

Commissioner of Sales Tax, U. P., Lucknow

Vs

M/S. Super Cotton Bowl Refilling Works

Civil Appeal No. 532 (Nt) of 1989

Commissioner of Sales Tax, U. P., Lucknow

Vs

M/S. Agra Beverages Corporation (P) Ltd., Agra

Civil Appeal No. 533 (Nt) of 1989

(S. Ranganathan, Sabyasachi Mukharji JJ)

02.02.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted and these appeals are disposed of by the judgment herein.
2. These appeals are from the judgment and orders of the High Court of Allahabad dated February 4, 1987 and March 26, 1987 respectively. These involve a common question. The facts of the appeal arising out of Special Leave Petition No. 1293 of 1988 and the facts of the appeal arising out of Special Leave Petition No. 1296 of 1988 are similar. In order to appreciate the contentions raised herein, it would be appropriate to deal with the facts of the appeal arising out of Special Leave Petition No. 1293 of 1988. The assessee is engaged in repairing and refilling of cotton bowls on the shafts which are used as part of the calendering machine in the textile industry. The cotton bowl is a shaft made of steel on which a thick layer of cotton is pasted and affixed. It is used in the textile finishing industries as an essential part of calendering machine. In the course of its use the cotton pasted on the shaft loses its thickness and shape and after some time it requires repairing and refilling. The assessee in this case moved an application under Section 35 of the U.P. Sales Tax Act, 1948 (hereinafter called 'the Act'). It may be mentioned that Section 35 was added by Section 13 of the U.P. Sales Tax (Amendment and Validation) Act 23 of 1979. Section 35 of the said Act has been amended by Section 31 of the U.P. Act 12 of 1979. Section 35 provides for determination of disputed questions by moving an application before the Commissioner of Sales Tax. The relevant part of the said section as it stood at the relevant time was as follows :

35. Determination of disputed question. - (1) If any question arises, otherwise then in a proceeding pending before a court or before an assessing authority under Section 7 or Section 21, whether, for the purposes of this Act, -

(a) any person or association of persons, society, club, firm, company, corporation, undertaking or government department is a dealer; or

(b) any particular thing done to any goods amounts to or results in the in the manufacture of goods within the meaning of that term; or

(c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefor; or

(d) any particular dealer is required to obtain, or to apply for the renewal of registration; or

(e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof,

the person or the dealer concerned may, after depositing the fee specified in Section 32, submit an application to the Commissioner of sales Tax, along with such documents as may be prescribed.

(2) The Commissioner of Sales Tax shall, after giving the applicant an opportunity of being heard, decide as he deems fit the question so arising :

Provided that, before giving such decision, the Commissioner of sales Tax may, in his discretion, ask an officer subordinate to his to make such inquiries as he considers necessary for the decision of the question.

(3) No decision of the Commissioner of Sales Tax under this section shall affect the validity or operation of any order passed earlier by any assessing authority, appellate authority, revising authority or the Tribunal.

(4) No question which arises from an order already passed, in the case of the applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.

(5) A decision given by the Commissioner of sales Tax under this section shall, subject to an appeal to the Tribunal, be final.

##(6) * * *##

33. The question that arises in these appeals before us is the true interpretation of sub-section (5) of Section 35 of the Act, namely, whether a revision shall lie to the High Court from the decision of the commissioner under Section 35 of the Act which has been the subject matter of an appeal before the Tribunal. The respondent-dealer moved an application under Section 35 of the Act and the decision was rendered in terms of said section. The decision inter alia, included the questions whether the job of repeating and refilling of cotton bowl and the process involved therein amounted to "manufacture" or "sale" within the meaning of the Act. The Commissioner of sales Tax by his order dated June 10, 1985 decided both the questions against the assessee. Aggrieved thereby the assessee he preferred and appeal before the Sales Tax Tribunal. The tribunal by its order dated November 14 1985 allowed the appeals in part. The Tribunal held that the process repairing and refilling of cotton bowls of the customers did not amount to "manufacture" as defined under Section 2 (e-1) of the Act. It further held that such an activity of the assessee amounted to "sale" as defined under Section 2(h) of the Act as amended by the U.P. Sales Tax Amendment and Validation Act, 1985. It is against this decision of the Sales Tax Tribunal that the Commissioner of Sales Tax had

preferred revision to the High Court. The High Court went into the question whether further revision lay to the High Court. The High Court, noticed the terms of Section 35 noted hereinbefore which provided by sub-section (5) of Section 35 that a decision given by the Commissioner of Sales Tax under that section, subject to an appeal to the Tribunal, shall be final. The High Court examined that question whether further revision lay and answer it in the negative. Therefore, we were concerned in these appeals with the question whether at the relevant time in terms of Section 35 of the Act any further revision lay to the High Court from the decision of the Commissioner which has been the subject matter of appeal before the Tribunal. The High Court came to the conclusion that having regard to the scheme of the provisions and the amendment made by the under U.P. Act 12 of 1979 and in view of the decision of the Division Bench of the High Court in *Indo Lube Refiners v. STO* ((1987) 66 STC 145 (All)) no further revision lay to the High Court from the order of the Tribunal. In that view of the matter, the High Court dismissed the revision. Aggrieved thereby, the Commissioner has come up in appeal before this Court in these two appeals.

4. Shri Manchanda for the appellants and Shri Raja Ram Agarwal for the respondents both submitted that the judgment under appeal is not correct though for different reasons. It is necessary to refer to the scheme of the Act and the amendments from time to time effected therein. Broadly speaking, the amendment is made by the sales Tax Officer in terms of Section 3 and other allied sections. Section 9 of the Act deals with appeals and provides that any dealer or other person aggrieved by the order made by the Assessing Authority other than an order mentioned in Section 10-A, may, within 30 days from the date of the service of the copy of the order or appeal to such authority, as may be prescribed, request the appellate authority in writing for summary disposal of his appeal. The other consequential provisions of law need not at the present moment be examined in detail. Section 10 provides for Sales Tax Tribunal. The section was submitted at first by U.P. Act 12 of 1979 and thereafter amended by U.P. Act 22 1984. After the substitution by the U.P. Act 12 of 1979 the Act has provided that there shall be a Sales Tax Tribunal consisting of a President and such other members as the State Government may from time to time been it necessary to appoint from amongst persons who have been, or who are qualified to be judges of the High Court and persons who hold or have held a post not below the rank of Deputy Commissioner of Sales Tax provided that when the Tribunal consisted of one or more persons who have been judges of a High Court then he or one of them he or one of them should be appointed the President. Sub-Section (5) of Section 10 authorities the Tribunal, as the case may be, to confirm, cancel or vary such order. Sub-Section (2) of Section 10 stipulates that any person aggrieved by an order passed by an appellate authority under Section 9 or by the revising authority under Section 10-B or by a decision given by the Commissioner of Sales Tax under Section 35 may, within six months from the date of service of the copy of such order or decision on him, prefer an appeal to the Tribunal. Sub-Section (10)(a) of Section 10 provides that an appeal against the order of the Appellate Authority under Section 9 shall be heard and disposed of, inter alia, (i) by a Bench of one member, where such order is passed by an Assistant commissioner (Judicial), the amount of the tax, fee or penalty in dispute does not exceed five thousand rupees; and (ii) by a Bench of two members, in any other case. An appeal against the order passed under Section 10-B should be heard and disposed of by a Bench of two members. An appeal against an order passed under Section 35 shall be heard and disposed of by a Bench of three members. The President has the power to direct an appeal to be heard and decided by a larger Bench and transfer an appeal from one Bench to another.

5. There was a subsequent amendment by Section 10 of the U. P. Act 22 of 1984. Section 10 as it stands after amendment by U.P. Act 22 of 1984 is as follows :

10. Sales Tax Tribunal. - (1) There shall be a Sales Tax Tribunal consisting of such

members, including a President, as the State Government may, from time to time, deem it necessary to appoint from amongst -

- (a) the persons who are qualified to be judges of the High Court; and
- (b) the persons belonging to the Uttar Pradesh Sales Tax Service who hold or have held a post not below the rank of Deputy Commissioner of Sales Tax :

Provided that -

- (i) Where the Tribunal consist of one or more persons who is or are members of the Uttar Pradesh Higher Judicial Service, then he or the senior most amongst them shall be appointed President;
- (ii) no person shall be appointed from amongst advocates unless he has had income tax on income from such profession (exclusive of all other incomes) in each of the five consecutive years preceding such appointment.

(1-A) The State Government may prescribe such other qualifications or conditions for the appointment of the President and other members of the Tribunal as it may deem fit.

(1-B) The provisions of Rule 56 of the Uttar Pradesh Fundamental Rules Shall continue to apply to every member of the Tribunal including the President, whether appointed before or after the commencement of the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1983, as they apply to any other government servant :

Provided that a member of the Tribunal including the President, appointed before the commencement of the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1983, may continue as such till he attains the age of sixty years.

(2) Any person aggrieved by an order passed by an appellate authority under section 9, other than an order referred to in subsection (4-A) of that said Section, or by the revising authority under Section 10-B or by the Commissioner of Sales Tax under sub-section (3) of Section 4-A or by a decision given by the Commissioner of Sales Tax under Section 35 may, within Six months from the date of service of the copy of such order or decision on him, prefer an appeal to the Tribunal :

Provided that where the disputed amount of tax, fee or penalty does not exceed one thousand rupees, the a appellant may, at his option, request the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly.

Explanation. - For the purpose of this sub-section, the expression 'any person', in relation to any order passed by an authority other than the Commissioner of Sales Tax, includes the Commissioner of Sales Tax.

(2-A) The manner and procedure of Summary disposal of appeal shall be such as may be prescribed.

(3) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications

under this section.

(4) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.

(5) The Tribunal may, if it has not already dismissed the appeal under sub-section (4), after calling for and examining the relevant records, and after giving the parties a reasonable opportunities of being heard or as the case may be, after following the procedure prescribed under sub-section (2-A) -

(a) confirm, cancel or vary such order, or

(b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner of Sales Tax, as the case may be, to pass a fresh order after such further inquiry, if any as may specified, or

(c) order such amount of tax, fee or penalty or other money as may have been realised in excess of the due amount to be refunded according to the provision of this Act.

Explanation. - The power to an order referred to in clause (a) includes the power to vary the order by reducing or enhancing the amount of assessment or penalty.

(6) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved within thirty days from the filing of such appeal, after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due or proceedings for re-assessment, under the order appealed against till the disposal of the appeal :

Provided that -

(i) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one-third of such disputed amount in addition to the amount required to be deposited under sub-section (1) of Section 9;

(ii) the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirement of clause (i) regarding payment of one-third of such disputed amount.

(8) No order passed under this section for the stay of recovery of tax, fee or penalty shall remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of assessing authority concerned for payment of the outstanding amount.

(9) The members of the Tribunal shall sit in such Benches of one, two or more members as may be constituted from time to time, and do such work of the Tribunal as may, subject to sub-section (10) and the rules, be allotted to them, by order, or in accordance with the directions of the President of the Tribunal.

(10)(a) An appeal against the order of appellate authority under Section 9 shall be heard and disposed of -

(i) by a Bench of two members, where such order is passed by a Deputy Commissioners (Appeals) or the amount of tax, fee or penalty in dispute exceeds ten thousand rupees;

(ii) by a single member in any other case.

(b) An appeal against an order passed under Section 10-B shall be heard and disposed of by a Bench of two members.

(c) An appeal an order passed under sub-section (3) of Section 4-A or a decision given under Section 35, which shall be filed before the President, shall be heard and disposed of by a Bench of three members.

(d) The President may, if he so thinks fit -

(i) direct an appeal to be heard and decided by a larger Bench;

(ii) transfer an appeal from one Bench to another Bench.

(11) The place of sitting and procedure of, and the manner presenting appeals and other documents to the Tribunal shall, subject to the rules, be such as the Tribunal may deem fit to adopt.

(12) The decision of case of heard by a Bench shall be in accordance with the opinion of the majority. Where the members are equally divided the President of the Tribunal may -

(a) if he was not a member of such Bench, give his own opinion or refer the case for the opinion of another members, whereupon the case shall be decided in accordance with such opinions; or

(b) form a larger Bench.

The section has been set out in extenso in order to appreciate the contentions raised.

6. As will be apparent from the aforesaid sub-section (10) (c) an appeal against an order passed or a decision given under Section 35 shall be filed before the President and shall be heard and disposed of by a Bench of three members. So far as revision is concerned, this was the subject matter of Section 11 of the Act. The U.P. Sales tax Act of 1948 underwent an amendment in 1984 so far as revision is concerned and as it stands today and so far as it is material for the present purpose, is as follows :

11. Revision by High Court in special cases. - (1) Any person aggrieved by an order made under sub-section (4) or sub-section (5) of Section 10, other than an order under sub-section (2) of that section summarily disposing of the appeal, or by an order passed under Section 22 by the Tribunal may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the

ground that the case involves any question of law :

Provided that, where such order was served on the person concerned at any time before the date of commencement of this section, as substituted by the Uttar Pradesh Taxation Laws (Amendment and Validation) Act, 1978) Act, (hereinafter in this section referred to as 'the said date'), and the period of one hundred and twenty days for making the application as referred to in this sub-section, as it existed before the said date, had not expired on the said date the person aggrieved may apply for revision within sixty from the said date.

The other sub-sections are not relevant for the present purpose.

7. Section 10-A deals with orders against which no appeal or revision lies and Section 10-B stands for revision by the Commissioner of Sales Tax. Section 11, as mentioned hereinbefore, stands for revision by the High Court and has been amended from time to time. In the aforesaid background the question posed in these appeals will have to be examined in the light of the decision of the High Court. The High Court in its judgment under appeals after analysing the provisions of Section 35 observed that the Commissioner entered into the determination of the disputed questions. Sub-clause (2) of Section 35 of the Act, according to the High Court, enjoins on the Commissioner to decide the questions referred to him as he deems fit after giving the applicant an opportunity of being heard. Under sub-clause (5) of Section 35 it has been stated that the decision given by the Commissioner of Sales tax shall subject to an appeal to the Tribunal, be final. The High Court while examining the section noticed that when an appeal against the order passed under Section 35 of the Act is before the Tribunal, the appeal is to be heard and disposed of by a Bench of three members, although in regard to other appeals before the Tribunal these can be disposed of even by a single members or by a Bench consisting of two members. The High Court noted that under sub-clause (5) of Section 35 of the Act prior to its amendment brought out by U.P. Act 12 of 1979, an appeal used to lie to the High Court against the order to the Commissioner of sales Tax. By the aforesaid amendment brought out by U. P. Act 12 of 1979 under clause (5) of Section 35 the words "High Court" have been deleted and substituted by the word "Tribunal". The learned Judge of the High Court observed that an appeal before the Tribunal was specially treated by the legislature and it was enjoined that it should be disposed of by a Bench of not less than three members. The learned Judge noted that the Division Bench of the High Court in the case of Indo Lube Refineries v. STO ((1987) 66 STC 145 (All) had taken the view that an order passed by the Commissioner under Section 35 of the Act was an administrative order and in so doing he did not act as a Tribunal.

8. In this connection reference may be made to the Division Bench decision of the High Court of Allahabad in Indo Lube Refineries ((1987) 66 STC (All). There the petitioner filed a writ petition contending that as the order of the Commissioner of Sales Tax had become final under subsection (5) of Section 35 of the U.P. Sales Tax Act, 1948, it was binding on the revenue as well as the petitioner and it was open to the Sales tax Officer who was inferior in hierarchy to ignore the order of the Commissioner in passing the assessment order. Dismissing the petition, it was held by the High Court that the Sales Tax Act had made a clear distinction between judicial proceedings which had to be conducted and concluded in accordance with Section 7, 9, 10, 10-B, 21 and 35 and the High Court noted that the proceedings under Sections 7 to 10-B were of different character than the one contemplated under Section 35, and it excluded a proceeding pending before a court, or before an assessing authority under amendments 7 or Section 21. It was a type of miscellaneous jurisdiction. It was held, to be exercised only in given circumstances or situations. In respect of proceedings under Section 7, which will take within itself an appeal and revision, the legislature had

not made the Commissioner a final arbiter. The Sales Tax Officer or the assessing authority while determining the turnover with a view to assess tax liability acts as a tribunal. Likewise, the appellate authority under Section 9 and the Tribunal under Section 10 of the Act are tribunals. The Commissioner did not act as a tribunal while dealing with application under Section 35. The nature of his jurisdiction is administrative according to the High Court. The legislature, according to the High Court, has used the language "otherwise than in a proceeding pending before a court or before an assessing authority under Section 7 or 21" deliberately with a view to maintain and preserve the sanctity of the judicial proceedings under the Act. The word "final" used in sub-section (5) of Section 35 is only with regard to the proceedings contemplated by that section and the order of the Commissioner would be final. But this will not bar the other authorities under the Act from deciding the controversy before it on its own by looking to the evidence and considering the question of law which comes before it. Therefore, the High Court rejected the submission that the order of the Commissioner of Sales Tax is binding in the assessment proceedings and proceedings have to be decided in accordance with the same.

9. It is difficult to accept the position that under Section 35 which empowers the Commissioner to determine disputed questions and the Commissioner under sub-section (2) after giving the parties opportunity of being, decides a question, his order can be called to be an administrative order. In our opinion, the very language of the Section which joins a decision by the Commissioner envisages that the decision is quasi-judicial and cannot be characterised as administrative. Whether that decision will be binding on other party and what will be the effect of the decision of the Commissioner of Sales Tax in pending assessment proceedings is another matter and we are concerned in these appeals with that question. We are concerned with the question whether on the language of the section a revision is entertainable from the decision of the Commissioner which has been subjected to an appeal to the Tribunal. In our opinion, in view of the language used specifically in the absence of a provision that such a revision will be maintainable, such revision will not be. Sub-section (5) of Section 35 after the amendment states that the decision of the Commissioner of Sales Tax under this section shall, subject to an appeal to the Tribunal, be final. In view of the language of the section, in our opinion, it cannot contemplate a further revision to the High Court against a decision of the Tribunal. In *Kydd v. Watch Committee of City of Liverpool* (1908 AC 327, 331-32 : (1907) 2 KB 591), Lord Loreburn, L.C., construing the provisions of Section 11 of the Police Act, 1890 of England which provided an appeal to quarter sessions as to the amount of a constable's pension, and also stipulated that the court shall make an order which shall be just and final, observed :

Where it says, speaking of such an order, that it is to be final, I think it means is to be an end of the business at quarter sessions

The Judicial Committee in *Maung Ba Thaw v. Ma Pin* (LR (1933-34) 61 IA 158 : AIR 1934 PC 81 : 1934 ALJ 402) while dealing with the Provincial Insolvency Act observed that when a right of appeal was given to any of the ordinary courts of the country, the procedure, orders and decrees of that court would be governed by the ordinary rules of the Civil Procedure Code and therefore an appeal to Privy Council was maintainable by the decision of the High Court. Here in the instant case the right of appeal has been given under the Act not to any ordinary court of the country under the Code of civil Procedure but to the courts enumerated under the Sales Tax Act and the revision is contemplated under the provisions of the Sales Tax Act. 'Final' in the section means that it is final and under the Act subject of the limited procedure contemplated under the Act. The intention of the legislature, in our opinion, in the amended scheme of the Act is clear and manifest and meaningful and the scheme of the Act is to regulate the determination of the question as to the assessability and

liability and question in connection thereto. The observation of Lord Lord Loreburn, L.C. were referred to in *South Asia Industries Pvt. Ltd. v. S. B. Sarup Singh* ((1965) 2 SCR 756 : AIR 1965 SC 1442), where this Court observed at page 766 of the report that the expression "final" prima facie meant that an order passed on appeal under the Act was conclusive and no further appeal lay. A right to revision under the Act is a right given by the Act. In this connection, observation in *Jetha Bai and Sons, Jew Town v. Sunderdas Rathenai* ((1988) 1 SCC 722) may be relied on.

10. We have noted that Section 11 of the Act after the amendment stipulated that any person being aggrieved by an order made under sub-section (4) or sub-section (5) of Section 10, other than an order under sub-section (2) of that section summarily disposing of the appeal, or by an order passed under Section 22 by the Tribunal, may apply for revision. Where an appeal is not disposed of summarily but by a decision, as in this case, and where the appeal is contemplated in such situation, to be heard by a Bench of three judges, in our opinion, if any further revision would have laid from the decision of the Tribunal then such decision of the Commissioner would not have been made final by sub-section (5) of Section 35. It may be mentioned that the Tribunal after exhaustively considering the contentions of the case allowed the appeal in part and the order of the Commissioner of Sales Tax was modified by holding that the process of repairing refilling of the cotton bowls of the customers did not amount to "manufacture" as defined in section 2(e-1) of the Act, as amended by the U.P. Sales Tax (Amendment and Validation) Act, 1985 (U.P. Act 38 1975) with effect from February 2, 1985. In the Scheme of the Act, in our opinion, it was enjoined that such an appeal is to be heard by a Bench of three judges. Where it was provided that the Tribunal, in opinion, it would be incorrect to contemplate that in such a situation a further revision under Section 11 lay to the High Court. Revision to the High Court in special cases under Section 11 is contemplated on the ground that the case involved a question of law. It may be mentioned that the High Court had mentioned that under sub-clause (5) of Section 35 of the Act prior to its amendment that an appeal used to lie to the High Court against an order of the Commissioner of Sales Tax. By the aforesaid amendment brought forward by the U. P. Act 12 of 1979 under clause (5) of Section 35 the words "High Court" have been deleted and substituted by the word "Tribunal". It appears that the High Court was right, therefore, in holding that an appeal to the Tribunal against an order of the Commissioner lies. So far as the appeal before the Tribunal against the order passed under Section 35 is concerned, special treatment has been provided for by the legislature. The Tribunal has come in place if the High Court in hearing the appeal. In such a situation to contemplate when the language of the section envisages that the order of the Commissioner would be final, subject to an appeal to the Tribunal that a further revision lay to the High Court would be unwarranted. As mentioned here before, we have to find out the intention of the legislature in such a situation. The intention of the legislature is a slippery phase as observed in *Aron Salomon v. A. Salmon and Company Ltd.* (1897 AC 22, 38), see also observation in *Lord Howard De Walden v. IRC* ((1948) 2 All ER 825) In such cases it is better to find out the intention of the legislature from the words used by the natural meaning of the words and the spirit and reason of the law. See *Cross on Statutory Interpretation*, 2nd edn., page 21.

11. Having regard to the scheme manifested from the amendment, that is to say, to make the Commissioner's decision final, subject to an appeal to the Tribunal where the Tribunal is enjoined to hear such an appeal by Bench of three members and where revision is provided only in special cases, in our opinion, it would be improper to interpret the spirit and reason of that law in such a way as to enjoin that a further revision lay to the High Court under Section 11 of the Act. In our opinion, therefore, the High Court right that no further revision in such situation lies to the High Court. This, however, does not eliminate the correction by the High Court. In an appropriate case by exercise of a writ of certiorari under Article 226 of the Constitution it exercises superintendence

over all Courts and tribunals throughout the territory. See in this connection Re Gilmore's Application ((1957) 1 All ER 796). We are not concerned with that situation in these appeals. In that view of the matter it appears to us that the High Court is right insofar as it held that no revision lay to the High Court.

12. These appeals, therefore, fail and are dismissed. Parties will pay and bear their own costs.

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