

The Sales Tax Officer and Another

Vs

Messrs Sudarsanam Iyengar and Sons

Civil Appeal No. 1232 of 1969

(S. M. Sikri, G. K. Mitter, P. Jagmohan Reddy JJ)

13.08.1969

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Kerala High Court. The facts may be firstly stated : The respondent was a non-resident dealer carrying on business in Quilon, Ernakulam and Calicut in the State of Kerala. When the assessment in respect of sales tax for the assessment years 1961-62 and 1962-63, was pending the respondent had applied for a bifurcation of the assessment by treating his business at three places mentioned above as separate units. This request was acceded to by the Board of Revenue. The orders of assessment relating to the two years were made in April 1964 and March 1964 respectively.

2. The Sales Tax Officer issued notices in December 1965 for reopening the original assessments on the ground that certain turnover had escaped assessment. The objections of the respondent to these notices having failed a writ petition seeking to quash the orders made by the Sales Tax authorities was filed. A learned Single Judge held that in respect of the assessment year 1961-62. The Sales-tax Officer had no jurisdiction or authority to proceed under Rule 33 of the Travancore-Cochin General Sales Tax Rules, 1950, which were in force at the material time. It was found that the notice served in December 1965 relating to that assessment year was beyond the time-limit of three years prescribed by the rule. As regards the assessment year 1962-63, the learned Judge held that the time-limit would expire on March 31, 1966. Owing to the writ petition and the stay orders which had been made the assessment could not be completed. The learned Judge felt that it was owing to the orders of the court that the Sales Tax authorities had been prevented from completing the assessment within the time. While disposing of the writ petition it was observed that the Sales Tax authorities would be at liberty to complete the proceedings initiated by the notice within the period of 59 days at the expiry of which the period prescribed by Rule 33 was to expire. The respondent preferred an appeal to a division Bench which set aside the direction granting 59 days extension for completing the assessment on the ground that the same was not justified under the law.

3. Counsel for the appellant has confined the appeal only to the proceedings relating to the assessment year 1962-63. It is admitted that with regard to the other year 1961-62, the proceedings became barred. It is contended before us that on a true construction of Rule 33 it should be held that the proceedings under that rule have to commence within three years next succeeding to that to which the tax relates and that it is not necessary that the entire proceedings relating to the escaped assessment should be completed within that period. In other words if such proceedings under Rule 33 have been commenced within the period prescribed by the rule they can be continued even beyond the period of three years till a final order of assessment is made. Reliance has been placed

on a number of decisions of this court some of which may be noticed. In the State of Punjab & Others v. Tara Chand Lajpat Rai (19 STC 493) the question which came up for consideration was that where the Sales tax authority issued a notice under Section 11(2) of the Punjab General Sales Tax Act, 1948 before the expiry of three years from the termination of the period for furnishing returns but finalised the assessment order after three years from the aforesaid date, whether such an assessment could be said to be barred by time. It was held that assessment proceedings commenced in the case of a registered dealer either when he furnished a return or when a notice was issued to him under Section 11(2) of the Punjab Act and if such proceedings were taken within the prescribed time though the assessment was finalised subsequently even after the expiry of the prescribed period no question of limitation would arise. In the State of Punjab and Another v. Murlidhar Mahabir Prashad (21 STC 29) the question of law was whether on a proper interpretation of sub-sections (4) and (5) of Section 11 of the Punjab Act the period of limitation was three years for making the assessment from the last date on which the return was to be filed or whether the order of assessment was valid even after it was made after a period of three years provided the necessary notice had been issued within that period. The aforesaid provision of the Punjab Act may be read :

"11(4) If a registered dealer, having furnished returns in respect of a period fails to comply with the terms of a notice issued under sub-section (2) the Assessing Authority shall within three years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer."

Relying mainly on the observation in Ghanshyam Das v. Regional Assistant Commissioner of Sales-Tax, Nagpur ((1964) 4 SCR 436) this court held that the proceedings for assessment were valid because the same been initiated within the period prescribed under Section 11(5). The principle laid down in Tara Chand Lajpat Rai's case (19 STC 493) was followed.

4. Rule 33 of the relevant rules is in these terms :

Rule 33(1) "If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority as the case may be, subject to the provisions of sub-rule (2) may at any time within three years next succeeding that to which the tax or licence fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the licence fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary."

Now in view of the previous decisions the principle is firmly established that assessment proceedings under the Sales-Tax Act must be held to be pending from the time the proceedings are initiated until they are terminated by a final order of assessment. The distinguishing feature on which emphasis has been laid by the counsel for the respondent is that the language employed in Rule 33 is such as to lead to only one conclusion that the final determination of the turnover which has escaped assessment and the assessment of the tax have to be done within three years. It is pointed out that in the other Sales-Tax provisions which came up for consideration in the cases mentioned above the words employed were "proceed to assess" i.e., sub-sections (4) and (5) of

Section 11 of the Punjab General Sales Tax Act. Our attention has been invited to the appropriate dictionary meaning of the word "determine" which is "to settle or decide - to come to a judicial decision" (Shorter Oxford English Dictionary). It is suggested that the word "determine" was employed in Rule 33 with a definite intention to set the limit within which the final order in the matter of assessment should be made, the limit being three years. We find it difficult to accept that in the context of sales tax legislation the use of the words "proceed to assess" and "determine" would lead to different consequences or result. In this connection the words which follow the word "determine" in Rule 33 must be accorded their due signification. The words "assess the tax payable" cannot be ignored and it is clearly meant that the assessment has to be made within the period prescribed. Assessment is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it. It cannot and does not mean a final order of assessment alone unless there is something in the context of a particular provision which compels such a meaning being attributed to it. In our judgment despite the phraseology employed in Rule 33 the principle which has been laid in other cases relating to analogous provisions in sales-tax statute must be followed as otherwise the purpose of a provision like Rule 33 can be completely defeated by taking certain collateral proceedings and obtaining a stay order as was done in the present case or by unduly delaying assessment proceedings beyond a period of three years.

5. It is undoubtedly open to the legislature or the rule making authority to make its intention quite clear that on the expiry of a specified period no final order of assessment can be made. Then the taxing authorities would certainly be debarred from completing the assessment beyond the period prescribed as was the case in sub-section (3) of Section 34 of the Income Tax Act 1922; but such is not the case here and we would hold that the assessment proceedings relating to the year 1962-63 were within time.

6. The appeal is allowed and the judgment of the High Court is set aside. The case shall go back to the High Court for disposal of such points as were previously not decided. In terms of the previous order, dated April 3, 1969, the respondents shall be entitled to costs in this court.

</html