his possession that any turnover in respect of sales or supplies of any goods chargeable to tax has escaped assessment in any year or has been under-assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, proceedings can be taken afresh under s. 11A. On the face of it, if a first assessment order is made under s. 11 and any turnover escapes assessment, the appropriate provision, under which action is to be taken for assessing that turnover to tax, is s. 11A. There is, however, no provision under which the power now sought to be exercised by the Deputy Commissioner in the case before us could have been exercised by any other authority. In this case, as we have indicated earlier, the first assessment of tax was made by the Sales Tax Officer, and the turnover now in question was assessed to tax by him. Having once assessed that turnover to tax, he could not initiate a fresh proceeding in respect of it under s. 11A. The assessment made by him was set aside in appeal by the Assistant Collector and it is this order of the Assistant Collector which is sought to be revised by the Deputy Commissioner. This is therefore, not a case where the powers are being exercised for the purpose of assessing or reassessing an escaped turnover. The case is one where the revisional powers are sought to be exercised to correct what appears to be an incorrect order passed in appeal by the Assistant Collector, and, for such a purpose, proceedings could not possibly have been taken under s. 11A. In exercising his revisional powers, therefore, the Deputy Commissioner is not encroaching upon the jurisdiction of any other authority specially entrusted with taking such proceedings.

In this connection, Mr. Desai relied on a decision of the Bombay High Court in *Manordas Kalidas v. V. V. Tatke* [11 S.T.C. 87]. The decision in that case also related to this very Act of 1946, but the point to be kept in view is that in that case, the revisional power was sought to be exercised in respect of the original assessment order passed by the Sales Tax Officer under s. 11 of the Act. It was in these circumstances that the Bombay High Court, after referring to its two decisions in *Bisesar House v. State of Bombay* [9 S.T.C. 654], and *Commr. of Income-tax v. Narsee Nagsee & Co.* [31 I.T.R. 164] held :-

"In neither of those two cases, revisional powers were sought to be exercised, but the principle of those cases must, in our judgment, apply for the same reasons to the exercise of revisional jurisdiction, and that jurisdiction must be exercised within an reasonable period, and the yard-stick of reasonableness will be the period prescribed for re-assessment."

It appears that, in view of the fact that proceedings for re-assessment could have been taken under s. 11A in that case and, instead, revisional powers were sought to be exercised, that Court held that the exercise of such revisional powers must be governed by the same limitation which applied to the

exercise of power of reassessment. In fact, the correct principle that should have been applied in that case is the principle mentioned by us earlier laid down in *K. M. Cheria Abdulla & Co.* [[1965] 1 S.C.R. 601]. The revision should have been held to be incompetent on the ground that the power was sought to be exercised for assessment of escaped turnover which had not been assessed at all at the initial stage of assessment under s. 11 and proceedings under s. 11A could have been competently initiated for bringing that turnover to tax. Instead, the Court equated the proceeding in revision with the proceeding for reassessment and applied the 4-year period of limitation which was prescribed only for reassessment and not for exercise of revisional power. In our opinion, the ultimate decision in that case was perfectly correct, but we are unable to affirm the view that the revisional power is governed by any period of limitation laid down in s. 11A for proceedings for reassessment of escaped turnover.

Reference, in this connection was also made to a decision of this Court in *Maharaj Kumar Kamal Singh v. Commissioner of Income-tax, Bihar and Orissa* [35 I.T.R. 1], in which the Court dealt with a case of an assessee whose income to the extent of Rs. 93,604/- representing interest on arrears of rent was omitted to be brought to assessment by the Income-tax Officer. Subsequently, in another case, the Privy Council held that interest on arrears of rent payable in respect of agricultural land was not agricultural income and, consequently, the Income-tax Officer initiated reassessment proceedings under s. 34(1)(b) of the Income-tax Act. The circumstance relied upon by learned counsel for the appellant was that the omission by the Income-tax Officer to bring to assessment that interest was part of an order made by him after his initial assessment order had been set aside by the Appellate Assistant Commissioner who directed a fresh assessment, allowing the appeal against that order. In that case, it was held that the escaped income could be brought to tax under s. 34 of the Income-Tax Act; and, on the basis of this decision, it was urged that, similarly, in the present case, the turnover now sought to be brought to tax in exercise of revisional powers could be re-assessed under s. 11A. This argument ignores the circumstance that, in that case, the last order, under which the income from interest had been exempted from tax, was an order made by the Income Tax Officer himself, though after the assessment proceedings had been remanded to him by the Appellate Assistant Commissioner. Since the income had escaped assessment under an order passed by the Income-tax Officer himself, he could competently take proceedings under Section 34. In the case before us, the turnover of the assessee now sought to be taxed in the revisional proceedings did not escape liability to tax under the orders of the Sales-tax Officer and, on the other hand, was actually taxed by him, which imposition of tax was set aside in appeal. Consequently, the Sales Tax Officer could not possibly take proceedings under s. 11A in respect of that turnover.

For these reasons, we hold that the proceedings initiated by the Deputy Commissioner of Sales Tax against the appellant are not incompetent and the High Court was right in refusing the writ sought by the appellant. The appeal fails and is dismissed with costs.

Appeal dismissed.

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