

State of Tamil Nadu

Vs

Star Tobacco Co.

Civil Appeals Nos. 2277 and 2278 of 1969

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

10.11.1972

JUDGMENT

HEGDE, J. –

1. These are appeal by certificate. The respondent has not put in his appearance. Civil Appeal No. 2277 of 1969 relates to the assessment of Sales-tax on the respondent for the assessment years 1957-58 and Civil Appeal No. 2278 of 1969 relates to his assessment for the assessment year 1958-59. Those assessments were made under the Madras General Sales Tax Act, 1939, read with the Rules framed thereunder. The 1939 Act was replaced by the Madras General Sales Tax Act, 1959 (Madras Act I of 1959). The assessments in questions were made after 1959 Act came in to force. Before the High Court the case proceeded on the basis that in respect of both the years the assessments were reopened under Section 16 of the 1959 Act. P. Ram Reddy appearing for the revenue contended that in regard to the assessment for the year 1958-59 there was no reopening at all. No such contention appears to have been taken before the High Court and hence it is not permissible for the appellant to take up that contention in this Court for the purpose of these appeals we shall proceed on the basis that the assessments in respect of both the years had been reopened.

2. The assessments were reopened by the assessing authority himself purporting to do so in exercise of his powers under Section 16 of the 1959, Act. The High Court came to the conclusion that the assessing authority could not have reopened the assessments as the assessments were made under the repealed Act. Under Rule 17 of the Rules framed, if an assessment made by the assessing authority was taken up in appeal to the appellate authority and the appellate authority had either confirmed or modified or reversed the assessment order, the opening of such an assessment could be made only by the appellate authority. Hence the assessing authority was not competent to reopen the assessments. This conclusion was challenged in this appeal.

3. If the provisions of the 1939 Rules governed the assessment proceedings, there can be no doubt that the assessing authority had no right to reopen the assessments as the assessments in questions were the subject-matter of an appeal. In that even the only authority which could have reopened the assessment was the appellate authority. If, on the other hand, the assessments in question were either wholly or partly governed by the provisions of the 1959 Act then we have to decide whether the provisions of the 1959 Act empowered the assessing authority to reopen the assessments. The Madras High Court in Deputy Commissioner of Commercial Taxes, Madras Division v. R. V. Ramiah Chetty and Co., ((1968) 22 STC 217) took the view that in cases where the assessments were made under the 1939 Act and Rules, the provision relating to reopening is Rule 17. The correctness of that decision was challenged before us.

4. The decision in Ramiah case (supra), is a decision bearing on a State Act and Rules framed thereunder. Further that decision relates to provisions which had been repealed as long back as 1959. Therefore, ordinarily this Court will not be inclined to interfere with such a decision. Further, we agree with the High Court that in view of the proviso to sub-section (I) of Section 61 of the Madras General Sales-tax Act, 1959, the appellate authority alone could have revised the assessment in question. That proviso reads as follows :

"Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto, anything done or any action taken including any appointment, notification, notice, order, rule, form, regulation, certificate, licence or permit in the exercise of any power conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act."

5. The question for decision is whether the jurisdiction to reopen is a question of procedure or power. Mr. Ram Reddy contended that it relates only to procedure and on that basis sought to seek support from the decision of this Court in State of Madras v. Lateef Hamid and Co. ((1971) 3 SCC 560 : (1971) 28 STC 690 (SC)) We are unable to accept this contention. In Hamid's case (supra), this Court was dealing with an alleged infraction of provision dealing with procedure. Herein we are dealing with a question of power. The question for decision is as to who had the jurisdiction to reopen the concerned assessments. Such a question cannot be considered as question of procedure. Under the old Rules the assessee had a right to have his assessments reopened only by the appellate authority. This was undoubtedly a right conferred on the assessee. It is a valuable right. That being so, the same is protected by the proviso quoted above.

6. In the result, these appeal fail and they are dismissed. No costs.

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