

M/s. Ram Kanai Jamini Ranjan Pal Pvt. Ltd.

Vs

Member, Board of Revenue, W. Bengal

Civil Appeal Nos. 669 and 670 of 1971

(A.C. Gupta, Jaswant Singh JJ)

23.04.1976

JUDGMENT

JASWANT SINGH, J. -

1. These two appeals Nos. 669 and 670 of 1971 by special leave from the common judgment dated June 11, 1970, of the High Court at Calcutta in Sales Tax References Nos. 395 of 1965 and 521 of 1967 which raise important questions as to the scope and extent of the revisional power of the Commissioner, Commercial Taxes, under Section 20(3) of the Bengal Finance (Sales Tax) Act, 1941 (Act VI of 1941) (hereinafter referred to as 'the Act') shall be disposed of by this judgment.

2. The facts giving rise to these appeals are : the appellant which is a private limited company, incorporated under the Indian Companies Act, 1913, and is registered as a dealer under the Act submitted a return for 4 quarters ending with the last dated of Chaitra, 1364 B.S. (corresponding to the period commencing with April 14, 1957, and ending with April 13, 1958) showing a gross turnover of sales of Rs. 35,93,402. By his order dated December 7, 1959, the Commercial Tax Officer, Rajakatra Charge, rejected the appellant's books of accounts on the ground of absence of purchase and sale vouchers and of stock statements and enhanced the gross turnover shown by the appellant by Rs. 50,000 and charged the entire enhanced amount to tax subject to deduction under Section 5(2)(b) of the Act. He also imposed a penalty of Rs. 1,000 under Section 11(1) of the Act. On appeal under Section 20(1) of the Act, the Assistant Commissioner, Commercial Taxes, Burrabazar Circle, by his order dated September 10, 1960, reduced the enhancement of gross turnover from Rs. 50,000 to Rs. 25,000 and the penalty from Rs. 1,000 to Rs. 500. Not satisfied with this reduction, the appellant moved the Commissioner, Commercial Taxes, West Bengal, in revision under Section 20(3) of the Act on November 10, 1960. Before the filing of the said revision petition, the Commercial Tax Officer, Central Section, to whom power under Section 14(1) of the Act has been duly delegated started an enquiry on January 20, 1960 and served on the appellant a notice dated October 25, 1960 to the following effect :

You are hereby directed to furnish the undersigned with the serial Nos. of the cash memos printed by you in 1363 B.S., 1365 B.S., 1366 B.S. and 1367 B.S. The names of the suppliers of these memos, relevant bill Nos. and dates, amount, dates of payment and modes of payment also are to be indicated.

The information may be supplied to the undersigned on 31st October, 1960 at 4 p.m. positively.

3. In response to the notice, the appellant appeared before the Commercial Tax Officer, who after hearing the former and examining the cash memos and other material submitted a report of the

investigation made by him to the Assistant Commissioner, Central Section, observing inter alia that two original cash memos issued by the appellant bearing serial No. 30727-26 dated January 24 for Rs. 69.50 in respect of sale of Banarsi saree and No. 31310-37 dated December 25, 1966 for Rs. 62.20 in respect of sale of readymade garments were not properly recorded in the appellant's books of accounts and records and that on reference to the appellant's books of accounts and cash memos, it had been found that cash memo No. 30727-26 was issued in respect of millmade cloth for Rs. 11.75 on August 18, 1964 and not in respect of Banarsi saree for Rs. 69.50 on January 24 and cash memo No. 31310-37 was issued in respect of sale of millmade cloth for Rs. 9.37 and not in respect of sale of readymade garments for Rs. 62.20 on December 25, 1966. He also observed in his report that in cash memo No. 31310-37, the date appeared to have been tempered with by subsequent insertion of the numerals "66" after the date of issue and that the actual date appeared to be December 25 and that the appellant had not been able to furnish a satisfactory explanation with regard to these discrepancies. The Commercial Tax Officer further stated in his report that his investigation revealed that the appellant got duplicate sets of 1,00,000 cash memos bearing serial Nos. 28501 to 29500 and 30501 to 31500 (Ed. : As would appear from the judgment of the High Court 2000 cash memo books containing 1,00,000 cash memos were supplied) printed and supplied by M/s. Blackwoods India Limited and did not record sales to the extent of Rs. 30,00,000 which in the absence of any evidence to the contrary appeared to be entirely taxable. This report was received by the Additional Commissioner, Commercial Taxes, while the aforesaid evidence to the contrary appeared to be entirely taxable. This report was received by the Additional Commissioner, Commercial Taxes, while the aforesaid revision petition was still pending before him. He, thereupon gave the following notice to the appellants :

On discovery of fresh materials. On discovery of fresh materials, as reported by the Commercial Tax Officer Central Section, in his report dated December 27, 1960 (copy enclosed), it appears that you have suppressed sales estimated to be Rs. 30,00,000 in respect of the assessment of four quarters ending Chaitra 1364 B.S. The above revision petition which has been filed before me is against the appellate order in respect of the assessment for the said period. It also appears that sales to the extent of Rs. 30,00,000 (estimated) escaped taxation from the original assessment and consequently from the Assistant Commissioner's appellate order. The above revision petition will be heard by me on October 5, 1961 at 11.30 a.m. and the report dated December 27, 1960 submitted by the Commercial Tax Officer, Central Section, will be considered at the time of hearing of the revision petition. You should, therefore, appear before me on that date at the hour fixed either in person or by a duly instructed agent to represent your case, filing which the matter will be decided ex parte without any further reference to you.

4. In reply to the notice, the appellant wrote back denying that it had any transaction with M/s. Blackwoods India Ltd. in relation to the printing of the duplicate sets of the cash memos in question and stating inter alia that on the matter being referred to the latter, they could not say from whom actually, the order in question was received nor could they give any relevant particulars. It was further added by the appellant that the proposed enhancement of gross and taxable sales by Rs. 30,00,000 was unjustified and unwarranted.

5. The Additional Commissioner disposed of the revision petition by enhancing the assessment by Rs. 20,00,000 as against the admitted gross turnover of Rs. 35,93,402 and charged the entire enhanced amount of Rs. 20,00,000 to tax subject to deduction under Section 5(2)(b) of the Act.

6. The appellant thereupon took the matter in further revision to the Board of Revenue, West Bengal contending that the conclusions arrived at by Additional Commissioner, Commercial Taxes were wholly unwarranted and that while exercising his power of revision under Section 20(3) of the Act, the Commissioner had to confine himself to the examination of the material before the Assessing Officer and could not take additional facts into consideration. The Board negatived both the contentions and rejected the revision application. Thereupon the appellant made an application to the Board under Section 21(2) of the Act requesting that the points of law arising from its decision be referred for decision to the High Court. Although at the hearing of the application, the appellant stressed that reference be made on three points, the Board allowed the application in part and referred only the following question of law for decision to the High Court :

Whether on the facts and circumstances of the case, in exercise of his powers under Section 20(3) of the Bengal Finance (Sales Tax) Act, 1941. The Additional Commissioner was competent to reassess the gross turnover of the petitioner by taking into consideration additional material which had not been made available to the assessing officer ?

7. The appellant did not rest content with this limited reference and made an application under sub-sections (2)(b) and (3) of Section 21 of the Act to the High Court which directed the Board to submit for its decision the following further question of law :

Whether on the facts admitted or found by the tribunals below, the Additional Commissioner of Commercial Taxes was vested with the authority or jurisdiction, under sub-section (3) of Section 20 of the Bengal Finance (Sales Tax) Act, 1941, read with Rule 80A of the Rules framed thereunder to admit or rely on the purported report, dated December 27, 1960, of the Commercial Tax Officer of the Central Section, pursuant to the enquiry, under sub-section (1) of Section 14 of the said Act, initiated long before the filing of the revision petition in question by the petitioner before the Commissioner of Commercial Taxes, West Bengal ?

8. The Board thereupon referred the abovequoted second question of law as well to the High Court for its decision.

9. After hearing the appellant and the Revenue the High Court by its common judgment dated June 11, 1970 answered both the aforesaid questions in the affirmative. Aggrieved by this judgment of the High Court, the appellant applied for and obtained special leave to appeal to this Court.

10. Appearing for the appellant, Mr. Desai has strenuously urged that the revisional power of the Additional Commissioner under Section 20(3) of the Act was a limited one and he was not competent to act as an original assessing authority and reassess the gross turnover by taking into consideration the additional material comprising fresh sources of revenue which was not available to the Assessing Officer. He has further urged that the Additional Commissioner, could not admit or rely on the report dated December 27, 1960 of the Commercial Tax Officer, Central Section based on the enquiry under Section 14(1) of the Act which was initiated long before the filing of the revision application before the Commissioner, Commercial Taxes, West Bengal.

11. Though both these contentions are inextricably linked up, we shall deal with them separately. Turning to the first contention, we wish to make it clear that the scope and ambit of the revisional jurisdiction varies from statute to statute and it is difficult to make general observations in regard

thereto. For ascertaining the true scope, content and ambit of revisional jurisdiction of the Commissioner or the Additional Commissioner, as the case may be, of Commercial Taxes, under the Act, it is necessary to notice Section 20 thereof which in so far as is material for the purpose of these appeals stood thus at the relevant time :

20. (3) 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 Board of Revenue may, in like manner, revise any order passed by the Commissioner :

Provided that before rejecting any application for the revision of any such order the Commissioner or the Board of Revenue, as the case may be, shall consider it and shall record reasons for such rejection :

Provided further that no application for revision shall lie to the Commissioner in respect of any assessment if an appeal lies under sub-section (1) to the Commissioner in respect of such assessment

(5) Before any order is passed under this section which is like to affect any person adversely, such person shall be given reasonable opportunity of being heard.

12. The section as extracted above is very widely worded. The word 'revise' occurring therein which is dictionary is described as meaning to 're-examine, to review, the correct, or to amend the fault' is not hedged or qualified by any condition or limitation. The controlling expressions like 'for the purpose of satisfying himself as to the legality or propriety of the order passed' or 'regularity of the proceeding' which are susceptible of being construed as restricting the revisional power to rectification of an illegality or impropriety of the order or of irregularity in the proceeding are also not to be found therein. There is also nothing in the Bengal Sales Tax Rules, 1941 (hereinafter called 'the Rules') to circumscribe or limit the power. It is not, therefore, unreasonable to infer that the amplitude of the power conferred on the Commissioner or the Additional Commissioner is more extensive than the power exercisable by the High Court under Section 115 of the Code of Civil Procedure. In fact, it can be easily equated with the power exercisable by the appellate authority in an appeal under sub-section (2) of Section 20 of the Act. We are fortified in this view by the following observations made by this Court in *Indira Sohanlal v. Custodian of Evacuee Property, Delhi* (AIR 1956 SC 77 : (1955) 2 SCR 1117) :

Section 27 is very wide in its terms and it cannot be construed as being subject to any limitation such as filing of an appeal. Nor can the scope of revisional powers be confined only to matters of jurisdiction or illegality, because under Section 27 the Custodian General, can exercise revisional powers for the purpose of satisfying himself as to "the legality or propriety" of any order of the Custodian.

13. The following observation made by Ramaswami, J. in *East Asiatic Co. (India) Ltd. v. State of Madras* (1956) 7 STC 299 (Mad) are also relevant :

The purposes of this Act are twofold, viz., the levy of a general tax on the sale of goods to supplement the lost revenues and for promoting the general public good; and secondly, to see that this is done under the provisions of the Act and not by

carrying out in a capricious or arbitrary manner. Therefore, a revisional authority has to be created. What is revision ? The essence of revisional jurisdiction lies in the duty of the superior tribunal or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence and correction in appropriate cases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various acts and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income-Tax Act, etc. The jurisdiction of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The purpose of such an amplitude being given suo motu revisions appears to be as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer unless its interests are safeguarded by the exercise of such supervisory jurisdiction as the one given to the authorities abovementioned.

14. Thus the Commissioner or the Additional Commissioner can, in exercise of his revisional power, reassess the turnover and while doing so rope in escaped items of turnover and thereby enhance the gross turnover.

15. Having found that the power of revision exercisable by the Commissioner, Commercial Taxes is not trammelled by any limitation, let us now see whether the Commissioner while exercising the revisional power is confined to the order of assessment and the record of proceedings of the Assessing Officer or can he travel outside the same and reassess the gross turnover by taking additional material into consideration. The following observations made in the majority judgment of this Court in the State of Kerala v. Cheria Abdulla & Co. ((1965) 16 STC 875 : AIR 1965 SC 1585 : (1965) 1 SCR 601) are helpful in deciding this matter :

The words of Section 12(2) of the Madras General Sales Tax, 1939, that the Deputy Commissioner "may pass such order with respect thereto as he thinks fit" means such order as may in the circumstances of the case for rectifying the defect be regarded by him as just. Power to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order, or irregularity in the proceeding. It is therefore not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him, and can never make enquiry outside that record. Therefore, conferment of power under Rule 14-A of the Madras General Sales Tax Rules, 1939, to make further enquiry in cases where after being satisfied about the illegality or impropriety of the order of irregularity in the proceeding, the revising authority thinks it just for rectifying the defect to do so does not amount to enlarging the jurisdiction conferred by Section 12(2).

16. It will also be apposite in this connection to refer to the following observations made by the Madras High Court in State of Madras v. Madura Knitting Co. Ltd. ((1959) 10 STC 155 (Mad) :

The powers given to the revising authority under Section 12 (2) were not confined to errors patent on the face of the record but would extend to probing further into the records like calling for despatch registers and other evidence.

17. It will also be useful in this connection to refer to the decision of this Court in *Swastik Oil Mills Ltd. v. H. B. Munshi, Deputy Commissioner of Sales Tax, Bombay* ((1968) 2 SCR 492 : AIR 1968 SC 843 : (1968) 21 STC 383) where this Court did not accept the principle laid down by the Andhra Pradesh High Court in *State of Andhra Pradesh v. T. G. Lakshmaiah Setty & Sons* ((1961) 12 STC 663 (AP)), that the Deputy Commissioner of Sales Tax while exercising revisional powers under the Sales Tax Act of 1946 or of 1953 or of 1959 could not travel beyond the material or record that is available to the assessing authority and was not entitled to find data to institute an enquiry so as to include additional material in order to judge the correctness of the order sought to be revised and held :

whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why, the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose admit additional material. The proceedings for revision, if started suo motu, must not of course be based on a mere conjecture and there should be some ground for invoking the revisional powers. Once these powers are invoked, the actual interference must be based on sufficient grounds, and, if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority holding a further enquiry or directing such an enquiry to be held by some other appropriate authority. This principle has been clearly recognised by this Court in the *State of Kerala v. Abdulla and Company*.

18. The decisions of this Court in *Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Dhanalakshmi Vilas Cashew Co.*, ((1969) 24 STC 491 : (1970) 3 SCC 273) *State of Kerala v. M. Appukutty* ((1963) 14 STC 242 : AIR 1963 SC 796 : 1963 Supp 1 SCR 563) and *Commissioner of Income-tax, Bombay v. Shapoorji Pallonji Mistry* ((1962) 44 ITR 891 : AIR 1962 SC 1036 : 1962 Supp 3 SCR 171) relied upon by Mr. Desai in support of his contention that while exercising his revisional power under Section 20(3) of the Act, the Commissioner cannot travel outside the return made by the assessee and the assessment order passed by the Sales Tax Officer with a view to finding out suppressed or escaped items of turnover and enhance the assessment are distinguishable as in all those cases, there were specific and separate provisions which enabled escaped turnover or income being brought to tax after following a special procedure. In *Dhanalakshmi Vilas Cashew Co.* case, there was Rule 33 of Kerala General Sales Tax Rules, 1950, in *M. Appukutty's* case, there was Rule 17 of the Madras General Sales Tax Rules, 1939, and in *Shapoorji Pallonji Mistry's* case, there were Sections 34 and 33B of the Income-Tax Act, 1922 which enabled escaped turnover or escaped income to be brought to tax. In the Act before us, however, there are no separate or specific provisions for assessment of escaped turnover which may, by implication, be said to exclude from the ambit of the revisional jurisdiction of the Commissioner the taking of additional facts into consideration and enhancing the gross turnover.

19. In view of the foregoing discussion, we have no hesitation in repelling the first contention raised on behalf of the appellant by Mr. Desai and in holding that the High Court was right in answering

the first question referred to it by the Board of Revenue in the affirmative.

20. This takes us to the second contention advanced on behalf of the appellant which is covered by the second question referred by the Board of Revenue at the requisition of the High Court. For effectively dealing with this contention, it is necessary to advert to the following two provisions viz. Section 14 of the Act and Rule 80A of the Rules :

(14) 1. The Commissioner may, subject to such conditions as may be prescribed, require any dealer -

(a) to produce before him any accounts, registers or documents,

(b) to furnish any information, relating to stock of goods of, or purchases, sales or deliveries of goods by, the dealer or relating to any other matter, as may be deemed necessary for the purposes of this Act.

2. (a) All accounts, registers and documents relating to the stocks of goods of, or purchases, sales and deliveries of goods by any dealer : and

(b) all goods kept in any place of business of any dealer shall at all reasonable times be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution

Rule 80A. The appellate or revisional authority may, before finally disposing of the matter, make such inquiry or cause such inquiry to be made by such officer as it may think fit.

21. A combined reading of the provisions of Section 20(3) of the Act and Rule 80A of the Rules would show that the Commissioner, Commercial Taxes is empowered to make or cause to be made such enquiry as he may think fit for proper exercise of the revisional jurisdiction conferred on him under Section 20(3) of the Act. It would be further noticed that the Commissioner can, under Section 14 of the Act, call upon any dealer to produce any accounts, registers or documents or to furnish any information relating to his business as may be deemed necessary for the purposes of the Act which include the exercise of revisional jurisdiction. It would also be noticed that the powers under Section 14 of the Act have been duly delegated to the Commercial Tax Officer. In this state of affairs, is immaterial whether the Commissioner proceeds to make the enquiry before or after the filing of a revision petition so long as he affords to the person likely to be adversely affected by his action, an opportunity of being heard. In the instant case, the whole thing was duly processed. As already stated, the Commercial Tax Officer, Central Section, by his notice dated October 25, 1960 gave adequate opportunity to the appellant to explain the discrepancies in its cash memos and books of accounts. Another opportunity to explain the suspicious circumstances relating to the alleged suppression of the turnover as also to refute the material collected by the Commercial Tax Officer, Central Section, as a result of the investigation made by him and to show cause why action to subject the escaped turnover to tax be not taken was afforded to the appellant by the Additional Commissioner, Commercial Taxes, when on receipt of the aforesaid report dated December 27,

1960 of the Commercial Tax Officer, Central Section, he gave a notice to the former and furnished him with any show of force that, in admitting and relying on the aforesaid report dated December 27, 1960 of the Commercial Tax Officer, Central Section, the Additional Commissioner, Commercial Taxes committed any illegality or breach of any statutory provision or rule or transgressed the limits of his jurisdiction. It will also not be out of place to mention that the contention which is the subject-matter of the second question was never raised before the Board of Revenue as appears from the statement of the case drawn by is. We are, therefore, clearly of the view that the High Court was right in answering the second question also in the affirmative.

22. In the result, the appeals fail and are hereby dismissed but in the circumstances of the case without any order as to costs.

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