SUPREME COURT OF INDIA

M/s. Deepak Agro Foods

Vs.

State of Rajasthan

C.A.No.4327-28 of 2008

(C.K. Thakker and D.K. Jain JJ.)

11.07.2008

JUDGMENT

D.K. Jain, J.

1. Leave granted.

2. These two sets of appeals, by special leave, are directed against the judgments and orders dated 4th May, 2004 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (Writs) No.900/2002 and order dated 15th July, 2005 passed in Review Petition No.8/2005 in Civil Special Appeal No.900/2002. By the impugned main orders, the Division Bench, while allowing the appeals, has set aside the assessment orders passed under the *Rajasthan Sales Tax Act, 1994* (for short `the Act') in respect of assessment years 1995-96 and 1996-97 and has remanded the cases for fresh assessments by a new Assessing Officer, to be nominated by the Commissioner of Commercial Taxes, Rajasthan.

3. Though the appeals pertain to two assessment years but are inter-connected insofar as the decision in appeal pertaining to the assessment year 1996-97 will depend upon the decision in appeal for the year 1995-96 because in its order for the latter year, the High Court has substantially relied on its order for the earlier year. Therefore, we propose to dispose of both the appeals by this common order. However, we shall refer to the facts emerging from the record for the assessment year 1995-96.

4. The appellant, a proprietorship concern, is a dealer under the Act. For the assessment year 1995-96, an ex-parte assessment was framed on 19th May, 1998. On appeal, the order of assessment was set aside by the Deputy Commissioner (Appeals) vide order dated 8th June, 2000 on the ground that proper opportunity of hearing had not been granted to the appellant. In pursuance of the said order, a fresh notice was issued to the appellant for appearance on 12th February, 2002. On the said date at the request of the appellant, the case was adjourned to 14th March, 2002 and then to 23rd March, 2002, when the appellant again sought time for

collecting the requisite details/ information and he was granted three months' time for the said purpose. The case was fixed on 25th June, 2002.

5. According to the appellant, he appeared before the Assessing Officer on 25th June, 2002 and requested for some more time to furnish the bank statements etc. and the case was accordingly kept for 29th June, 2002. However, on 29th June, 2002, when the appellant appeared before the Assessing Officer, he is said to have been told that the assessment order had already been passed on 7th June, 2002.

6. Being aggrieved, the appellant challenged the said order by preferring a writ petition. In the writ petition, it was alleged that the assessment order was anti-dated and in fact the same was passed on 29th June, 2002, by which date the period of limitation was over. Interpolation in the order sheets dated 23rd March, 2002 and 25th June, 2002 was alleged and it was also stated that the appellant was coerced to countersign the cuttings and tempering in the order sheets. However, the writ petition was dismissed by the learned Single Judge in limine, inter alia, on the ground that if the writ petitioner had any grievance that the proceedings had not been recorded correctly, he could have drawn the attention of the Presiding Officer towards such errors while the matter was still fresh to his mind. Accordingly, the learned Single Judge directed the appellant to bring the alleged anomalies to the notice of the Assessing Officer and simultaneously, if so advised, he could challenge the assessment order by filing appeal before the Appellate Authority.

7. The correctness of the order passed by the learned Single Judge was questioned by the appellant before the Division Bench. On perusal of the original records, particularly order sheets dated 23rd March, 2002 and 25th June, 2002, the learned Judges felt convinced that some over-writings and interpolations in the order sheets had taken place.

> “They observed thus:
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> "In these circumstances, the assertions made by the assessee in his petition about tempering with the record of the proceedings dated 23.3.2002 and 25.6.2002 is apparent, which makes the assessment order as an outcome of these mechanisations, by anti dating the proceedings and pass the order by anti dating it and in the allegation of assessee cannot be reasonably ruled out. The assertion of assessee stands fully corroborated by the record of the proceedings which speaks eloquently about its tempering with. Obviously, the assessee would not be a party to it to suffer anti dated ex-parte order to his detriment. It can reasonably be attributed to the Assessing Officer, who had chosen this path for the reasons best known to him.
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> More so the Assessing Officer having been impleaded as party respondent by name has not chosen to appeal and answer the assertions. It is a case in which it can very well be said that the record speaks for itself. In the aforesaid circumstances, an order alleged to have been passed on 7.6.2002 in the absence of the assessee by tempering with the record of the proceedings dated 23.3.2002 and 25.6.2002 cannot be sustained."

> The Division Bench strongly felt that it was a fit case in which arm of the Court in exercise of its extraordinary jurisdiction must reach to remedy the breach of principles of natural justice, arising from breach of code of conduct, by officer acting against all canons of fair play and transparency in discharging its duties as statutory functionary. Accordingly, as stated supra, the appeal was allowed; assessment order dated 7th June, 2002 was set aside and demands raised consequent thereto were quashed, with a direction to the Commissioner of Commercial Taxes, Rajasthan to nominate another Assessing Officer, not below the rank of a Senior Commercial Taxes Officer, for making fresh assessment. The Division Bench directed the appellant to appear before such nominated authority on 1st of July, 2004 and also that the assessment period would be counted thereafter by 31st August, 2004. As regards assessment year 1996-97, though there was no specific allegation of interpolation in the records, like in the previous year, yet the High Court felt that since the same officer had framed the assessment and the proceedings for this year were being taken up simultaneously, these also did not go out of the cloud of suspicion surrounding the assessing officer. The learned Judges were also of the view that notice fixing the hearing on 8th June, 2002 had not been properly served. Accordingly, assessment order for this year as well was set aside with similar directions as were given in respect of the assessment year 1995-96. Being dissatisfied with the direction for fresh assessments, these appeals have been preferred by the dealer."

8. In the counter affidavit filed on behalf of the respondents, pursuant to the issue of notice, averments in the petition in regard to the interpolation of records are denied. It is stated that the order passed by the Deputy Commissioner (Appeals) on 8th June, 2000, setting aside the assessment order dated 19th March, 1998 was received by the Assessing Officer only on 13th July, 2000 and, therefore, the assessment order passed on 7th June, 2002 was within time. It is pleaded that even if it is assumed that the assessment order had been actually passed on 29th June, 2002, as alleged by the appellant, and had been anti-dated as 7th June, 2002, to save limitation, still the same was within the period of limitation, which was to expire on 12th July, 2002. Though a rejoinder affidavit has been filed on behalf of the appellant but the said assertion has not been controverted.

9. Shri Rajiv Dutta, learned senior counsel appearing on behalf of the appellant, submitted that in the light of its afore-extracted observations and a clear finding that the assessment order for the assessment year 1995-96 had been anti-dated, the order was null and void. It was urged that assessment proceedings after the expiry of the period of limitation being a nullity in law, the High Court should have annulled the assessment and there was no question of a fresh assessment. Thus, the nub of the grievance of the appellant is that in remanding the matter back to the Assessing Officer, the High Court has not only extended the statutory period prescribed for completion of assessment, it has also conferred jurisdiction upon the Assessing Officer, which he otherwise lacked on the expiry of the said period.

10. Per contra, Shri Sushil Kumar Jain, learned counsel appearing on behalf of the respondents submitted that since assessments in respect of both the assessment years had

been completed within time, the impugned directions are in order. Learned counsel also pointed out that pursuant to and in furtherance of the orders passed by the High Court, fresh assessments in respect of both the assessment years have already been completed.

11. Having given anxious consideration to the rival stands, we are satisfied that the appeal is misconceived and is liable to be dismissed.

12. Chapter IV of the Act lays down the procedure for payment of tax, filing of returns and assessments. Section 29 prescribes the procedure and time limits for completion of assessment. Clause (b) of sub-section 8 of Section 29, relevant for our purpose, reads as follows:

> "(8)(b)Notwithstanding anything contained in sub-clause (a), where an assessment order is passed in consequence of or to give effect to, any order of an appellate authority or the Tribunal or a competent court, it shall be completed within two years of the communication of such order to the assessing authority; however, the Commissioner may for reasons to be recorded in writing, extend in any particular case, such time limit by a period not exceeding six months."
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> On a bare reading of the provision, it becomes abundantly clear that if an assessment order is set aside by an Appellate Authority, fresh assessment has to be completed within a period of two years from the date of communication of the order in appeal to the Assessing Authority and not from the date of order in appeal; as is pleaded by the appellant."

13. As afore-stated, in the counter-affidavit as well as in the written submissions filed on behalf of the respondents, it is stated that the order of the Appellate Authority, dated 8th June, 2000, was received by the Assessing Authority on 13th July, 2000 and, therefore, fresh assessment, pursuant to the said order, could be completed by 12th July, 2002 (ignoring further period of six months, which could be extended by the Commissioner). That being so, even if it is assumed that the assessment order, for the assessment year 1995-96, had, in fact, been passed on 29th June, 2002, as alleged by the appellant, it was still very much within the time limit prescribed under the afore-noted provision i.e. 12th July, 2002. We are, therefore, unable to accept the stand of the appellant that the assessment having been made after the expiry of the time limit, it was null and void and should have been annulled.

14. Having come to the above conclusion, the next question which requires consideration is whether in the light of the observations of the Division Bench in the afore-extracted paragraph on the irregularities as also the conduct of the assessing officer, the assessment orders could be said to be null and void, as pleaded on behalf of the appellants?

15. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction

of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See: *Kiran Singh & Ors. Vs. Chaman Paswan & Ors.*[1]).However, exercise of jurisdiction in a wrongful manner cannot result in a nullity - it is an illegality, capable of being cured in a duly constituted legal proceedings.

16. Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit inasmuch as the assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not stricto sensu apply to assessment proceedings. Nevertheless, in order to appreciate the distinction between a "null and void" order and an "illegal or irregular" order, it would be profitable to notice a few decisions of this Court on the point.

17. In *Rafique Bibi (Dead) By LRs. Vs. Sayed Waliuddin (Dead) By LRs. & Ors.*[2], explaining the distinction between "null and void decree" and "illegal decree", this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognisance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure lay down by law. A decree suffering from illegality or irregularity of procedure cannot be termed inexecutable.

18.In view of the above, in the present case, apart from the fact that on a plain reading of Section 29(8)(b) of the Act, it is manifestly clear that fresh assessment for the assessment year 1995-96, framed pursuant to the order passed by the appellate authority on 8th June, 2000, was well within the prescribed time, even otherwise, in the light of the afore-stated settled law, the assessments orders in question could not be held to be null and void on account of the stated irregularities committed by the assessing officer during the course of assessment proceedings. In our opinion, therefore, despite scathing observations by the Division Bench on the conduct of the assessing officer, it was a case of an irregularity in assessment proceedings by the officer, who was not bereft of authority to assess the appellant. At best, it was an illegality, which defect was capable of and has been cured by the High Court by setting aside the orders and by granting consequential relief.

19. In the conspectus of the circumstances aforesaid, we do not find any infirmity in the impugned directions given by the Division Bench of the High Court warranting interference in the exercise of our jurisdiction under Article 136 of the Constitution. The appeals are devoid of any merit and are dismissed accordingly with costs throughout.

[1]*AIR 1954 SC 340*
[2]*(2004) 1 SCC 287*