

State of Tamil Nadu

Vs

Mahalakshmi Textile Mills Ltd.

Civil Appeal No. 2281 of 1980

(M. Srinivasan, U. C. Banerjee JJ)

03.02.1999

JUDGMENT

M. Srinivasan J.

1. The short facts leading to this appeal are as follows : The respondent-assessee was assessed to sales tax by the Assessment Officer. After some time, he invoked the *suo motu* powers of the Deputy Commissioner under Section 32 of the Tamil Nadu General Sales Tax Act (for short "the Act") questioning the correctness of the assessment. The Deputy Commissioner dismissed the petition *in limine*. The assessee filed a writ petition challenging the said order in the High Court. The High Court held that the Deputy Commissioner should entertain the revision and decide it on its merits. The matter was thus remanded.

2. After remand, the Deputy Commissioner once again dismissed the petition on merits. The assessee filed an appeal to the Tribunal which went into the merits and found that the assessee's contention was correct. Consequently, the appeal was allowed. The said judgment of the Tribunal was challenged by the appellant in revision under the Act.

3. In the revision petition, following three contentions were urged : (1) that the time limit of four years for exercising the *suo motu* powers of the Deputy Commissioner under Section 32 had expired by the time he passed his order on 19th February, 1968, and the order of assessment could not be revised at that stage; (2) that the assessee not having filed an appeal against the order of assessment could not invoke the revisional jurisdiction of the Deputy Commissioner; and (3) that as the exemption of the sales from tax was already available under the law and the assessee having shown the amount of turnover in its return and got the same assessed without protest could not later contest the liability and invoke the jurisdiction under Section 32. All the three contentions were rejected by the High Court and the appellant is before us in this appeal.

4. In our opinion, none of the contentions has any merit. Section 32(2) prescribes three conditions for the Deputy Commissioner to pass an order under sub-section (1) of the said Section - (a) the time for appeal against the order had expired; (b) the order had not been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal, or of a revision in the High Court; and (c) more than four years had not expired after the passing of the assessment order.

5. The above Section shows that the time limit prescribed does not prevent the Deputy Commissioner from passing an order on an application filed before him under Section 32 within the period mentioned in the sub-section. Here the revision petition under Section 32 was filed by the assessee within a period of four years and he passed an order on a later date. As the High Court has

rightly pointed out, just because the Deputy Commissioner took time to pass the order on the application of the assessee, it cannot be said that the time limit of four years prescribed by the Section had expired and he had no jurisdiction to pass the order. We agree with the reasoning of the High Court and reject the first contention.

6. As regards the second contention, the Section itself contemplates a revision being filed when there was no appeal before the appellate authority. In fact, sub-section 2(a) says that a revision could be filed only after the time for appeal against the order had expired. that means, if the assessee had not filed an appeal within the time prescribed therefor, he could invoke the jurisdiction of the Deputy Commissioner under Section 32. That is what has been done in the present case by the assessee. The mere fact that he did not invoke the jurisdiction of the appellate authority will not prevent the assessee from invoking the jurisdiction under Section 32 of the Deputy Commissioner.

7. The third contention is based on the facts of the case. According to learned counsel for the appellant, the position in law was not settled for the first time in *K.G. Khosla and Co. (P) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras Division, Madras, 1966(17) STC 473*, by the Supreme Court. What all was done in that case was only to clarify that a sale need not precede an import in order to bring it within the scope of Section 5(2) of the Central Sales Tax Act. Learned counsel submits that the earlier decisions of this Court had laid down the same principle and nothing new was set out in the decision of this Court in K.G. Khosla's case. It may be so, but that does not prevent the revisional authority when it entertained the revision petition on merits pursuant to be direction given by the High Court in the writ petition filed by the assessee to apply the law as declared by the Supreme Court. When the revisional authority dealt with the revision petition under Section 32 pursuant to the order of the High Court, the law had been reiterated by the Supreme Court in K.G. Khosla's case clarifying the position with regard to the question of a sale preceding an import. The Tribunal after going into the facts of the case came to the conclusion that Section 5(2) of the Central Sales Tax Act would apply in this case and the assessee cannot be taxed under the Tamil Nadu General Sales Tax Act. The decision of the Tribunal on the facts cannot be interfered with by the High Court in a revision petition under Section 38 of the Act. The scope of Section 38 was limited to an erroneous decision on a question of law or failure to decide a question of law.

8. Consequently, the judgment of the High Court in the revision filed by the State is correct. The appeal fails and is dismissed with no order as to costs.