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Court : Karnataka

Decided On : Mar-10-1966

Reported in : [1966]18STC154(Kar)

Judge : A.R. Somnath Iyer and ;Ahmed Ali Khan, JJ.

Acts : Bombay Sales Tax Act, 1953 - Sections 11(2), 14, 14(2), 14(3), 14(4), 14(5), 14(6), 14(7) and 15; States Reorganisation Act; Mysore Sales Tax Act, 1957; Central Provinces and Berar Sales Tax Act - Sections 10(3), 11, 11(2), 11(3), 11(4), 11(5) and 11-A; Business Profit Tax Act - Sections 14

Appeal No. : Writ Petition Nos. 308 and 309 of 1964

Appellant : Mysore Kirloskar Ltd.

Respondent : The State of Mysore and anr.

Advocate for Def. : G.B. Kulkarni, High Court Government Pleader

Advocate for Pet/Ap. : D.R. Venkatesha Iyer, Adv.

Judgement :

Somnath Iyer, J.

1. The petitioner before us in these two cases is a company known as the Mysore Kirloskar Limited which is a manufacturer of agricultural implements and other

machine tools. This company was carrying on a business in the sale of agricultural implements in the Gadag and Hubli areas, in which, at the relevant point of time, the Bombay Sales Tax Act, 1953 (Bombay Act III of 1953) was operating. After these two areas became part of the new State of Mysore under the States Reorganisation Act, the Commercial Tax Officer functioning under the Mysore Sales Tax Act, 1957, issued notices intimating the petitioner that he proposed to commence proceedings under sub-sections (6) and (7) of section 14 of the Bombay Sales Tax Act in Writ Petition No. 308 of 1964 and under sub-sections (6) and (7) of section 14 and section 15 of that Act in Writ Petition No. 309 of 1964. In Writ Petition No. 308 of 1964 which relates to the Gadag area, the petitioner was informed that since he had failed to register himself as a dealer under the Bombay Sales Tax Act although he was liable to pay the tax in respect of the period to which the notice related, it was proposed to make a best judgment assessment of the tax due by the petitioner and to impose a penalty on him under sub-section (7) of section 14 of wilful failure to apply for registration. The notice under section 15 intimated the petitioner that it was proposed to assess his escaped turnover. The period to which both of these notices related was the period between 1st November, 1956, and 30th September, 1957.

2. By these notices, the petitioner was called upon to produce his accounts by the dates specified in these notices. The petitioner thereupon pointed out to the concerned Commercial Tax Officer that the proceedings which were proposed to be commenced had become time barred. The Commercial Tax Officer, however, maintained that he could continue the proceedings and so, the petitioner asks us to quash the notices issued by the Commercial Tax Officer and to stop further proceedings by appropriate writs and directions.

3. The incompetence on the part of the Commercial Tax Officer to commence the impugned proceedings is sought to be deduced from section 15 of the Bombay Sales Tax Act which authorises the assessment of an escaped turnover within five years of the end of the year to which the turnover relates in the one case and within three years from that date in the other. It was contended that what the Commercial Tax Officer proposed to do in each of these two cases was to assess the turnover of the petitioner which was supposed to have escaped assessment

and that since the periods with which we are concerned ended on 30th September, 1957, the notices issued by the Commercial Tax Officer in the year 1964 were issued too late, and were, therefore, beyond his competence.

4. It should be mentioned here that the notice issued in Writ Petition No. 308 of 1964 was issued on 3rd February, 1964, and those in Writ Petition No. 309 of 1964 were issued on 8th January, 1964.

5. Mr. Government Pleader does not disputed that if the period of limitation within which the proceedings could have been commenced is that prescribed by section 15 of the Bombay Sales Tax Act, the proceedings were barred by limitation. But, he contends that the periods of limitation prescribed by that section have no application to the case before us.

6. Now, the notice issued in Writ Petition No. 308 of 1964 was issued under sub-sections (6) and (7) of section 14 while among the notices issued in Writ Petition No. 309 of 1964, one was issued under sub-sections (6) and (7) of section 14 and the other under section 15. It is however plain that the notice issued under section 15 in Writ Petition No. 309 of 1964 was beyond the competence of the Commercial Tax Officer. About hat, there can be no difficulty whatsoever, and, Mr. Government Pleader does not dispute that it is so.

7. But, it was stoutly maintained by Mr. Kulkarni the learned Government Pleader, that the periods prescribed by section 15 have no relevance to the proceedings which are commenced under sub-sections (6) and (7) of section 14.

8. The question is whether it is so.

9. Now, the petitioner was an unregistered dealer and submitted no returns for the period with which we are concerned. According to the Commercial Tax Officer, he had received information which satisfied him that although he was liable to pay the tax in respect of that period, the petitioner had failed to apply for registration and so it was that he proposed to make an assessment to the best of his judgment of the amount of the tax due from the petitioner under sub-section (6) of section 14. He simultaneously proposed to impose a penalty for failure to apply for registration

which is possible under sub-section (7) of that section.

10. Neither sub-section (6) nor sub-section (7) expressly prescribes any period of limitation within which an assessment could be made under sub-section (6) or a penalty could be imposed under sub-section (7).

11. But the argument maintained for the petitioner is that when the Commercial Tax Officer proposed to make an assessment under sub-section (6) he proposed to do no more than to make an assessment of the escaped turnover and that no proceeding could be commenced in that regard except within the periods of limitation prescribed by section 15.

12. From the decision of the Supreme Court in Ghamshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur : [1964]51ITR557(SC) , three principles clearly emerge. The first is that the expression 'escaped assessment' includes a turnover which has never been assessed either for one reason or for the other. The second is that there is no escaped assessment if proceedings in respect of the first assessment are still pending and the assessment is not completed. The third is that assessment proceedings do not start unless the dealer produced his return or there is a requisition for further information.

13. This was the elucidation made by the Supreme Court of the provisions of sections 11 and 11-A of the C.P. and Berar Sales Tax Act which correspond to sections 14 and 15 of the Bombay Sales Tax Act. Since the language of the two sections of the C.P. and Berar Sales Tax Act is similar to that of sections 14 and 15 of the Bombay Sales Tax Act, we should concluded that the enunciations made by the Supreme Court are equally apposite to the cases arising under the Bombay Sales Tax Act.

14. Indeed, in Rajaram Factory v. The State of Mysore ([1966] 18 S.T.C. 43; 5 Mys. L.R. 87.), the enunciation made by the Supreme Court as to the interpretation of the expression 'escaped assessment' was held to govern cases arising under section 14(5) of the Bombay Sales Tax Act.

15. The question is whether we should extend those principles to proceedings commenced under section 14(6) of the Bombay Sales Tax Act.

16. Section 14 of the Bombay Sales Tax Act consists of many parts. Sub-section (1) directs that the tax due from a registered dealer shall be assessed separately for each year during which he is liable to pay the tax; but there is a proviso to that sub-section which says that in the case of a dealer who has failed to furnish any return relating to any period in a year by the prescribed date, there could be assessment for different parts of such year. Sub-section (2) empowers the Collector when he is satisfied about he correctness and completeness of the return furnished in respect of any period, to make an assessment on the basis of such returns. Sub-section (3) has two clauses. The first clause empowers the Collector when he is not satisfied with the correctness or the completeness of the return, to make a requisition for the particulars specified in that clause. Clause (b) authorises an assessment on the basis of the evidence which the dealer might produce. Sub-section (4) authorises a best judgment assessment when the dealer fails to furnish the return, or, in the case of non-compliance with the requisition for further information under sub-section (3), Sub-section (5) authorities a similar best judgment assessment in a case where the dealer furnishes no return by the prescribed date.

17. Sub-section (6) with which we are concerned again creates the power to make a best judgment assessment in the case of a dealer who was liable to pay the tax under the Act but did not apply for registration and so produced no return. Sub-section (7) authorities the imposition of a penalty upon a person governed by sub-section (6), and sub-section (8) preserves the power to commence a prosecution under the Act notwithstanding an assessment made under section 14.

18. What becomes manifest from the pronouncement of the Supreme Court in Ghanshyamdas's case : [1964]51ITR557(SC) is that in all cases where the taxing authority wishes to make a best judgment assessment, either for the reason that the dealer produced no return or for the reason that he produced no further information though called upon to do so, he commenced a proceeding for the assessment of an escaped turnover.

19. That was the view taken by this Court in Rajaram Factory case : ILR 1966 KAR180 in which the taxing authority proposed to make a best judgment assessment under sub-section (5) of section 14 in a case where the dealer did not furnish a return. It will be observed that no period of limitation is prescribed either by sub-section (3) or sub-section (4) or sub-section (5) for such assessment.

20. Mr. Venkatesha Iyer appearing for the petitioner asks us to say that if the periods of limitation prescribed by section 15 are applicable to an assessment of an escaped turnover under sub-sections (3), (4) and (5) of the Act, they are equally applicable to the proposed assessment under sub-section (6). It was contended that what a taxing authority does under sub-section (6) is to assess an escaped turnover, and, since sub-section (6) itself does not prescribed any period of limitation, that prescribed by section 15 is also applicable to such assessment.

21. In Bisesar House v. State of Bombay ([1958] 9 S.T.C. 654.), the High Court of Bombay when dealing with a case arising under the C.P. and Berar Sales Tax Act, pointed out that an assessment under section 11(2) of that Act which corresponds to section 14(3)(a) of the Bombay Sales Tax Act could not be made beyond the period of limitation prescribed by section 11-A of that Act which corresponds to section 15 of the Bombay Act. That High Court was also of the view that even to assessments which could be made under sections 11(3), 11(4) and 11(5) of the C.P. and Berar Act which correspond to sub-sections (4), (5) and (6) of section 14 of the Bombay Act, the periods of limitation prescribed by section 11-A of the C.P. and Berar Act were equally applicable. The ratio of the decision was that the period of limitation in the case of a person who does not produce a return or who does not produce the further information required by the taxing authority, could not be longer than that within which the assessment of an escaped turnover could be made under section 11-A. Their Lordships were therefore of the view that the period of limitation prescribed by section 11-A was equally applicable to the assessment under sub-sections (2), (3), (4) and (5) of section 11.

22. This view which their Lordships took rested upon an earlier decision of the same High Court in Commissioner of Income-tax, Bombay City v. Narsee Nagsee & Co. ([1957] 31 I.T.R. 164.), in which the question was whether the period of

limitation prescribed for the assessment of escaped income by section 14 of the Business Profit Tax Act, was applicable to proceedings concerning the issue of a notice under section 11 for furnishing a return of business profits and which did not prescribe any period of limitation. The view expressed in that case was that taking the scheme of the Act as a whole, it was the duty of the Court to import into section 11 the period of limitation prescribed by section 14, and, in that context, the Court said thus :

'In our opinion, every Act must be construed as a whole and the duty of the Court must be as far as possible to reconcile the various provisions of a statute .....

'Inasmuch as section 11 does not indicate any period of time with regard to the issuing of a notice, would it or would it not be right for us to import into section 11 the consideration which led the Legislature to fix a limitation of time for the purpose of issuing a notice under section 14 If we were not to do that, we would arrive at this rather extraordinary conclusion that the Legislature, while saving the subject from harassment of proceedings with regard to escaped assessment or under-assessment, permitted that harassment with regard to the very initiation of proceedings after the lapse of four years .....'

23. We are of the view that the general scheme of the Bombay Sales Tax Act and that of sections 14 and 15 of that Act impels the view that we should, as was done in the case of the Commissioner of Income-tax, Bombay City v. Narsee Nagsee and Co. ([1957] 31 I.T.R. 164.), import the period of limitation prescribed by section 15 into section 14 although section 14 prescribes no such period of limitation. We should do so on the principle that a person who produced no return or no further information though called upon to do so, should not be exposed to the harassment of a proceeding which is not possible under section 15 after the expiry of the period of limitation prescribed by it.

24. Now, there is the clear authority of the Supreme Court by which we are bound, and, which was applied to proceedings under section 14(5) of the Bombay Act by this Court in Rajaram Factory case : ILR 1966 KAR180 that the assessment of an escaped turnover need not be preceded by an antecedent or earlier assessment. A turnover escapes assessment according to the elucidation made in those two

cases when it is not taxed whatever may be the reason for which it is not taxed. So it was that this Court said that in the case of a dealer who furnished no returns and in whose case an assessment was proposed to be made under section 14(5) of the Bombay Sales Tax Act, the assessment was really an assessment of the escaped turnover within the meaning of section 15.

25. It seems that, if nothing else could be said about it, that ratio would produce the result, that an assessment of the turnover of a dealer who was liable to pay tax and who did not register himself, which is possible under section 14(6), is also the assessment of an escaped turnover. While sub-section (5) governs the case of a dealer who did not produce the return when called upon to do so, sub-section (6) applies to an unregistered dealer who failed to apply for registration and therefore produced no return. If a case falling within sub-section (5) is governed by the period of limitation prescribed by section 15, it does not stand to reason to say that a case falling under sub-section (6) is not so governed. When an assessment is made under sub-section (6) it is as much the assessment of an escaped turnover as it is when an assessment is made under sub-section (5), and so, the period of limitation specified in section 15 which is the limitation prescribed for an assessment of an escaped turnover is plainly applicable even to an assessment under sub-section (6).

26. Mr. Kulkarni, the learned Government Pleader, urged that an assessment under sub-section (6) is outside the period of limitation prescribed by section 15 since the assessment of an escaped turnover of an unregistered dealer is unlike the preceding sub-section of section 14 which authorises the assessment of the turnover of a registered dealer.

27. This submission is unacceptable. Section 13(1)(b) empowered the Collector the require even an unregistered dealer to produce a return of his turnover, and, while sub-section (1) of section 14 is applicable only to a registered dealer the other sub-sections, namely, sub-sections (2), (3), (4) and (5) are as much applicable to an unregistered dealer as they are to a registered dealer. While sub-section (1) expressly refers to a registered dealer, the word occurring in sub-sections (2), (3), (4) and (5) is the word 'dealer' without the adjective 'registered'

preceding it.

28. The interpretation suggested by Mr. Government Pleader that even sub-sections (2) to (5) govern only the assessment of the turnover of a registered dealer, would produce incongruous results. Sub-section (2) authorises the Collector to make an assessment on the basis of the return of a dealer when he is satisfied with its completeness and correctness. If this sub-section is understood as being applicable only to the case of a registered dealer, the Collector would be without power to make an assessment on the basis of a correct and complete turnover produced by an unregistered dealer, since the only provision under which such assessment could be made under the Bombay Sales Tax Act is section 14(2).

29. Similarly, the Collector would have no power in the case of an unregistered dealer to call for further information under sub-section (3)(a) or to make an assessment on the evidence collected by him under sub-section (3)(b) or to make a best judgment assessment under sub-sections (4) and (5). An interpretation which leads to such odd consequences cannot be sound.

30. It is, therefore, clear that sub-sections (2), (3), (4) and (5) of section 14 of the Bombay Sales Tax Act regulate not only the assessment of a registered dealer but also that of an unregistered dealer.

31. So, it follows that in a case where the assessment of an escaped turnover has to be made in the case of an unregistered dealer under sub-sections (3), (4) and (5), to such assessments, the period of limitation applicable is that specified in section 15. That that is so, is what is completely destructive of the contention that that period of limitation is applicable only to assessments in the case of registered dealers and not to assessments in respect of unregistered dealers.

32. If, therefore, the period of limitation prescribed by section 15 is not confined only to the assessment of escaped turnover of a registered dealer and is equally applicable to the assessment of an unregistered dealer's turnover, there would be no ground for the postulate that the assessment under sub-section (6) of a dealer who had failed to apply for registration could be made beyond the period of

limitation prescribed by section 15. That assessment being in truth and in reality the assessment of an escaped turnover, although it is the escaped turnover of a person who did not apply for registration and therefore did not become a registered dealer, is governed by the period of limitation prescribed by section 15 in the same way in which the assessment of any other escaped turnover is governed.

33. The view that we take receives support from what was said by the Supreme Court in Ghanshyamdas's case : [1964]51ITR557(SC) , in the context of the pronouncement of the High Court of Bombay in Ramkrishna Ramnath v. Sales Tax Officer, Nagpur, and Others ([1960] 11 S.T.C. 811.), in which the High Court of Bombay felt disposed to take the view that the period of limitation prescribed under section 11-A of the C.P. and Berar Sales Tax Act was inapplicable to a proceeding under section 11(4)(a) of that Act, in which the best judgment assessment was proposed to be made in default of compliance with the requisition of the taxing authority. The Supreme Court which did not accept the enunciation, said this :

'A Division Bench of the same High Court in Ramkrishna Ramnath v. Sales Tax Officer, Nagpur ([1960] 11 S.T.C. 811.), made a distinction between proceedings under section 11(4)(a) and those under section 11(2) of the Act in that proceedings under section 11(2) are for the purpose of assessment whereas those under section 11(4)(a) are taken in terrorem and the dealer is penalized by a best judgment assessment in default of compliance. On that reasoning they held that the period of limitation prescribed under section 11-A might apply to a proceeding under section 11(2), but no such period of limitation was laid down in the Act in respect of a proceeding under section 10(3) or section 11(4)(a) of the Act. We find if rather difficult to appreciate the reasoning on which the learned Judge distinguished the Full Bench decision.'

34. The Full Bench decision to which the Supreme Court referred in this part of the judgment was the case of Bisesar House ([1958] 9 S.T.C. 654.).

35. So, the applicability or otherwise of the period of limitation prescribed by section 15 of no extent depends upon whether the assessment is proposed to be

made in terrorem in default of compliance or whether in making that assessment, a penalty is proposed to be imposed as it could be done under section 14(7) of the Bombay Act. What attracts that period of limitation is the proposal to make an assessment of escaped turnover, whatever may be the reason for which there has been such escape.

36. We, therefore, lean to the view that since the period of limitation within which the assessment which the Commercial Tax Officer proposed to make under section 14(6) is that prescribed by section 15 of the Bombay Sales Tax Act which had expired long before the impugned notices were issued by him, the notices which he issued were clearly beyond his competence.

37. What flows from this conclusion is that the imposition of a penalty which the Commercial Tax Officer proposed to do under section 14(7) which is possible only which making an assessment under sub-section (6) is also not possible since the assessment in the course of which that penalty could be imposed is itself not possible.

38. The writ petitions, therefore, succeed. We quash the notices issued to the petitioner in both these cases. We also make a further order quashing the proceedings which the Commercial Tax Officer has commenced in pursuance thereof.

39. In the circumstances, no costs.

40. Petitions allowed.

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