

The Board of Revenue, Madras

Vs

Raj Brothers Agencies

Civil Appeals Nos. 492 and 493 of 1979

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

06.02.1973

JUDGEMENT

HEGDE, J. -

1. These appeals are by certificate. They are directed against the order of the Madras High Court in two writ petitions in which mandamus was issued to the Board of Revenue to consider and decide the revision petitions filed by the assessee-respondent under section 34(1) of the Madras General Sales Tax Act, 1959 (1 of 1959) (hereinafter called the "Act").
2. The facts of the case lie within a narrow compass. The respondent- assessee was assessed to sales tax during the assessment years 1960-61 and 1961-62. Aggrieved by the orders of the assessing authorities, he went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner dismissed his appeals. Thereafter, he filed second appeals to the Sales Tax Appellate Tribunal, Madras. Those appeals were dismissed as having been time-barred. After the Tribunal dismissed the appeals the assessee moved the Board of Revenue under section 34(1) to revise the assessment orders. The Board came to the conclusion that it had no jurisdiction to entertain those petitions. The High Court, in the writ petitions filed held that the Board has jurisdiction to entertain those appeals and consequently issued a writ of mandamus to the Board to entertain the revision petitions and consider them on merits. It is against that decision the State of Tamil Nadu has come up in appeal.
3. In these appeals we are called upon to determine the true scope of section 34. Section 34(1) confers on the Board of Revenue suo motu power to call for and examine an order passed or proceeding recorded by the appropriate authorities under some of the provisions of the Act. Section 34(2) reads thus :
4. "The Board of Revenue shall not pass any order under sub-sec. (1) if -
 - (1) the time for appeal against that order has not expired; or
 - (b) the order has been made the subject of an appeal to the Appellate Tribunal or of a revision in the High Court; or
 - (c) more than four years have expired after the passing of the order"
5. The question for consideration is as to what is the meaning of the expression "the order has been made the subject of an appeal" ? Whether an appeal against an order which was dismissed as having

been barred by time can be considered as an order which had been made the subject of an appeal ? This question does present some difficulty. But in view of the circumstances, which we shall presently set out, we will not be justified in examining the correctness of the conclusion reached by the High Court. As far back as 1963 the scope of section 34 came up for consideration before the Madras High Court in *Erode Yarn Stores v. State of Madras* (1) Therein the assessee contended that once an appeal is filed before a Tribunal, the Board is precluded from invoking its power under section 34. The State of Madras controverted that position. Therein the State contended that before the jurisdiction of the Board to exercise its power under section 34 can be held to be taken away, the appeal filed before the Tribunal must have been an effective appeal and that an appeal which was dismissed on the ground of limitation is not an effective appeal. The High Court of Madras accepted that contention and decided the case in favour of the State. In arriving at the conclusion that the words 'subject of an appeal' mean subject of an "effective appeal", the High Court took into consideration the mischief that would otherwise arise, namely, all that an assessee, who wants to stifle the Board's suo motu power of revision has to do is to file a time-barred appeal and get it dismissed. It was because of that difficulty the High Court in *Erode Yarn Stores'* case came to the conclusion that the expression "the order which has been the subject of an appeal" as meaning "subject of an appeal effective". In arriving at that decision, the High Court did take into consideration the decision of this court in *Mela Ram & Sons v. Commissioner of Income-tax* (2) wherein this court ruled that an appeal presented out of time is an appeal and an order dismissing it as time-barred is one passed in an appeal. That was a decision rendered under the provisions of the Indian Income-tax Act, 1922. The question for decision in that case was whether an appeal lay against an order of the Appellate Assistant Commissioner dismissing an appeal as time-barred.

6. In the circumstances of the present case, it is not necessary for us to consider whether the decision of the High Court in *Erode Yarn Stores'* case was correctly decided. That decision was rendered in respect of a provision in a State Act. It was rendered as far back as 1963. In that case the High Court accepted the contention of the State. That decision has stood the field till now. It must have governed several cases, decided thereafter. After that decision was rendered, the Act had been subject to several amendments. The Legislature has not thought it fit to amend section 34. To put it differently the State had prayed for and obtained a particular interpretation of section 34. It has accepted that interpretation to be correct ever since 1963. Under these circumstances, it is not proper for this court to upset that decision at this late stage and disturb a settled position in law. If the State wants to change the law it is open to it to move the Legislature for making the necessary amendments. We find it difficult to appreciate the State conduct in taking inconsistent positions.

7. Yet another contention was taken on behalf of the State. It was contended on behalf of the State that the assessee had no right to invoke the jurisdiction of the Board to exercise its revisional power. This contention too has to be rejected. The power is conferred on the Board to remedy any injustice. It is open to an assessee or the revenue to bring to the notice of the Board any error made by the subordinate authorities. It is up to Board to consider whether the case is a fit case for exercising its revisional jurisdiction. If the Board had gone into the case and come to the conclusion that there was no justification for exercising its jurisdiction under section 34, then in the absence of any vitiating circumstance recognised by law, the High Court would not have interfered with the discretion of the Board. But what has happened in this case is that the Board had refused to exercise its jurisdiction under the erroneous view that in view of the dismissal of the assessee's appeal it was not competent to entertain the petition. The decision of the Board was vitiated by an error apparent on the face of the record. Hence the High Court was justified in interfering with that decision. Whether the case is a fit one for exercising jurisdiction of the Board or not is entirely a matter for the Board to consider and decide, Mr. Rangam drew our attention to two decisions of the Andhra Pradesh High Court

where the High Court held that no appeal lay against the order of the Andhra Pradesh Revenue Board under section 20(1) of the Andhra Pradesh General Sales Tax Act, 1957, which provision is similar to section 34 of the Act. Those decisions lend no assistance to the appellant's case.

8. In the result, these appeals fail and they are dismissed. The respondents are absent and hence there will be no order as to costs.

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