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Multanmal Harakmal Vs. State of Mysore

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Court : Karnataka

Decided On : Mar-20-1967

Reported in : [1968]21STC485(Kar)

Judge : A. Narayana Pai and ;B. Venkataswami, JJ.

Acts : Bombay Sales Tax Act, 1953 - Sections 14 and 14(2); Central Provinces and Berar Sales Tax Act, 1947 - Sections 11(1); Mysore Sales Tax Act - Sections 23(1)

Appeal No. : S.T.R.P. No. 32 of 1966

Appellant : Multanmal Harakmal

Respondent : State of Mysore

Advocate for Def. : G.V. Shantharaju, Adv.

Advocate for Pet/Ap. : W.K. Joshi, Adv.

Judgement :
ORDER

Narayana Pai, J.

1. This matter arises out of an old assessment under the Bombay Sales Tax Act, 1953. The petitioner's complaint is that the original Assessing Authority who

expressly purported to act under sub-section (2) of section 14 of the Act has committed the error of rejecting a portion of the return. Both the first Appellate Authority as well as the Mysore Sales Tax Appellate Tribunal have held that there is no substance in the grievance of the petitioner. Hence this revision petition.

2. Section 14 of the Bombay Sales Tax Act, 1953, deals with submission of returns and completion of assessments. Sub-section (1) relates to submission of returns. Sub-section (2) reads :

'If the Collector is satisfied without requiring the presence of a 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 the tax due from the dealer on the basis of such returns.'

Sub-section (3) says that if the Collector is not so satisfied without requiring the presence of a dealer or without the production of evidence, he shall issue a notice to the dealer to appear or to produce evidence etc. and then proceed to complete the assessment after hearing the dealer, examining his evidence etc. We are not concerned with the other portions of that section.

3. In this case the Assessing Authority did in the first instance issue a notice in Form No. 13. That form is prescribed for the issue of notice under section 14. When the dealer appeared, he raised the objection that the notice was defective as he was not given 10 days' time as required by the Rules. Thereupon the officer proceeded to complete the assessment under sub-section (2) of section 14 and in doing so, found that certain exemptions claimed by the dealer appeared to be excessive in the light of the statements filed by him along with the previously filed quarterly returns of the year. The result was that the petitioner assesses was directed to pay this excess as balance of tax due by him over and above the amount paid by him. That amount is Rs. 1,155.33.

4. For understanding the view of the law on which the officer came to act as aforesaid it is enough to extract the following para. from his order :

'The dealer, a firm of 3 partners, is a re-seller of cloth. One of the partners Sri Surajmal Hasakmal Mutha was present in response to the notice issued in Form 13, and represented that the notice issued is defective inasmuch as 10 days' time is not allowed from the date of service of notice for the production of books and so assessment is to be made under sub-section (2) of section 14. As represented by the dealer, notice issued under section 14 is defective, so assessment is made under sub-section (2) of section 14 by determining the turnover as furnished by the dealer.'

5. The argument on behalf of the petitioner as already stated is that once the officer came to act under sub-section (2) of section 14, he had no jurisdiction to do anything but to accept as correct and complete the return furnished by the dealer. He also cites an observation of Chagla, C.J., in Bisesar House v. State of Bombay and Others ([1958] 9 S.T.C. 654), relating to sub-section (1) of section 11 of the C.P. and Berar Sales Tax Act, 1947, which is pari materia with sub-section (2) of section 14 of the Bombay Sales Tax Act. What his Lordship observes is that whereas the completion of the assessment without the issue of notice is a formal matter resulting in merely appropriating the tax already paid by the assessee to the revenue, where the Assessing Authority desires either to increase the amount of tax or correct the return or in any other way amend or alter the return made by the assessee, it is obligatory on him to issue notice. The effect of this principle is that alteration or modification of the return resulting in the liability to pay tax in a sum different from the sum already admitted as due by the assessee in his return is not possible without issue of notice, whereas if an officer acts under sub-section (2) of section 14, it necessarily means that he is accepting everything that is stated in the return as correct and further that the return is complete which means that every information necessary for completion of the assessment is found in the return.

6. But one thing that occurs to us is that this is not a case at all in which it was possible for the officer to act under sub-section (2) of section 14. He could do so only if he is satisfied that the return furnished by the assessee is correct and complete. It is because he was not so satisfied that he had first come to issue a notice. Issue of that notice itself shows that the assessment could not be

completed without hearing the assessee's explanation of his return and/or without production of further evidence by him in support of the return.

7. The second error committed by the officer appears to be his ready acceptance of the assessee's argument that the notice was defective and that therefore further action cannot be taken on the notice. Assuming for the sake of argument that the notice was originally defective, any defect therein became totally inoperative when the petitioner on the service of the notice appeared before him. The sole purpose of the notice is to put a party to a pending proceeding on notice thereof and to furnish him with an opportunity to present himself and take part in the proceedings to protect his interest. Once that purpose is served by the party appearing before a particular authority, there is no principle of law or justice which requires that any defect or irregularity in the notice should be examined, or permits the party who has appeared to rely upon the defects or irregularities for preventing the authority from proceeding to deal with the matter in accordance with law.

8. But the officer having done so and provided the petitioner with the argument that he could not under sub-section (2) of section 14 alter or amend the returns, there is no alternative but to set aside the order of the Assessing Authority as also the orders of the Appellate Authorities which confirmed the said order and to direct him to complete the assessment after giving the petitioner opportunity of producing evidence and being heard.

9. Because the setting aside of the order revives the return and so long as the return is there, no question of limitation arises - vide Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur, and Others ([1963] 14 S.T.C. 976).

10. We, therefore, set aside the original assessment order as well as the appellate orders confirming the same and direct the Assessing Officer to re-do the assessment and complete the same after giving the petitioner reasonable opportunity of producing the evidence and hearing him. No costs.

11. Ordered accordingly.

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