

SUPREME COURT OF INDIA

State of Punjab & Ors.

Vs.

Shreyans Indus Ltd.

C.A.No.2506-2511 of 2016

(T.S.Thakur,CJI., A.K.Sikri and R.Banumathi,JJ.)

04.03.2016

JUDGMENT

A.K.Sikri.J.

(S.L.P(C)No.21712-21717 of 2009)

1. Leave granted.

2. In these appeals, the judgment which is impugned is passed by the High Court of Punjab & Haryana. The issue involved in these appeals is identical which pertains to the interpretation that is to be accorded to sub-section (10) of Section 11 of Punjab General Sales Tax Act, 1948 (hereinafter referred to as the “Act”). It is for this reason that all these appeals were heard together and can conveniently be disposed of by one common judgment. Since SLP (C) Nos. 21712-21717 of 2009 was taken as the lead case, for understanding the nature of lis that is involved, the factual narration can be addressed from the said appeal.

3. In these appeals, we are concerned with Assessment Years 2000-01, 2001-02, 2002-03 and 2003-04. Obviously, assessment in respect of these Assessment Years was to be made under the said Act. The assessee had filed quarterly returns in respect of the aforesaid Assessment Years. In terms of Section 11(3) of the Act, time-limit for completing the assessment provided therein is three years from the end of the year. Accordingly, assessments were to be made by 30th April, 2004 for the Assessment Year 2000-01, 30th April, 2005 for the Assessment Year 2001-02, 30th April, 2006 for the Assessment Year 2002-03 and 30th April, 2007 for the Assessment Year 2003-04. It is an admitted case that no assessment was made in respect of any of these Assessment Years by the aforesaid stipulated dates.

4. The Assessing Officer, however, sent notices to the respondent- assessee in Form ST-XIV for the aforesaid Assessment Years, i.e., after the expiry of three years. The assessee took an objection that these notices were sent beyond the period of assessment and, therefore, it was

not permissible for the Assessing Officer to issue notice after the expiry of three years and carry on with the assessment proceedings.

5. We may point out that under Section 11(10) of the Act, the Commissioner is empowered to extend the period of three years for passing the order of assessment for such further period as he may deem fit, after recording in writing the reasons for extending such period. When the objection was taken by the assessee that the notices were time barred, the Excise and Taxation Commissioner, Patiala passed orders dated August 17, 2007 granting extension of time. Reason given for extension of time was that the case of the assessee for the year 1999-2000 was pending with the Tribunal. This order of extension was challenged by the respondent along with the order of assessment passed by the Assessing Officer. The Tribunal, however, dismissed the appeal of the assessee vide its orders September 13, 2007 holding that since there was a power of extension conferred upon the Commissioner under Section 11(10) of the Act, the Commissioner was within his powers to extend the period. The contention of the assessee was that though there was a power of extension, such a power could be exercised only within the limitation prescribed. In other words, it was contended that when the normal period of limitation for passing assessment order by the Assessing Officer was three years, as per Section 11(3) of the Act, the power to extend the period could be exercised within the said period of three years and not after the expiry of limitation period. This plea of the assessee was rejected by the Tribunal.

6. The assessee took up the matter further by filing appeals before the High Court. Here, the assessee has succeeded in its submission as the High Court of Punjab and Haryana vide impugned judgment dated September 26, 2008 has held that once the period of limitation expires, the immunity from subjecting itself to the assessment sets in and the right to make assessment gets extinguished. Therefore, when the period of limitation prescribed in the Act for passing the assessment order expires, thereafter, the Commissioner is debarred from exercising his powers under sub-section (10) of Section 11 of the Act and cannot extend the period of limitation for the purposes of assessment. This order is assailed by the Revenue in the instant appeals before us.

7. It would also be pertinent to note, at this stage, that while arriving at the aforesaid conclusion, the Punjab and Haryana High Court has placed heavy reliance upon the view taken by a Division Bench of Karnataka High Court in *Bharat Heavy Electricals Ltd. v. Assistant Commissioner of Commercial Taxes (INT-I), South Zone, Bangalore and others*¹ which judgment of Karnataka High Court, in turn, refers to similar view taken by Gujarat High Court in *Javer Jivan Mehta v. Assistant Commissioner of Sales Tax (Appeal)*². Thus, three High Courts have taken identical view, namely, though power to extend time of three years for a further period of passing the assessment is there with the Commissioner, the same has to be exercised before the expiry of normal period of three years and not subsequent there to.

8. As the submissions of the parties on either side would be better understood once the relevant statutory provision is noted, it would be apposite to reproduce the provisions of Section 11 of the Act, which are as follows:

“11. Assessment of tax. - (1) 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 pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnished the last return in respect of such period.

(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) 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, [pass an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of nay period.

(4) If a dealer having furnished returns in respect of a period, fails to comply with the terms of notice issued under sub-section (2), the Assessing Authority shall, [within a period of three years from the 1st date prescribed for furnishing the last return in respect of such period, pass an order of assessment to the best of his judgment.

(5) If a dealer does not furnish returns in respect of any period by the last date prescribed the assessing authority shall within a period of five years from the last date prescribed for furnishing the return in respect of such period and after giving the dealer a reasonable opportunity of being heard, pass an order of assessment to the best of his judgment.

(6)IF upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(7)The amount of any tax, penalty or interest payavble under this Act shall be paid by the dealer in the manner prescribed, by such date as may be specified in the notice issued by the Assessing Authority for the purpose and the date so specified shall not

be less than fifteen days and not more than thirty days from the date of service of such notice: Provided that the Assessing Authority may, with the prior approval of the Assistant Excise and Taxation Commissioner, Incharge of the District extend the date of such payment or allow payment by instalments against an adequate security or bank guarantee.

(8) If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified thereof in the notice of assessment or in the order permitting payment in installments, the Commissioner or any other person appointed to assist him under s9b-section

(1) of Section 3 may, after giving such dealer an opportunity of being heard, impose on him a penalty not exceeding in amount the sum due from him.

(9) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act.

(10) The Commissioner, may for reasons to be recorded in writing, extends the period of three years, for passing the order of assessment for such further period as he may deem fit.

(11) Where the proceedings of assessment are stayed by an order of any court, the period for which such stay remains in force, shall not count towards computing the period of three years specified under this section for passing the order of assessment.

(12) The assessing authority may on his own motion, review any assessment order passed by him and such review shall be completed within a period of one year from the date of order under review.”

(emphasis supplied)

9. A mere reading of the aforesaid provision would reflect that wherever return is filed by the assessee, assessment is to be made within a period of three years from the last date prescribed for furnishing the return in respect of such period. On the other hand, in those cases where return is not filed or any dealer, who is liable to pay the tax under the Act, does not get himself registered therein, the period of assessment prescribed is five years. We are not concerned with the alternate situation as in the instant appeals not only the assesseees are registered dealers, they had also filed their returns regularly within the prescribed period and, therefore, assessments were to be completed within a period of three years from the last date prescribed for furnishing the returns, which is the normal period prescribed. At the same time, sub-section (10) of Section 11 gives power to the Commissioner to extend a period of three years. Interestingly, there is no upper limit prescribed for which the period can be extended, meaning thereby such an extension can be given, theoretically, for any length of time. This discretion is, however, controlled by obligating the Commissioner to give his reasons for extension, and such reasons are to be recorded in writing. Obviously, the purpose

of giving reasons in writing is to ensure that the power to extend the period of limitation is exercised for valid reasons based on material considerations and that power is not abused by exercising it without any application of mind, or mala fide or on irrelevant considerations or for extraneous purposes. Such an order of extension of time, naturally, is open to judicial review, albeit within the confines of law on the basis of which such judicial review is permissible.

10. Be that as it may, the question before us is as to whether the power to extend time is to be necessarily exercised before the normal expiry of the said period of three years run out.

11. Mr. Ganguli, submitted that there is no such embargo or impediment provided in subsection (10) of Section 11 mandating the Commissioner to pass an order of extension necessarily within the normal period of three years. He submitted that the word used in the aforesaid provision 'extension' of time is in contradistinction to the word 'deferment' which appears in the Karnataka Legislation. On that basis, he argued that it was inappropriate on the part of the High Court to refer to and rely upon the judgment of Karnataka High Court inasmuch as provision of law contained in the Karnataka Sales Tax Act is entirely different. He further submitted that since in Punjab Legislation, the expression used is 'extension of time', the Court was required to construe the provision keeping in mind the said language. Mr. Ganguli argued that a reading of meaning of expression 'deferment' and 'extension' of time as contained in Black's Law Dictionary will clearly bring out the difference.

•“defer, vb. 1. To postpone; to delay <to defer taxes to another year>”

•“deferment, n. 1. The act of delaying; postponement <deferment of a judicial decision>”

It was submitted that the expressions 'defer' and 'deferment' as can be seen from the above definitions, clearly contemplate postponement, which presupposes that the time period originally fixed is not extinguished. In other words, an action, which is deferred, (i.e. an action which is required to be completed within a specified time frame) can only be deferred of which the time so fixed has not expired. It was submitted that, in contrast, Black's Law Dictionary defines the expression 'extension' as follows:

“Extension, n. 3. Tax. A period of additional time to file an income-tax return beyond its due date. 4. A period of additional time to take an action, make a decision, accept an offer, or complete a task”

It was argued that the word 'extension has' varied meanings, dependent on the context in which it is used. The expression 'extension' in the context of surveillance orders, has been interpreted in the following manner:

“Where surveillance pursuant to order issued under Title III of Omnibus Crime Control and Safe Streets Act is of same premises, involves substantially same persons, and is part of same investigation, second Title III surveillance order issued

after expiration of first order is 'extension' of first order for purposes of requirement of sealing of recordings, even if there is gap of time in between expiration of first order and entry of second.”

(Emphasis supplied)

12. Mr. Ganguli also referred to the concept of extension as incorporated in Section 148 of the Code of Civil Procedure, 1908. He relied upon the judgment of this Court in *D.V. Paul v. Manisha Lalwani*³. This Court in paragraph 26 of the said judgment held as under:

“26. Insofar as the first aspect is concerned Section 148 CPC, in our opinion, clearly reserves in favour of the court the power to enlarge the time required for doing an act prescribed or allowed by the Code of Civil Procedure. Section 148 of the Code may at this stage be extracted.

“148. Enlargement of time.— Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired.”

A plain reading of the above would show that when any period or time is granted by the court for doing any act, the court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the court has expired. It is evident from the language employed in the provision that the power given to the court is discretionary and intended to be exercised only to meet the ends of justice.”

13. Mr. Ganguli further submitted that even in the context of taxation law, a similar reasoning has been adopted by the Court in *Commissioner of Income Tax, Jullundur v. Ajanta Electricals*⁴. While interpreting Section 139(2) of the Income Tax Act, which empowered the Assessing Officer to grant an extension of time for filing of the return of income, upholding the power of the Income Tax Officer to extend the time for filing of the time originally granted, this Court held as follows:

“9. In this context, the question whether a belated application could be regarded as valid or not has to be considered. As rightly pointed out by the Punjab and Haryana High Court while deciding these cases under Section 256(2) and by the Calcutta High Court in *Sunderdas Thackersay & Bros.*(137 ITR 646), there are no words of limitation in Section 139(2) to the effect that no application could be filed after the period allowed had expired. As we have stated earlier, it was a procedural provision. The limit of thirty days was not intended to be final as discretion was given to the ITO to extend that date. The ITO could have been called upon to exercise that discretion for proper reasons. No fetters were placed upon the discretion of the ITO as regards the number of times he could extend the date or the period for which he could extend it. It is conceded that repeated applications could be made within the time allowed, in view of the clear indication to that effect in Form No. 6, by the use of

words “it has not been possible”. If it was intended that the application for extension of time under Section 139(2) was to be made within the time allowed originally or within the extended time then the words “it has not been possible” were not at all necessary and the words “it is not possible” would have been sufficient. Though the rule cannot affect, control or derogate from the section of the Act, so long as it does not have that effect, it has to be regarded as having the same force as the section of the Act. If Section 139(2) is read along with Rule 13 and Form No. 6 it becomes clear that an application for extension could be made even after the period allowed originally or as a result of extension granted had expired. Keeping in mind the object of giving discretion to the ITO and the consequences that were to follow from not filing the return within time, we see no justification for reading into the section any limitation to the effect that no application could be made after the time allowed had expired. We see no good reason to construe the section so narrowly.”

In that judgment, applying the principles contained in Section 148, CPC, it was remarked as under:

“10. We cannot accept the contention raised on behalf of the Revenue that the word ‘extend’ in the proviso to Section 139(2) implies that at the time of making the application the time allowed should not have expired. Though the Civil Procedure Code by itself does not apply to the proceedings under the Income Tax Act, we see no reason why a principle of procedure evolved for doing justice to a party to the proceeding cannot be called in aid to while interpreting a procedural provision contained in the Act. Section 148 of the Code provides that where any period is fixed or granted by the court for the doing of any act prescribed or allowed by the Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. Various situations can be envisaged where a party to the proceeding is prevented by circumstances beyond his control from doing the required act within the fixed period. The assessee may be able to point out that because of a sudden death in the family or because of his sudden illness of a serious nature or because he had to leave for an outside place all of a sudden or because he could not return from outside in spite of his best efforts, or for other good reasons, as the case may be, he was not able to file the return within time ”
[Emphasis supplied]

14. Mr. Ganguli also drew sustenance from the Arbitration Act, 1940 which gave power to the Court to extend time. It was submitted that this Court has held in the matter of *Hindustan Steelworks Construction Ltd. v. C. Rajasekhar Rao*⁵ that the Court has got the power to extend time even after the award has been given or after the expiry of the period prescribed from the award.

15. Mr. Ganguli re-emphasized that reliance upon the decision of Gujarat High Court in the impugned judgment was untenable as the provisions of Karnataka Sales Tax Act are totally different inasmuch as Section 12(6) of the Karnataka Act provided only 'deferment'. He submitted that even the judgment of Gujarat High Court in *Javer Jivan Mehta*² case was

distinguishable since that was also a case of exclusion of a period and the issue therein was the computation of period of limitation.

16. The aforesaid contentions were refuted by the learned counsel who appeared for assesseees in these appeals. It was submitted that sub-section (10) of Section 11 states, in no uncertain term, that the assessment order is to be passed 'within a period of three years '. It was emphasized that the word 'within' was of significance. It was pointed out that before the year 1998, no period of limitation was prescribed and such a provision came to be inserted by way of amendment vide Act No. 12 of 1998 dated April 20, 1998 . It was further argued that sub-section (10) of Section 11 obligates the Commissioner to record reasons in writing while extending the period. It was submitted that this requirement of recording of reasons came up for consideration before Punjab & Haryana High Court and in a series of judgments, it is held that such an order of extension of time can be passed only after giving an opportunity of hearing to the assessee. The learned counsel referred to the following judgments of the High Court:

“(i) State of Punjab, Through Assistant Excise and Taxation Commissioner, Bathinda v. M/s. Olam Agro India Ltd. (formerly Olam Export India Ltd.); decided by the Punjab & Haryana High Court on August 20, 2013.

(ii) State of Punjab v. M/s. Olam Agro India Ltd. ; Daily Order; Dismissed by the Supreme Court vide Oder dated May 08, 2015.

(iii) A.B. Sugars Limited v. The State of Punjab and others; Decided by the Punjab & Haryana High Court on September 01, 2009.”

17. It was also argued that conceptually there was no difference between 'deferment' and 'extension' insofar as it related to the issue at hand which is concerned with the point of time at which Commissioner is to exercise his powers. For that, the reasons given by Karnataka High Court as well as Gujarat High Court holding that such a power gets extinguished with the expiry of normal period of limitation prescribed and, therefore, cannot be exercised after the limitation period were germane and relevant while construing the provisions of sub-section (10) of Section 11 of the Act as well and, therefore, those cases were rightly relied upon by the High Court in the impugned judgment.

18. In rejoinder, Mr. Ganguli refuted the aforesaid submissions of the learned counsel for the assesseees. The arguments advanced by him was that the submission of the assesseees that the Commissioner has to afford an opportunity of hearing to the dealer before extending the period of limitation does not arise in the present case as this was not the issue raised in the Courts below. He argued that the question to be decided in these appeals was as to whether the power under sub-section (10) of Section 11 of the Act could be exercised on the expiry of the period of three years and this question is not answered in the judgments referred to by the opposite party. He further submitted that it is a question of fact to be decided in each case as to whether assessee was entitled to such a right of hearing and, therefore, this issue could not be taken up for the first time in these appeals.

19. We have bestowed our serious considerations to the submissions made by the counsel who argued the matter.

20. We may say at the outset that though provisions of the Punjab Act are couched in different language from Karnataka Act or Gujarat Act, the essence of these provisions is same. As noticed above, insofar as scheme of Punjab Act is concerned, the assessment order is to be normally passed within a period of three years. At the same time, power is given to the Commissioner under Section 11(10) of the Act to extend the said period of three years. Once such an extension is given, the order is passed even beyond the period of three years. Significantly, no upper limit is fixed while giving such extension which means that the power can be exercised for extending the period for any length of time, subject however to the condition that the Commissioner is bound to record the reasons justifying such an extension. Obviously, when the Commissioner passes such an order and give reasons, not only he would have to justify his action of extending time but also the period by which the time is extended. In the Karnataka Legislation, the power is of 'deferment'. In that Legislation as well, the Assessment Order is to be passed within three years as sub-section (5) of Section 12 of Karnataka Sales Tax Act stipulates that no assessment shall be made after a period of three years from the date on which the return under sub-section (1) of that order is submitted by a dealer subject to two provisos mentioned therein. Sub-section (6) of Section 12 mentions as to how the period of limitation is to be computed and reads as under:

“(6) In computing the period of limitation for assessment under this Section,-

(a) the time during which the proceedings for assessment in question have been deferred on account of any stay order granted by any Court or any other authority shall be excluded;

(b) the time during which the assessment has been deferred in any case or class of cases by the Joint Commissioner for reasons to be recorded in writing shall be excluded.”

21. Clause (b) of sub-section (6) indicates that Joint Commissioner, in appropriate cases, may pass an order for deferment of Assessment Order to be passed by the Assessing Authority and once such an order is passed, that period has not to be counted while computing the period of limitation. Significantly, this provision also mandates the Joint Commissioner to record reasons for deferring the orders of assessment. In essence, therefore, the purport and objective behind the provisions in Punjab Act as well as in Karnataka Act remains the same. By making any order of deferment under sub-section (6) of Section 12 of Karnataka Sales Tax Act, the Joint Commissioner is, in fact, achieving the same purpose of granting more time to the Assessing Officer to pass the Assessment Order. Same is the purpose behind sub-section (11) of Section 10 of the Punjab Act. In view thereof, it may not be appropriate to go into the nuanced distinction between “deferment” and “extension” as per the definitions

contained Black's Law Dictionary in the given situation, which is dealt with in the instant appeals.

22. Even otherwise, it is important to understand the ratio laid down in the judgment of Karnataka High Court in *Bharat Heavy Electricals Ltd. (supra)*. The issue in the said case before the Karnataka High Court was as to whether the power to pass a deferment order is to be exercised even after the expiry of the period of limitation which was answered in the negative. The reasons given in support of this conclusion are as follows:

“...Deferment of assessment has the effect of enlarging the period of limitation which did not expire by the time the deferment order is contemplated to be passed. When once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Resort to deferment provisions does not retrieve the situation. There is no question of deferring assessment which has already become time-barred. The provision for exclusion of time in computing the period of limitation of deferment of assessment is meant to prevent further running of time against the Revenue if the limitation had not expired.”

(emphasis supplied)

23. It was also observed that upon the lapse of the period of limitation prescribed, the right of the Department to assess an assessee gets extinguished and this extension confers a very valuable right on the assessee.

24. If one is to go by the aforesaid dicta, with which we entirely agree, the same shall apply in the instant cases as well. In the context of the Punjab Act, it can be said that extension of time for assessment has the effect of enlarging the period of limitation and, therefore, once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Therefore, there would be no question of extending the time for assessment when the assessment has already become time barred. A valuable right has also accrued in favour of the assessee when the period of limitation expires. If the Commissioner is permitted to grant the extension even after the expiry of original period of limitation prescribed under the Act, it will give him right to exercise such a power at any time even much after the last date of assessment. In the instant appeals itself, when the last dates of assessment were 30th April, 2004, 30th April, 2005, 30th April, 2006 and 30th April, 2007, order extending the time under Section 11(10) of the Act were passed on August 17, 2007, August 17, 2007, August 17, 2007 and May 25, 2007 respectively. Thus, for the Assessment Year 2000-2001, order of extension is passed more than three years after the last date and for the Assessment Year 2001-2002, it is more than two years after the last date. Such a situation cannot be countenanced as rightly held by the High Court. When the last date of assessment in respect of these Assessment Years expired, it vested a valuable right in the assessee which cannot be lightly taken away. As a consequence, sub-section (11) of Section 10 has to be interpreted in the manner which is equitable to both the parties. Therefore, the only way to interpret the same is that by holding that power to extend the time is to be exercised before the normal period of assessment expires. On the aforesaid

interpretation, other arguments of Mr. Ganguli lose all significance. Argument of learned senior counsel for the appellants based on Section 148 of the CPC would be of no consequence. This Section categorically states that power to enlarge the period can be exercised even when period originally fixed has expired. Likewise, reliance upon Section 139(2) of the Income Tax Act is misconceived. That provision is made for the benefit of the assessee which empowers the Assessing Officer to grant an extension of time for filing of the return of income and, therefore, obviously will have no bearing on the issue at hand. Moreover, this Court in Ajantha Electricals's case (supra), which is relied upon by the learned counsel for the appellant, held that the time can be extended even after the time allowed originally has expired on the interpretation of the words "it has not been possible" occurring in Section 133(2) of the Act. The Court, thus, opined that the aforesaid expression would mean that the time can be extended even after original time prescribed in the said provision has expired. Same is our answer to the argument of Mr. Ganguli predicated on Section 28 of the Arbitration Act, 1940 as that provision was in altogether different context.

25. We, thus, do not find any error in the impugned judgments of Punjab and Haryana High Court and as a consequence, dismiss all these appeals. Parties are, however, left to bear their own cost.

Judgment Referred.

¹(2006) 143 STC 0010

²(1998) 111 STC 0199

³(2010) 8 SCC 0546

⁴(1994) 5 SCC 0182

⁵(1987) 4 SCC 0093