The Indian Aluminium Cables Ltd. & Anr.

Vs

The Excise and Taxation Officer & Anr.

Civil Appeal No. 415 and 962 of 1976

(H.R. Khanna, N.L. Untwalia, Jaswant Singh JJ)

23.09.1976

JUDGEMENT

UNTWALIA, J. -

1. In these two appeals by special leave a common question of law falls for our determination, hence, they have been heard together are being disposed of by this judgment.

2. The Indian Aluminium Cables Ltd., appellant 1 in both the appeals had got its factory at Faridabad in the State of Haryana. It sells and supplies aluminium cables to several State Electricity Undertakings or Boards situated in the various States. In respect of the assessment year 1962-63, the Company raised a dispute that it was not liable to pay Central Sales Tax under the Central Sales Tax Act, 1956, as it claimed to be exempt from inter-State tax on the sales of its products to the various State Undertakings or Boards by reason of the provisions contained in section 5(2) (a) (iv) of the Punjab General Sales Tax Act, 1948 - hereinafter referred to as the Act. The Tribunal decided the matter in favour of the assessee Company but the High Court of Punjab and Haryana answered the Sales-tax Reference made at the instance of the Revenue against the assessee. The decision of the High Court is reported in The State vs. Indian Aluminium Cables Ltd., Faridabad. The matter was brought to this Court in appeal and by a decision given on April 2, 1976 the view of the High Court was affirmed and it was held that the sales were not exempt from tax generally within the meaning of section 8 (2A) of the Central Act read with Section 5(2) (a) (iv) of the Punjab Act. The decision of this Court is reported in Indian Aluminium Cables Ltd. and another vs. State of Haryana.

3. The period of assessment concerning the appellant is each quarter of the year. In respect of all the 8 quarters of the years 1969-70 and 1970-71, Returns were filed by the Company in time, i.e. on or before the last day of the month following the quarter concerned. The Assessing Authority did not accept the Returns and issued notices on May 22, 1970 under section 11(2) of the Act in respect of the 4 quarters of 1969-70 requiring the assessee Company to produce evidence in support of the Returns. Since the question of assessee's liability to pay Central Sales Tax was pending in reference before the High Court the matter was not pursued by the Assessing Authority and as per the request of the assessee it was kept pending. Even though the High Court decision was given on November 5, 1973, the matter became subjudice in appeal filed in this Court. It appears that the matter of assessment in respect of the year 1960-70 was taken up by the Assessing Authority again by issuance of a notice on September 15, 1975. Thereupon, the Company filed Civil Writ Petition No. 561/1976 in the High Court on January 27, 1976 to quash the notice dated September 15, 1975 and to restrain the State of Haryana and its Officer, the Excise and Taxation Officer, Feridabad, from proceedings with the assessment. It is said that in respect of the 4 quarters of the year 1970-71 notices under section 11(2) of the Act were issued for the first time by the assessing authority on

January 30, 1976. Thereupon, the Company filed in the High Court Civil Writ Petition No. 1961/1976 for reliefs similar to the ones asked for in the other writ petition.

4. According to the appellant, in the first writ petition before the High Court the two main questions were raised in the following terms :

> "(i) Whether the assessment proceedings with regard to assessment year 1969-70 could be proceeded with and whether assessment order could be passed beyond a period of 5 years after the expiry of the period to which the assessment relates. In other words, whether the Sales Tax Officer had jurisdiction to make assessment for the assessment year 1969-70 which had become time barred;
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> (ii) Whether Central Sales Tax was payable in respect of sale of electric cables manufactured and sold by the petitioner Company to State Electricity Boards in view of the exemption granted generally under section 8(2A) of the General Sales Tax Act read with section 5(2) (a) (iv) of the Punjab Central Sales Tax Act, 1948".

This writ petition was dismissed in limine by a Bench of the High Court stating "Reply had been filed. The matter is covered in favour of the respondent by 33 STC 152. Dismissed". It appears by the time the second writ petition came to be filed the appellant's liability to pay Central Sales Tax was decided by this Court in the case referred to above. Therefore, in the second writ petition, in the main, the question raised was one of limitation as in the other writ petition. Another Bench of the High Court dismissed this writ petition in limine on July 21, 1976. In substance and in effect, inspite of the Full Bench decision (by the majority) of the High Court in the case of Rameshwar Lal Sarup Chand vs. Shri U. S. Naurath, Excise & Taxation Officer, Assessing Authority, Amritsar and Anr., on which Mr. S. T. Desai, learned counsel for the appellant heavily relied upon before us, neither Bench found any substance in the point of limitation raised by the Company and dismissed the two writ petitions in limine. In our opinion the High Court was right, for reasons to be stated hereinafter in this judgment, in not entertaining the point of limitation in spite of the Full Bench decision aforesaid, as, the said decision in view of many pronouncements of this Court to be alluded to hereinafter is no longer good law.

5. In face of the decision of this Court in Indian Aluminium Cables Ltd. & Anr. vs. State of Haryana (supra) the question of the appellant's tax liability under the Central Sales Tax Act was not re-agitated before us. Learned counsel for the appellant, however strenuously urged that the assessing authority could not assess the tax payable by the appellant on expiry of the period of 5 years from the end of each quarter. The 4th quarter of the year 1969-70 expired on March 31, 1970 and the period of 5 years having expired on March 31, 1975 no assessment could be made thereafter. In relation to the year 1970-71 even the notice for the first time was issued under section 11(2) of the Act after expiry of the period of 5 years in relation to the first three quarters, although it was within time apropos the last quarter. The period of the last quarter. The period of the last quarter expired on March 31, 1971; but no assessment could be made, according to the appellant's counsel even in regard to the assessment year 1970-71 in respect of any quarter on the expiry of the 5 years period reckoning from the last date of the quarter. Mr. M. C. Bhandare, learned counsel for the respondents submitted that although a time limit had been fixed in sub-sections (4), (5) and (6) of section 11 of the Act, no time limit was fixed by the Legislature for actions and orders to be taken and passed under sub-sections (1), (2) and (3). Counsel, therefore, urged that neither the issuance of any notice under section 11(2) of the Act was beyond any period of time nor was the assessing authority under any disability of any period of limitation in passing the final order of assessment in respect of any of

the quarters in question. The alternative submission of Mr. Desai that in any view of the matter notice had to be issued under section 11(2) and assessments had to be completed under section 11(3) within a reasonable time was also refuted by Mr. Bhandare.

6. It is beyond any dispute and debate that under section 10 of the Act read along with the Rules framed thereunder, Return has to be filed by a dealer for each quarter by the last day of the following month of the quarter and admitted sales tax as per the Return has also got to be deposited and challan filed along with the Return. It will be seen hereinafter from the authoritative pronouncements of this Court that the mere statutory liability of a dealer to file the Return or to pay the tax has not the effect of commencement of any proceeding under the Act. If a dealer does not file a Return being liable to pay tax, then action under sub-section (5) or sub-section (6), as the case may be, has to be taken by the Assessing Authority within the period of 5 years prescribed therein. The expression "proceed to assess" in those two sub-sections as also in sub-section (4) means taking some effective step towards proceeding to make the best judgment assessment in accordance with the sub-section which may be applicable. In a given case action may be taken under section 11-A(1) of the Act treating the case as a case of escaped assessment within the meaning of said section. But the assessing authority has got to proceed to assess or reassess within 5 years following the close of the year for which the turnover is proposed to be assessed or re-assessed. But in a case where the assessee has filed the Return the proceeding under the Act commences on the filing of the Return. "If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns" as provided for in section 11(1). The assessment under sub-section (1) can be made at any time even according to the Full Bench decision of the Bombay High Court in Bisesar House vs. State of Bombay and Other followed in Rameshwar Lal Sarup Chand. But the view of the Bombay High Court on a consideration of the similar provisions of the other State statute that a notice under sub-section (2) must be issued within the period of limitation mentioned in other sub-section 11 or section 11-A on longer holds good. A notice under sub-section (2) requiring the dealer to produce evidence can be issued at any time after the filing of the Return. The expectancy of taking steps without any undue delay and within a reasonable time is an expectancy of prudence. But legally the action cannot be nullified merely on the ground of delay in the issuance of the notice under Section 11 (2). Sub section (3) of section 11 says :

> "On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer".

On a correct interpretation of the provision aforesaid what emerges is as follows :-

> (i) That the Assessing Authority shall hear the evidence produced by the dealer on the day specified in the notice issued under sub-section (2).
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> (ii) It can adjourn the hearing to some other day and hear the evidence produced by the dealer on the adjourned day or days.
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> (iii) The Assessing Authority may require the dealer to produce further evidence on specified points on the adjourned day or days.

(iv) The Assessing Authority should assess the amount of tax due from the dealer, that is to say, pass the order of assessment, on the day on which the hearing of the evidence is completed or "as soon afterwards as may be".

The last phrase is absent in some of the similar statutes. It, therefore, may be open to argument whether the assessment order passed under section 11(3) of the Act after undue delay of the completion of the hearing of the evidence produced or required to be produced by the dealer is valid or not. But we are not concerned with the said question in this case as on the facts and in the circumstances appearing in relation to the assessment proceedings of either to the two years the production of evidence by the assessee could not and has not started as yet because of the filing of the writ petitions and the appeals in this Court. It goes without saying that the assessing authority will be well advised to complete the assessment proceedings in question as soon as it may be possible to do so after the delivery of this judgment.

7. Sub-section (4) of section 11 is attracted in a case where a dealer having furnished a Return in respect of a period fails to comply with the terms of a notice issued under sub-section (2). In such a case the Assessing Authority has to take some effective step, such as issuance of a notice to the assessee intimating to him that he is proceeding to assess to the best of his judgment the amount of tax due from the dealer. On failure of a dealer to furnish a Return in respect of any period by the prescribed date the Assessing Authority after giving the dealer a reasonable opportunity of being heard can proceed to assess to the best of his judgment the amount of tax, if any, due from the dealer. In such a case also an effective step such as issuance of a notice to the dealer concerned showing that the Assessing Authority is proceeding to assess has got to be taken within 5 years of the expiry of the period concerned. Sub-section (6) is attracted in the case of a dealer who being liable to pay tax under the Act has failed to apply for registration. Similar steps as the ones to be taken under sub- section (5) are to be taken under sub-section (6) within a period of 5 years of the expiry of the concerned period. But the Legislature advisedly did not fix any period of limitation for taking up of the steps or the passing of the assessment order under any of the sub- sections (1), (2) or (3). The reason is obvious. Best judgment assessments in the circumstances mentioned in any of the sub-sections (4), (5) or (6) could not be allowed to be made after the expiry of a certain reasonable time which the Legislature thought was three years previously but made it five years by Punjab Act 28 of 1965. But where a registered dealer has filed the Return the assessing authority can pass the assessment order under sub-section (1) and accept the Return filed by the dealer as correct and complete. In such a case the formality of passing an order of assessment is to be completed without any further demand of tax from the dealer. For the issuance of a notice under sub-section (2) no time limit has been fixed, but the assessing authority must remain on its guard of taking the steps and completing the assessment as soon as it may be possible to do so. Otherwise, the risk involved may just be pointed out. Take a case where a notice under sub-section (2) is issued after the expiry or just on the verge of expiry of the period of 5 years and the dealer fails to comply with the terms of the notice. In such a case the assessing authority may have to proceed to make the best judgment assessment under sub-section (4) attracting the bar of limitation of 5 years. But, of course, there may be a case where in spite of the failure of the dealer to comply with the terms of a notice issued under sub-section (2) the assessing authority may be in a position to complete the assessment under sub-section (3), treating the alleged failure of the dealer as not a real failure on his part.

8. We now proceed to discuss some of the relevant decisions on the points at issue.

9. In Bisesar House case (supra), Chagla, C.J. delivering the judgment of a Full Bench of the

Bombay High Court on a consideration of the similar provisions of section 11 of the C.P. and Bear Sales Tax Act, 1947 applied the ratio of his decision in Commissioner of Income-Tax, Bombay City vs. Narsee Nagsee & Co., to a case covered by section 11(2) of the Sales Tax Act. With respect to the learned Chief Justice we say that he was not right when he said at page 660 : "Section 11(2) is in the substantial sense an initiation of fresh proceedings by the Commissioner. It is open to the Commissioner to be satisfied with what the assessee has done and pass an order under section 11(1). But if he is not satisfied, then he initiates fresh proceedings under section 11(2) by issuing a notice. That undoubtedly is putting the assessee to the peril of the apprehension that as a result of the notice his tax might be enhanced. If the principle we have laid down in Narsee Nagsee's case - 31 I.T.R. 164 is correct, then that principle would undoubtedly apply to the issuing of a notice under section 11(2)". As held by this Court in the case of Ghanshyamdas vs. Regional Assistant Commissioner of Sales Tax, Nagpur & Other, even the filing of a Return by a dealer is tantamount to initation or commencement of a proceeding under the Sales Tax Act. The decision of the Bombay High Court in Narsee Nagsee's case was affirmed by a Division Bench (by majority) of this Court in Commissioner of Income-tax, Bombay City I. vs. Narsee Nagsee & Co.

10. Subba Rao, J, as he then was, delivering the majority opinion of a Constitution Bench of this Court in Ghanshyamdas's case (supra) referring to the decision of the Privy Council in Rajendranath Mukherjea vs. Income-tax Commissioner, said at page 983 of 14 S.T.C. "This decision is a clear authority for the position that if a return was duly made, the assessment could be made at any time unless the statute prescribed a time limit. This can only be for the reason that the proceedings duly initiated in time will be ending and can, therefore, be completed without time limit". At page 987 says the learned Judge : "It is manifest that in the case of a registered dealer the proceedings before the Commissioner start factually when a return is made or when a notice is issued to him either under section 10(3) or under Section 11(2) of the Act". As rightly pointed out by Shah, J. as he then was, at page 436, if we may say so with respect, in the case of Regional Assistant Commissioner of Sales Tax, Indore vs. Malwa Vanaspati and Chemical Co. Ltd., section 11(2) is a typographical error in the sentence extracted above. In disapproval of the view of the Full Bench expressed in Bisesar House case (supra) it was reiterated at page 989 in Ghanshyamdas's case "As we have held that the submission of a statutory return would initiate the proceedings and that the proceedings would be pending till a final order of assessment was made on the said return, on question of limitation would arise .... For the foregoing reasons we hold that a statutory obligation to make a return within a prescribed time does not proprio vigore initiate the assessment proceedings before the Commissioner; but the proceedings would commence after the return was submitted and would continue till a final order of assessment was made in regard to the said return".

11. In Narsee Nagsee's case (supra) it has been pointed out by the majority of the Bench that a notice under section 11(1) of the Business Profits Tax Act, 1947 "must be given within the financial year which commences next after the expiry of the accounting period or the previous year which is by itself or includes the chargeable accounting period in question". (vide page 317 of 40 I.T.R). It was also pointed out in that case that the words "profits escaping assessment" in section 14 of the Business Profits Tax Act applied equally to cases where notice had been given but had resulted in no assessment and to cases where due to inadvertence, oversight or any other reason no notice was given and therefore no assessment was made.

12. This Court in The State of Punjab & Others vs. Tara Chand Lajpat Rai, reversed the decision of the Punjab High Court in Civil Writ No. 1088/61 and following the decision of this Court in Ghanshyamdas's case (supra) stated at page 501 :

> This decision is, therefore, a clear authority for the proposition that assessment proceedings commence in the case of a registered dealer either when he furnishes a return or when a notice is issued to him under section 11(2) of the present Act, and that if such proceedings are taken within the prescribed time though the assessment is finalised subsequently, even after the expiry of the prescribed period, no question of limitation would arise".

In the case of Tarachand Lajpat Rai (supra) the dealer had filed the Returns after the expiry of 30 days from the relevant date but they were not rejected by the Department on that ground. Notice under section 11(2) of the Act was issued and that also was done before the expiry of period of 3 years' as the period of limitation stood then in the other sub-sections. On the authority of Ghanshyamdas's case it was held "the assessment proceedings commenced either when the respondent- firm filed the returns or in any event from the date of the said notice. Both the events, therefore, were within the prescribed time." The decision of the Full Bench of the Punjab High Court in the case of Rameshwar Lal Sarup Chand (supra) was merely distinguished on the ground that the question decided in Ghanshyamdas's case did not come up for consideration in Rameshwar Lal's case. But we think it is high time that the decision of the Full Bench of the High Court in Rameshwar Lal's case should be clearly and expressly over-ruled now. An identical view had been expressed by this Court reversing the decision of the Punjab High Court in Letters Patent Appeal No. 319/63 in the case of State of Punjab and anr. vs. Murlidhar Mahabir Prasad. The challenge before this Court in the case of Madhya Pradesh Industries Ltd. vs. State of Maharashtra and Others, was whether sub- section (3) of section 11A of the C.P. and Berar Sales Tax Act, 1947 was violative of Article 14 of the Constitution. The argument was repelled and it was stated at page 402 by Hegde, J. delivering the judgment on behalf of himself, Wanchoo, C.J. and Mitter, J. :

> "This Court in Ghanshyamdas's case specifically overruled the decision of the Bombay High Court in Bisesar House case. Therein this Court held that while 11(2) deals with pending proceedings, section 11A concerns itself with matters which are not pending. This Court further ruled that in the case of pending proceedings the Act has not prescribed any period of limitation. That decision proceeds on the basis that section 11(2) and section 11A cover different fields and that they do not overlap".

Bachawat, J. speaking for himself and Ramaswami, J. went a step further and in their concurring judgment stated at page 403 :

> "There is no limitation for the issue of a notice under section 11(2). This follows from a plain reading of section 11(2) independently of Section 11A(3). Neither Section 11(2) nor section 11A(3) is violative of Article 14. A notice under Section 11(2) is issued in a pending proceeding, whereas a notice under Section 11A(1) initiates a now proceeding. There is a reasonable basis for classification and differential treatment of the notices under section 11(2) and 11A(1) for the purposes of Limitation."

The majority opinion of the Full Bench of the Punjab High Court was delivered by two Judges in the case of Rameshwarlal Sarupchand (supra) Pandit, J. gave a dissenting opinion. It is wrong to say, as stated by the majority, that the expression "proceed to assess" and the word "assess" connote the same meaning. The ratio of the majority opinion is chiefly based upon the decision of the Full Bench of the Bombay High Court in Bisesar House's case which decision was not approved by this Court and must be deemed to have been over-ruled. The majority, we may also point out with

respect, committed a mistake in appreciating the decision of this Court in the case of Madan Lal Arora vs. The Excise and Taxation Officer, Amritsar, Sarkar, J., as he then was, delivering the judgment on behalf of a Constitution Bench of this Court adverted to the facts of the case and stated that the registered dealer under the Punjab General Sales Tax Act had filed returns for the 4 quarters of the financial year ending on March 31, 1955 as also for the 4 quarters for the financial year ending on March 31, 1956. In respect of each year the Sales Tax Assessing Officer served three successive notices on the dealer, one on March 7, 1958, the other on April 4, 1958, and the third on August 18, 1959. The first two notices were merely under section 11(2) of the Act. But in the last notice which was issued after the expiry of 3 years it was stated that on the dealer's failure to produce the documents and other evidence mentioned in the notice, the case would be decided on best judgment basis. The dealer did not comply with any of the notices and challenged with success by a petition under Article 32 of the Constitution the right of the authorities to make a best judgment assessment. In that connection it was pointed out that the period of 3 years mentioned in sub-section (4) of Section 11 of the Act had to be counted from the expiry of the period in relation to which the returns had been filed and on expiry of the said period the authorities could not proceed to make the best judgment assessment. The third and the last notice given on August 18, 1959 was taken to be a notice to the dealer the assessing authority was proceeding to make the best judgment assessment and since this was done more than 3 years after expiry of all the 8 quarters in respect of the two years it was held to be without jurisdiction and the respondent was restrained from making any best judgment assessment on the petitioner for sales tax for any quarter of the financial years 1954-55 and 1955-56. The decision of this Court in Madan Lal Arora's case justifies our apprehension which we have mentioned in the beginning of our judgment to the effect that if a dealer fails to comply with the notice issued under section 11(2) of the Act, then in such a case, even though there may not be any time limit for issuance of a notice, but on the dealer's failure to comply with it the assessing authority may be obliged to take recourse to sub-section (4) attracting the bar of limitation of 5 years for proceeding to assess on the best judgment basis. The majority, however, was wrong when they said at page 949 of 15 S.T.C. with reference to Madan Lal Arora's case :

> "In the case before the Supreme Court, two notices were within three years and the third notice was beyond three years and their Lordships held that the third notice being beyond three years, the Assessing Authority had no jurisdiction to make to assessment. If the phrase "proceed to assess" bears the meaning which the learned counsel for the State contends for, namely, that only a step towards assessment has to be taken and the assessment can be made at any time after the period of three years, their Lordships would, on the basis of the two notices within the period of limitation, have come to a different conclusion and that is not what has been done."

This was, it appears to us, clearly a mistaken reading of the judgment of this Court. The majority in our opinion, was also wrong in importing the period of limitation provided in sub-sections (4), (5) and (6) of section 11 of the Act into sub-section (3) must also be completed within 3 years from the last date on which the return should be filed under the Act. We are again constrained to point out that the majority of the Full Bench committed a mistake in thinking that this Court had held in Madan Lal Arora's case that the period of 3 years had to be counted from the last date on which the return should be filed. The decision of the Full Bench of the Punjab High Court in the case of Rameshwar Lal's case (supra) is clearly erroneous and must be over-ruled. Pandit, J. in his dissenting opinion had, by and large, taken a correct view in favour of the Revenue.

13. Lastly, we may also make a reference to a recent decision of this Court delivered by one of us

(Untwalia, J,) in the case of Gurbaksh Singh vs. Union of India & Others. An argument quite similar to the one advanced before us was advanced on behalf of the assessee appellant in that case before this Court. It was argued that the period of 4 years of limitation prescribed under sub-section (2a) of section 11 of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, should be imported into the revisional and the appellate power of the authorities conferred on them under section 20. This argument was repelled and it was pointed out that the legislature had not provided any period within which an order was to be made by an Appellate or Revisional authority; no such period should be imported in the exercise of the power on the basis of section 11(2a). Mr. Desai relied upon the pen-ultimate paragraph of this decision in support of his contention that in any view of the matter notice under section 11(2) had to be issued and the assessment completed within a reasonable time. We do not accept this contention to be sound. The argument as presented cannot be accepted to be correct. In Gurbaksh Singh's case it was not stated that the exercise of the revisional power suo moto could not be made after an undue long delay. On such an assumption it was merely found as a fact that there was no undue delay in the suo moto exercise of the power.

14. In the result we do not find any merit in the appeals. They are dismissed with costs. Hearing fee one set only.

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