

M/S. S. B. Gurbaksh Singh

Vs

Union of India and Others

Civil Appeals Nos. 667-668 of 1975

(V.R. Krishna Iyer, A.C. Gupta, N.L. Untwalia JJ)

27.01.1976

JUDGMENT

UNTWALIA, J. -

1. In these appeals by certificate the question for determination is whether the exercise of the power of revision under sub-section (3) of Section 20 of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi - hereinafter called the Act - is subject to the period of limitation provided in sub-section (2a) of Section 11 or Section 11A of the said Act. The requisite facts lie in a narrow compass and may usefully be stated at the outset.

2. The appellant who was carrying on the business of execution of building contracts was assessed to sales tax under the Act by the Sales Tax Officer for the year 1955-56 by an order of assessment made on November 23, 1959. The appellant's appeal before the Assistant Commissioner of Sales Tax succeeded in part. He held that the assessment for the first two quarters of the year 1955-56 was invalid having been made out of time. The case was, therefore, remanded to the Sales Tax Officer for a fresh assessment in respect of the third and fourth quarters of the year. The Sales Tax Officer in pursuance of the appellate order of remand dated February 11, 1960 passed a fresh assessment order on March 21, 1960. The Commissioner, however, after notice dated July 21, 1960 to the appellant, by his order dated July 29, 1960 revised the appellate order of the Assistant Commissioner in exercise of his power under Section 20(3) of the Act. He held that no part of the assessment for the year 1955-56 was barred and directed a fresh assessment to be made. A fresh assessment for all the four quarters was accordingly made by the Sales Tax Officer on September 24, 1960. The appellant filed two writ petitions in the Delhi High Court challenging the order made in revision by the Commissioner and the fresh assessment order passed by the Sales Tax Officer in pursuance thereof. A learned Single Judge of the High Court allowed the writ applications on April 2, 1969 and quashed the impugned orders. The respondents took up the matter in letters patent appeal and succeeded before a Bench of the High Court. Hence these appeals by the assessee.

3. Mr. F. S. Nariman appearing for the appellant contended :

(1) That the appellate and the revisional authorities must exercise (their appellate or revisional power within the period prescribed under sub-section (2a) of Section 11 of the Act. If their orders are final orders of assessment then directly they are exercising their powers under sub-section (1) or (2) of Section 11. In case their orders are of remand for fresh assessment to the assessing authority then also they must pass their orders within the periods aforesaid although under the proviso added in 1959 the assessing authority may have a further period of 4 years or 6 years, as the case may be, for passing a fresh assessment.

(2) That the Commissioner while exercising the power in revision cannot overstep and ignore the period of limitation of 3 years provided in Section 11A of the Act.

(3) That the authority mentioned in Sections 11, 11A and 20(3) being the Commissioner, the Commissioner is subject to the period of limitation provided in Sections 11 and 11A even when exercising the revisional power under Section 20(3).

(4) That in any view of the matter the revisional authority must exercise the power in a reasonable manner and within a reasonable time. It cannot exercise the power of revision, suo motu, after a long lapse of time at its sweet will and pleasure.

4. Under Section 3 of the Act, a hierarchy of officers has been constituted by the Chief Commissioner - namely, the Commissioner of Sales Tax, Sales Tax Officers and others to assist him. Section 11 of the Act deals with assessment of tax. The Sales Tax Officer exercising the powers as an officer to assist the Commissioner under Section 11(1) of the Act can proceed to assess the amount of the tax due from a registered dealer within 18 months of the expiry of a particular period. A dealer who has been liable to pay tax under the Act but has failed to get himself registered can be assessed to tax under sub-section (2). Then sub-section (2a) says :

No assessment under sub-section (1) shall be made after the expiry of four years and no assessment under sub-section (2) shall be made after the expiry of six years from the end of the year in respect of which or part of which the assessment is made :

5. A proviso was added to sub-section (2a) w.e.f. October 1, 1959 by the Amending Act of 1959 and it reads as follows :

Provided that where such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a court, the period of four years or six years, as the case may be, shall be reckoned from the date of such order.

6. It is to be noticed that a period of limitation has been provided in Section 11(2a) and no assessment either under sub-section (1) or sub-section (2) can be made after the expiry of the specified period. But where such an assessment is made by the assessing authority in consequence of or to give effect to any order of an appellate or revisional authority or any order of a court made in reference, writ or in any other proceeding then under the proviso the period of limitation is to be reckoned from the date of such order. The legislature has not provided any period within which an order is to be made by an appellate or revisional authority or a court. Obviously it would have been unpractical and unworkable to do so.

7. Section 20 deals with an appeal, revision or review. If the appeal is filed in time the appellate authority in disposing of any appeal filed under sub-section (1) may -

(a) confirm, reduce, enhance or annul the assessment; or

(b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed.

For exercise of the appellate power in any of the manners mentioned above, there is no limitation of time. If assessment can be reduced in appeal at any time it can be enhanced also without the fetter of time. If the assessment is set aside and the case remanded to the assessing authority to make a fresh

assessment then the authority, because of the proviso to Section 11(2a), is obliged to make the fresh assessment within four years of the appellate order. Sub-section (3) of Section 20 reads thus :

Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules thereunder by a person appointed under Section 3 to assist him, and subject as aforesaid, the Chief Commissioner may, in like manner, revise any order passed by the Commissioner.

The Commissioner can revise any assessment made or order passed under the Act including the order of the appellate authority. The limits of the revisional power are not circumscribed in sub-section (3), but it goes without saying that they will be akin to the power of the appellate authority as mentioned in sub-section (2). The revisional authority obviously, as pointed out by this Court in the case of *State of Kerala v. K. M. Cheria Abdulla and Company* (16 STC 875 : AIR 1965 SC 1585 : (1965) 1 SCR 601) should not trench upon the power expressly reserved by the Act or the rules to other authorities and cannot ignore the limits inherent in exercise of those powers. Section 11A is one such power which deals with assessment and reassessment of tax in case of an escaped assessment or underassessment. Exercise of that power is subject to the limitations provided therein. In Rule 66(2) of the Delhi Sales Tax Rules, 1951 a period of limitation of 60 days has been provided for the filing of an application in revision which can be extended under the proviso appended to that rule on sufficient cause being shown. But no such limitation has been provided for the suo moto exercise of the revisional power.

8. Mr. Nariman very strongly relied upon the majority decision of this Court in *State of Orissa v. Debaki Debi* (15 STC 153 : AIR 1964 SC 1413 : (1964) 5 SCR 253) and submitted that the power of revision exercised by the Commissioner in this case beyond the period of four years prescribed in sub-section (2a) of Section 11 was illegal and ultra vires. A close scrutiny of the argument will result in its rejection.

9. In the Orissa case all the orders made by the Collector in exercise of his power of revision under Section 23 of the Orissa Sales Tax Act were passed later than 36 months from the expiry of the period in respect of which the assessment was made. The High Court's view that they were in contravention of Section 12(7) which was a power of assessment or reassessment in case of an escaped or underassessment was not upheld. But it was found that the proviso to Section 12(6) was in general terms. It was not only a proviso providing for the period of limitation for the first assessment but it governed the assessment made in exercise of the appellate or the revisional power. The main ratio decidendi of the case is that the proviso in Section 12(6) is in reality an independent legislative provision unrelated to Section 12(6). Therefore, its operation was not confined to assessment under Section 12 but applied to any assessment made under the Act. In the alternative it was also opined that assessments made in exercise of the revisional power was an assessment made under Section 12. It was so said because if the appellate or the revisional authority would have directed the assessing authority to make a fresh assessment it could do so only under Section 12 and then it would be subject to the period of limitation of 36 months. It was pointed out in the majority decision of this Court that there would be an anomalous situation. If the appellate authority set aside the assessment and remanded it for fresh orders, no fresh assessment could be made because of the period of limitation. But if instead of doing so the appellate authority affected the same assessment there would be no bar of limitation. In the present case in view of the proviso added to Section 11(2a) the anomaly flows in the reverse direction. If the appellate or the revisional authority made a remand order the assessing authority could pass a fresh order of assessment within 4 years of such

order. But if the higher authority itself revised the assessment then it would be barred by the rule of limitation provided in Section 11(2a). To avoid such an anomaly Mr. Nariman suggested a construction to be put which neither solves the anomaly nor is warranted by the language of the provisions of the Act. Counsel submitted that in all cases the powers must be exercised within 4 years of the period in respect of which an assessment was being made on a registered dealer. It will be wholly unreasonable - almost impossible to say that all orders in appeal, revision or reference must be passed within four years of the end of the period of assessment, otherwise they will be barred. It does not solve the anomaly either. Even if the order of remand is made, say, just on the last day of the period of four years, it will be competent to the assessing authority to make a fresh assessment within the further period of 4 years. The ratio of the case in *Debaki Debi* (supra) must be confined within its four corners and cannot be extended to the facts of the instant case.

10. In *Swastik Oil Mills Ltd. v. H. B. Munshi*, Deputy Commissioner of Sales Tax, Bombay (21 STC 383 : AIR 1968 SC 843 : (1968) 2 SCR 492) the decision of this Court in *Debaki Debi*'s case was distinguished on the ground that the provision of limitation of 36 months in substance was not a real proviso to the section in which it was placed but was in fact a period of limitation for all orders of assessment made under any other provision of the Orissa Act, while in the Bombay Acts there was no such general provision prescribing a period of limitation for making an assessment. Reference to the period of limitation in Section 11A of the Bombay Act which is a power of making assessment or reassessment in case of an escaped or underassessed assessments was also rejected.

11. Our attention was also drawn to the decision of a Single Judge of the Punjab High Court, Delhi Bench, in *Sir Sobha Singh & Company v. Commissioner of Sales Tax, Delhi* (18 STC 416 (Punj)) wherein following the decision of this Court in *Debaki Debi*'s case it was held that an order of review made by the Commissioner under Section 20(4) of the Act in effect is an order of assessment under Section 11(1) and cannot be made after the expiry of the period prescribed under Section 11(2a). The learned Judge in the course of his judgment made it clear that he was concerned with the construction of the Act as it stood before 1959 and was not obliged to consider the effect of the proviso added to Section 11(2a) in 1959. It is not necessary to decide in this case whether without the aid of the proviso aforesaid the decision of the learned Single Judge was correct or not but surely in face of the proviso it cannot hold good.

12. In *Commissioner of Commercial Taxes, Bihar, Patna v. Sheodutta Prasad Chandeshwar Singh* (25 STC 114 (Pat)) the review proceedings initiated by the assessing authority was held to be barred under the proviso to Section 13(6) of the Bihar Sales Tax Act, 1947. But distinguishing the said decision another Bench of the Patna High Court held in *Commissioner of Commercial Taxes, Bihar v. Ashoka Marketing Ltd.* (33 STC 24 (Pat)) that the order of review passed by the Deputy Commissioner was not barred by time. The decision of the Patna High Court in *Commissioner of Commercial Taxes, Bihar, Patna v. Sheodutta Prasad Chandeshwar Singh* (supra) on identical facts was followed in *Commissioner of Commercial Taxes, Bihar v. Shiva Pujan Prasad Bhagat* (33 STC 466 (Pat)). But the principle decided in those cases cannot help the appellant. It may well be that if the assessing authority itself exercises the power of review it cannot circumscribe the bar of limitation provided in Section 11(2a). But it will be unjust, unreasonable and impracticable to say that the said bar of limitation must also continue to run at all stages of the proceedings, namely, the appellate, revisional, reference, writ or any other stage.

13. It was pointed out by this Court in *Swastik Oil Mills'* case (supra) that the Deputy Commissioner when seeking to exercise his revisional powers was not encroaching upon the powers reserved to other authorities. The powers were not exercised for the purpose of assessing or re-assessing an

escaped turnover. The revisional powers were sought to be exercised to correct what appeared to be an incorrect order passed by an Assistant Collector and for such a purpose proceedings could not possibly have been taken under Section 11A. In the instant case also it could not be disputed that the view taken by the Assistant Commissioner in appeal was obviously wrong. The commissioner while correcting that mistake in exercise of his revisional power was not doing anything which the Sales Tax Officer was empowered to do under Section 11A. He was merely setting right the illegality in the appellate order.

14. The third point urged by the appellant is too obviously wrong to merit any detailed discussion. It was not the Commissioner who had passed the assessment order under Section 11. That order was of the Sales Tax Officer acting as an officer to assist the Commissioner for the purpose of assessment. The assessment order was interfered with by the appellate authority, the Assistant Commissioner and the Commissioner was revising the order of the Assistant Commissioner. All cannot be treated as Commissioners for the purpose of the different powers exercised by the three different authorities. The use of the term "Commissioner" in the sections is merely for the purpose of describing and, at any rate, including the officer assisting the Commissioner as Commissioner.

15. Apropos the fourth and the last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo moto after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time limit has been prescribed for it. It may well be that for an exercise of the suo moto power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case.

16. For the reasons stated above the appeals fail and are dismissed with costs. One set of hearing fee.

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