

The Commissioner of Sales Tax, U.P.

Vs

M/s. Bhagwan Industries (P) Ltd., Lucknow.

Civil Appeal No. 2032 of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

10.10.1972

### JUDGEMENT

KHANNA, J. -

1. This appeal by special leave by the Commissioner of sales Tax Uttar Pradesh is directed against the judgment of Allahabad High Court whereby it answered the following two questions referred to it under section 11 of U.P. Sales Tax Act (hereinafter referred to as the Act) in the negative :

"(I) Whether the assessing officer under these circumstances could be said to have had an honest belief that the turnover had practically escaped taxation so as to start proceedings under section 217.

(II) Whether the aforesaid two preliminary notices asking for the production of accounts can be taken to be notices under sec. 21 for the starting of the proceedings so as to warrant passing of the assessment within one year of the service thereof ?"

2. The matter relates to the assessment year 1957-58. The respondent assessee, Bhagwan Industries (P) Ltd. carries on the business of selling atta, maida and sooji, its business comprises various units including Venkateshwar Flour Mills, Lucknow. It was assessed on December 26, 1958 for the purpose of sales tax for the year 1957-58 under rule 41 (5) of the U.P. Sales Tax Rules. The estimated turnover was determined to be Rs. 46,00,000/-, out of which the net turnover of Venkateshwar Flour Mills for atta, maida and sooji was estimated at Rs. 43,00,000/-. The assessment was exparte and the respondent did not produce the account books.

3. On account of food shortage the Government banned the purchase of wheat by rolling flour mills from the open market in August 1958. The Government further fixed quota of wheat to be supplied by the Central Government for each such mill on the basis of average of grinding done in the assessment year 1958-59 disclosed a turnover of Rs. 75,70,840. On September 13, 1961 the Sales Tax Officer issued the following notice to the respondent :

"Certain items of sales and purchases made by you during the year 57- 58 and 58-59 have come to my notice which need verification. You are required to appear before me on 27-9-61 with all your account books of the year 57-58 and 58-59 for the above mentioned verification.

2. Please note that in case you fail to appear it will be presumed that the Sales and Purchases under reference are not entered in your books and action under sec. 21 of

the U.P. Sales Tax Act may be taken against you."

4. The above notice was served upon the respondent on September 19, 1961. Appearance was put in on behalf of the respondent in pursuance of the notice, but the account books were not produced. On March 13, 1962 the Sales Tax Officer sent the following memorandum to the respondent :

"M/s. Bhagwan Industries Private Ltd., Aishbagh, Lucknow deal in atta, maida and sooji which are manufactured by them in their rolling flour mills Shree Venkateshwar Flour Mills. They have been finally assessed for the years 1956-57 and 1957-58 on estimated turnover of Rs. 42,75,000/- (tax assessed Rs. 92,046-94) and Rs. 45,00,000/- (tax assessed Rs. 72,875-00) respectively. Both these assessment orders were passed exparte. The case of the year 1956-57 was reopened under sec. 21 on the basis of certain information and an escaped turnover of Rs. 35,532/- was against assessed under sec. 21 of the U.P. Sales Tax Act. At the time of this of this assessment also the account books were not produced.

2. The above mentioned firm is on record for the last many years. The sale of atta, maida and sooji was exempt under sec. 4 of the U.P. Sales Tax Act upto 31-3-56 but was declared taxable with effect from 1-4-56. According to the assessment order of the year 1955-56 their sales of atta, maida and sooji had amounted to Rs. 58,18,425-15-6. The assessment case of the firm for the year 1958-59 has also been completed and during that year according to the account books the turnover of atta, maida an sooji had amounted to Rs. 75,70,840/-. Keeping in view the turnover according to the account books during the year 1955-56 and 1958-59 it appeared that the turnover determined in the exparte orders of the year 1956-57 and 1957-58 was estimated at a lesser amount and thus some turnover escaped assessment during each of these two years. It was, therefore, considered necessary that the actual position be ascertained from the assessee. Some information received from other Sales Tax Officers regarding the sales made by this firm during the years 1957-58 also needed verification as was done in the year 1956-57 resulting in the assessment of the firm under sec. 21 during that year.

3. A notice was, therefore, issued to the firm on 13-9-61 for the production of the account books of the year 1957-58 but the firm failed to produce the account books. Again summons were issued under rule 78 of the U.P. Sales Tax Rules to Shri Keshoe pd. Vaid Managing Director of the firm requiring him to appear in person and to produce the account books of the firm for the year 1956-57 and 1957-58 but against neither the account books were produced nor Shri Vaid appeared in person. One application dated 27-12-1961 was, however, received from one of the directors of the firm informing that Shri Kesheo Pd. Vaid was out of station and requesting that the summons be issued in the name of the concerned M/s. Bhagwan Industries Private Ltd. rather than in the name of any individual. This application has been kept on record.

4. The hesitation on the part of the firm to produce the account books and even to disclose their actual turnover during the years 1956-57 and 1957-58 as per their account books confirms the presumption that they have been under assessed for these two years. They are, however, given an opportunity to produce their account books of these years on 19-3-62 and disclose their sales of the above mentioned two years as per their account books failing which their cases of the year 1957-58 will be reopened under sec. 21 of the U.P. Sales Tax Act and penalty of prosecution proceedings as permissible under the U.P. Sales Tax Act shall be started for the year 1956-57 the assessment of which has already become time barred.

5. A copy of this order shall be kept in the file the dealer pertaining to the years 1956-57 and

another shall be kept in the file pertaining to the year 1957-58.

5. The memorandum was received by the respondent on March 16, 1962. but the account books were not produced by the respondent. On March 24, 1962 the following notice was issued under sec. 21 of the Act to the respondent and the same was served on March 26, 1962 :

"As I have come to know that a part of your sale proceeds relating to the assessment year 57-58, has been left over from being taxed, therefore, I order that you should furnish supplementary statement of the sale-proceeds in the form attached herewith in respect of the year ending 31-3-58 within 15 days.

2. You are further informed that you should be present at the Sales tax officer, Golaganj on 27-4-62 at 10-30 O'clock, along with all the account books and your other business papers in respect of the year the sale proceeds whereof are mentioned by you in the above mentioned statement. If you fail to turn up on the fixed date tax shall be levied on you exparte."

6. On October 5, 1962 the accountant of the respondent made a statement before the Sales Tax Officer that the account books for the years 1956-57 and 1957-58 had been misplaced in the head office at Bombay and no books, register or vouchers regarding the business of the years 1956-57 and 1957-58 were available. On March 19, 1963 the Sales Tax Officer made an assessment order under sec. 21 of the Act for the assessment year 1957-58 estimation the total net turnover for that year at Rs. 85,50,000. The amount of escaped turnover was estimated to be Rs. 38,50,000.

7. Appeal filed by the respondent against the above order was dismissed.

8. The respondent then went up in revision and contended that there was no material on which the Sales Tax Officer could have reason to believe that turnover had escaped assessment. The proceedings initiated under sec. 21 of the Act were said to be without jurisdiction. It was also urged on behalf of the respondent that notice issued on September 13, 1961 as also the memorandum dated March 13, 1962 constituted valid notice under sec. 21 of the Act and as the assessments had not been completed within one year of the service of those notices, the assessments were barred by limitation. The Judge (Revisions) rejected these contentions. He was, however, of the opinion that the quantum of turnover needed redetermination. At the instance of the respondent the Judge (Revisions) referred the questions reproduced at the commencement of this judgement to the High Court.

9. The High Court while answering the first question in the negative, referred to the words "reason to believe" in sec. 21 of the Act and observed that the reason must be that of an honest reasonable person based upon reasonable grounds and that it was not sufficient that the Sales Tax Officer should have reason to suspect that the turnover had been under-assessed. In the opinion of the High Court, it could not be said that the Sales Tax Officer had reason to believe that the turnover had been under assessed, as regards the second question, the High Court held that notice dated September 13, 1961 and the memorandum dated March 13, 1962 were of a preliminary nature and could not be considered to be notice under sec. 21 of the Act.

10. In appeal before us Mr. Manchanda on behalf of the appellant has assailed the correctness of the answer given by the High Court to the first question. It is submitted that there was rational basis for the Sales Tax Officer to believe that the turnover of the respondent had been under-assessed and that

the finding of the High Court that the Sales Tax Officer could not be said to have reason to believe that the turnover had been under-assessed was incorrect. As against that Mr. Karkhanis on behalf of the respondent has conversed for the correctness of the view of the High Court in answer to question No. (1). There is, in our opinion, considerable force in the submission of Mr. Manchanda. Sec. 21 of the Act deals with assessment of tax on assets and levy of licence fees incorrectly assessed, and reads as under :

"(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to the dealer, and making such enquiry as may be necessary, assess or-re-assess him to tax :

Provided that the tax shall be charged at the rate at which it would have charged had the turnover not escaped assessment, or full assessment, as the case may be.

Explanation. - Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of the judgment.

(2) No order of assessment under sub-section (1) or under any other provisions of this Act shall be made for any assessment year after the expiry of four years is thereby exceeded :

Provided that where the notice under sub-sec. (1) has been served within such four years the assessment or re-assessment to be made in pursuance of such notice may be made within one year of the date of the notice even if the period of four years is thereby exceeded :

Provided further that nothing contained in this section limiting the time within which any assessment or re-assessment may be made shall apply to an assessment or re-assessment made in consequence of or to give effect to, any finding or direction contained in an order under sec. 9,10 or 11.

Explanation. - Where the assessment proceedings relating to any dealer remained stayed under the orders of any Civil or other competent Court, the period during which the proceedings remained so stayed shall be excluded in computing the period of limitation for assessment provided under this sub-section."

Perusal of sub-sec. (1) of the section reproduced above shows that the assessing authority can assess or re-assess a dealer to tax if such authority has reason to believe that the whole or any part of the turnover of the dealer has, for reason, escaped assessment to tax for any year. In such an event, the assessing authority before making the assessment or re-assessment must issue notice to the dealer. The said authority may also make such enquiry as may be necessary in the circumstances of the case.

11. The controversy between the parties has entered on the points as to whether the assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for the assessment year 1957-58. Question in the circumstances arises as to what is the import of the words "reason to believe", as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in

the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with the jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this Court, for the sufficiency of the grounds which induced the assessing authority to act is not a justifiable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence.

12. It may also be mentioned that at the stage of the issue of notice the consideration which has to be weighed is whether there is some relevant material giving as to whether that material is sufficient for making assessment or re-assessment under section 21 of the Act would be gone into after notice is issued to that dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material procured as a result of the enquiry which may be considered necessary.

13. The import of the words "reason to believe" has been examined by this Court in cases arising out of proceedings under section 34 of the Indian Income Tax Act, 1922 wherein also these words were used. The aforesaid section dealt with income escaping assessment and conferred jurisdiction on the Income Tax Officer to make assessment or re-assessment if he had reason to believe that income, profits or gains chargeable to income tax had been under-assessed and that such under-assessment had occurred by reason of either omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts necessary for his assessment. Certain other conditions were also necessary but we are not concerned with them. Dealing with that section in the case of *S. Narayanappa vs. Commissioner of Income-Tax (1)* this court observed;

"But the legal position is that if there are in fact some reasonable grounds for the Income-tax Officer to believe that there had been any non-disclosure as regards any fact, which would have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice under section 34. Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income-tax Officer to act is not a justifiable issue. It is of course open for the assessee to contend that the Income-tax Office did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression "reason to believe" in section 34 of the Income-Tax Act does not mean a purely subjective satisfaction on the part of the Income-tax Officer. To put it differently, it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceeding under section 34 of the Act is open to challenge in a court of law."

Reliance was placed in the above context upon an earlier decision of this Court in the case of

Calcutta Discount Co. Ltd. vs. Income-tax Officer, Companies District I, Calcutta (2). The above observation regarding the import of the words "reason to believe" though made in the context of section 34 of the Indian Income Tax Act, 1922 have in our opinion, equal bearing on the construction of those words in section 21 of the U.P. Sales Tax Act.

14. In the light of the view we have taken of the words "reason to believe," we have no doubt that the assessing authority in the present case had valid grounds for initiating proceedings under section 21 of the Act against the respondent. It would appear from the memorandum dated March 13, 1962 sent by the assessment authority that for the assessment year 1955-56 the sales of atta, maida and sooji of the respondent amounted to over rupees fiftyeight lakhs Account books of the respondent for sale of atta, maida and sooji amounted to over rupees seventy five lakhs. The assessing authority had also material with it to show that the quota of wheat for the respondent had been fixed in August 1958 on the basis of the average of grinding done in the past three years. There was also the additional fact that the respondent had in spite of repeated notices not produced its account books for the assessment year 1957-58. These facts, in our opinion, were germane to the formation of the belief of the assessing authority that part of the turnover of the respondent had escaped assessment to tax. It cannot be said that the above belief was not formed in good faith or was more pretence for initiating action under section 21 of the Act. The assessing authority in the circumstances, in our opinion, acted within the ambit of its powers in initiating proceedings under section 21 of the Act.

15. We are unable to accede to the contention of Mr. Karkhanis that as the assessment sought to be reopened was *ex parte* assessment under rule 41 (5) of the Uttar Pradesh Sales Tax Rules, no proceedings in respect of that assessment can be initiated under sec. 21 of the Act. There is nothing in that section to restrict its operation to assessments other than those which have been made *ex parte* under rule 41 (5). The language of the section makes it plain that the assessing authority can take action if such authority has reason to believe that the whole or part of the turnover of a dealer has for any reason escaped assessment to tax for any year. To accede to the contention of Mr. Karkhanis would be tantamount to affording protection, so far as the operation of sec. 21 is concerned, to dealers who avoid to put in appearance and produce their account books before the assessing authority. Such a construction is not only warranted by the language of the section, it is manifestly unreasonable inasmuch as it puts a premium on contumacy.

16. Mr. Karkhanis has also assailed the answer of the High Court to question No. (II) and has contended that the notice dated March 13, 1961 and the memorandum dated March 13, 1962 should be construed as notices under sec. 21 of the Act. As the re-assessment was not completed within one year of the service of those notices, the re-assessment, according to the learned counsel, should be held to be barred by limitation. There is, in our opinion, no force in this contention. To agree with the High Court that the above notice and the memorandum were of a preliminary nature and did not constitute notices under sec. 21 of the Act. All that was stated in the said notice and the memorandum was to call upon the respondent to produce account books. Threat was also held out that in case of non-compliance by the respondent, proceedings would be taken under section 21 of the Act. The above notice and the memorandum could not be construed as notices under sec. 21 of the Act. The above notice and the memorandum could not consequently be construed as notices under sec. 21 of the Act. It was only on March 24, 1962 that notice under sec. 21 of the Act was given to the respondent and the same was served on March 26, 1962. The assessment under sec. 21 was made on March 19, 1963 which was admittedly within one year of the date of the service of the notice under sec. 21 of the Act.

17. We accordingly accept the appeal and discharge the answer given by the High Court to question

No. (1). In our opinion, the assessing authority had an honest belief that the turnover of the respondent had partially escaped taxation so as to justify initiation of proceedings under sec. 21 of the Act. We accordingly answer the said question in the favour of the department. The appellant shall be entitled to the costs of this Court as well as the High Court.

</html