

The State of U.P. Vs. Jaipuria Brothers

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Court : Allahabad

Decided On : Mar-03-1960

Reported in : [1961]12STC248(All)

Judge : R. Dayal and ;R.A. Misra, JJ.

Appeal No. : Special Appeal No. 3 of 1956

Appellant : The State of U.P.

Respondent : Jaipuria Brothers

Advocate for Def. : R.S. Pathak, Adv.

Advocate for Pet/Ap. : N.D. Pant, Adv.

Disposition : Appeal allowed

Judgement :

R. Dayal, J.

1. This is a special appeal against the order of a learned Judge allowing the respondent's petition under Article 226 of the Constitution of India and issuing a writ of mandamus to the Sales Tax Officer, Kanpur, and the Commissioner of Sales Tax, Uttar Pradesh, not to proceed to assess the respondent to sales tax in respect of its turnover for the year 1948-49 under Section 21 of the U.P. Sales Tax

Act.

2. The respondent, Messrs Jaipuria Brothers Limited, stated in its writ petition that it was the sole selling agent of the Swadeshi Cotton Mills Co., Ltd., Kanpur, the manufacturer, with effect from 5th of October, 1946; that it sold cloth and yarn for and on behalf of the said manufacturer ; that it held a licence under Section 6 of the U.P. Sales Tax Act, 1948 (hereinafter called the Act); and that considering itself to be an agent and not a dealer within the definition of that term in Clause (c) of Section 2 of the Act did not file any return for the assessment year 1948-49 under the Act.

3. The Sales Tax Officer, Kanpur, issued a notice to the respondent under Section 21 of the Act on the 20th of March, 1952, and in spite of the protest of the respondent that it was not a dealer, assessed the respondent to sales tax on the 31st March, 1952. The assessment was based on the estimated turnover of the respondent's business which had escaped assessment for the assessment year 1948-49. The respondent appealed against that assessment order to the Judge (Appeals) Sales Tax, Kanpur. The appeal was allowed and the assessment order was annulled. Against this order of the Judge (Appeals) Sales Tax, Kanpur, the Commissioner of Sales Tax, U.P., filed a revision before the Judge (Revisions) Sales Tax, U.P. By order dated 28th of March, 1955, the Judge (Revisions) Sales Tax allowed the revision application, set aside the assessment order of the Judge (Appeals) Sales Tax and remanded the case for fresh assessment after proper scrutiny of the account books in the light of the observations made in his order.

4. In pursuance of this order of the Judge (Revisions) Sales Tax the Sales Tax Officer issued a notice on the 10th of June, 1955, to the respondent calling upon him to appear before the Sales Tax Officer with his complete account books, statements and other relevant documents for verification for the purposes of re-assessment for the year 1948-49. The respondent objected to the fresh proceedings for re-assessment on the ground that any fresh assessment was barred in view of the limitation prescribed in Section 21 of the Act. The Sales Tax Officer overruled the objection by his order dated 2nd September, 1955. Thereafter the respondent filed the writ petition.

5. The learned Judge held that the Sales Tax Officer had no jurisdiction to make an assessment in 1955 on the turnover of the respondent's business which escaped assessment to the tax in the year 1948-49, as such assessment is to be made within a period of three years next succeeding that to which the tax related, that period ending on the 31st of March, 1952. He repelled the contention for the State that the assessment to be made in the present case was not an assessment on any escaped turnover. He also repelled the contention that Section 21 of the Act did not include cases received by the Sales Tax Officer for making assessments on escaped turnover on remand from the Judge (Revisions). He accordingly, by his order dated 4th November, 1955, allowed the petition and issued a mandamus to the Sales Tax Officer and the Commissioner not to proceed with the assessment under Section 21 of the Act against the respondent.

6. The relevant portion of Section 21 of the Act, as it stood in March, 1952, is:

If for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to the tax...the assessing authority may, at any time within a period of three years next succeeding that to which the tax...relates, assess the tax payable on the turnover which has escaped assessment...after issuing a notice to the dealer and after making such inquiry as he considers necessary.

7. This section was amended in 1954. The amendment did not, however, make any significant difference to the above-quoted relevant portion of the previous section.

8. On the 28th of May, 1956, the Uttar Pradesh Sales Tax (Amendment) Act, XIX of 1956, was published in the Uttar Pradesh Gazette, Extraordinary. It had received the assent of the President on May 26, 1956. Section 15 of this Amendment Act is :-

For Section 21 of the Principal Act the following shall be and be always deemed to have been substituted :

'21. (1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for any

year, the assessing authority may, after issuing notice to the dealer, and making such enquiry as may be necessary, assess or re-assess him to tax:

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment, or full assessment, as the case may be.

Explanation-Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

(2) No order of assessment under Sub-section (1) or under any other provision of this Act shall be made for any assessment year after the expiry of four years from the end of such year:

Provided that where the notice under Sub-section (1) has been served within such four years the assessment or re-assessment to be made in pursuance of such notice may be made within one year of the date of the service of the notice even if the period of four years is thereby exceeded:

Provided further that nothing contained in this section limiting the time within which any assessment or re-assessment may be made shall apply to an assessment or re-assessment made in consequence of, or to give effect to, any finding or direction contained in an order under Section 9, 10 or 11.

Explanation-Where the assessment proceedings relating to any dealer remained stayed under the orders of any Civil or other competent Court, the period during which the proceedings remained so stayed shall be excluded in computing the period of limitation for assessment provided under this sub-section.'

9. The learned standing counsel relying on Section 21 of the Act after the aforesaid amendment submitted that in view of proviso 2 to Sub-section (2) of this section the limitation of time for making an assessment or re-assessment does not apply to the assessment or re-assessment made in consequence of the directions contained in the order of Judge (Revisions), and that therefore even if the order in appeal correctly interpreted the provisions of the old Section 21 of the Act, the order is to be quashed, when in view of the amended section the Sales Tax Officer

can lawfully proceed with the assessment of the turnover which escaped assessment. It is contended for the respondent that this provision of the amended Section 21 of the Act does not help the appellant as it does not validate the order of the Judge (Revisions) dated the 28th of March, 1955, that order being a null and void order, as the Judge (Revisions) had no jurisdiction to pass an order directing the Sales Tax Officer to do what he could not do in view of the provisions of then Section 21 of the Act. Reliance was placed on the case of Commissioner of Income-tax, Bombay Presidency and Aden v. Messrs Khemchand Ramdas [1938] 6 I.T.R. 414, Commissioner of Income-tax, Bombay v. Edulji F. E. Dinshaw : [1943]11ITR340(Bom) and Commissioner of Income-lax, Bombay v. Mangaldas Motilal & Co : [1944]12ITR89(Bom) . It was further contended for the respondent that in view of the amended Section 21 of the Act the Judge (Revisions) can be deemed to have had the power to pass an order of the kind that he did on the 28th of March, 1955, but as he however did not pass that particular order in the exercise of the power conferred on him by the second proviso to Sub-section (2) of the amended Section 21 of the Act, that order continues to be bad and reliance is placed on the case of Firm Bangali Mal Satish Chandra Jain v. The Sales Tax Officer, Agra (1958) A.L.J. 228. In reply the learned standing counsel submits that the order of the Judge (Revisions) dated the 28th March, 1955, was not a wrong order under the old Section 21 of the Act, that it would not become a wrong order merely because it could not be enforced or supplemented. It is submitted that the Judge (Revisions) did not suffer from any inherent lack of jurisdiction to pass that order.

10. We are of opinion that this appeal should be allowed. It is not disputed that the Sales Tax Officer could have assessed tax on the turnover of the respondent's business which escaped assessment to the sales tax in 1948-49 upto 31st March, 1952. The Sales Tax Officer did make such an assessment on the 31st March, 1952. An appeal against that assessment order lay to the Judge (Appeals) under Section 9 of the Act. Sub-section (3) of Section 9 lays down the powers of the appellate authority for disposing of the appeal.

11. This sub-section is :-

The appellate authority may, after giving the appellant a reasonable opportunity of being heard

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the assessing authority to pass a fresh order after such further inquiry as may be directed, or

(c)...

Sub-section (4) of Section 9 is : Every order passed in appeal under this section shall, subject to the powers of revision conferred by Section 10 and of any reference made to High Court under Section 11, be final.

12. It is clear from these provisions that the Judge (Appeals), the appellate authority, could, after setting aside the assessment, direct the assessing authority to pass a fresh order after such further enquiry as he might direct. Such a direction for fresh assessment is to be made only when the appeal is disposed of. There is no limit fixed for the disposal of the appeal. When the Sales Tax Officer is competent to make the assessment on the last date of limitation according to the provisions of Section 21, it is obvious that the order of the appellate authority would be made beyond that period of three years; and that if the provisions of Section 21 be interpreted as the learned Judge has interpreted them, then this power of the appellate authority will be of no effect in such cases in which the appeal itself could not be disposed of within the limited period prescribed by Section 21. The provisions of the various enactments in the same Act should as far as possible be so interpreted that none becomes ineffective or inconsistent with the other provisions. To reconcile the provisions of Sub-section (3) of Section 9 and of the old Section 21 of the Act, the provisions of Section 21 would be so construed that any assessment of the turnover which had escaped assessment, in pursuance of the directions of the appellate authority be held not to be subject to the period of limitation within which the fresh assessment is to be made. The limitation of time is with respect to the assessment by the Sales Tax Officer in the first instance on the turnover which has escaped assessment and is not on any re-assessment or fresh assessment under the directions of the appellate authority.

13. Sub-section (3) of Section 10 of the Act, as it stood in 1955, was :

The Revising Authority may in his discretion at any time suo motu or on the application of the Commissioner of Sales Tax or the person aggrieved, call for and examine the record of any order made by any Appellate or Assessing Authority under this Act, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order as he thinks fit:

Provided that no such application shall be entertained in any case where an appeal lay against the order, but was not preferred.

14. The Judge (Revisions), the Revising Authority, could therefore on the application of the Commissioner, Sales Tax, pass any order which he thought fit. His power is not restricted in any way, and therefore is at least as wide, if not more, than the power of the appellate authority. He can therefore pass an order setting aside the assessment made by the Sales Tax Officer under old Section 21 of the Act and direct the Assessing Authority to pass a fresh order after such further enquiry as may be directed. The order of the Judge (Revisions) of the 28th March, 1955, did not go beyond this. By this order the Judge (Revisions) set aside the assessment order and remanded the case for a fresh assessment after proper scrutiny of the account books in the light of the observations made by him. We are therefore of opinion that the order of the Judge (Revisions) was an order within his jurisdiction. It was a good order and that in view of the interpretation we have placed on old Section 21 of the Act, the Sales Tax Officer was competent to proceed with a fresh assessment on such turnover of the respondent as had escaped assessment in 1948-49.

15. The position is absolutely clear in view of the new Section 21 of the Act after the amendment of 1956. The order of Judge (Revisions) was a good order and the Sales Tax Officer is competent to conduct the proceedings of fresh assessment in pursuance of that order.

16. We do not agree with the contention for the respondent that the order dated 28th March, 1955, by the Judge (Revisions) was an order passed beyond his jurisdiction and was therefore null and void. That order required no validation. The

second proviso to Sub-section (2) of new Section 21 of the Act confers no fresh powers on the Judge (Revisions). It only provided that the provisions about the time within which the Sales Tax Officer is to assess the turnover which had escaped assessment does not apply to an assessment made on such turnover under the directions of the appellate or revisional authority ; and therefore there is no question of the Judge (Revisions) not exercising the power which he newly acquired under the amended Section 21 of the Act.

17. The cases relied upon by the learned counsel for the respondent are distinguishable. In Commissioner of Income-tax, Bombay Presidency & Aden v. Messrs Khemchand Ramdas the Income-tax Officer made an assessment to the best of his judgment under Section 23(4) of the Income-tax Act, 1922, and did not assess the super tax in view of the registration of the firm. The assessee paid the amount of taxes levied. Subsequently the Commissioner of Income-tax exercising his powers under Section 33 of the Income-tax Act revised the order of the Income-tax Officer regarding the registration of the assessee-firm, ordered its cancellation, and directed the Income-tax Officer to take further necessary action. In pursuance of this order the Income-tax Officer issued another order assessing super tax on .that firm and served a notice of demand. This order was issued more than one year after the close of the fiscal year ending on 31st March, 1927, and more than one year after the date of the earlier demand of the income-tax. The assessee appealed to the Assistant Commissioner of Income-tax and challenged the power of the Income-tax Officer to make that order. The appeal was dismissed. The assessee then applied to the Commissioner requesting him to exercise his powers under Section 33 of the Income-tax Act or, in the alternative, to refer the matter to the High Court under the provisions of Section 66(2) of the Income-tax Act. The High Court held that the Income-tax Officer had no power to make that order in view of the provisions of Sections 34 and 35 of the Income-tax Act. Their Lordships of the Privy Council agreed with that view and said at page 179 :

But when once a final assessment is arrived at, it cannot, in their Lordships' opinion be reopened except in the circumstances detailed in Sections 34 and 35 of the Act (to which reference is made hereafter) and within the time limited by those

sections.... The Commissioner's powers under Section 33 can 'only be exercised subject to the provisions of the Act, of which the provisions in Sections 34 and 35 are in this respect of the greatest importance.

18. According to Section 34 of the Income-tax Act, an Income-tax Officer can issue a notice for assessment of tax on income, profits or gains, which has escaped assessment within one year of the end of the assessment year, and then to proceed to assess or re-assess such income, profits or gains. Section 35 of the Income-tax Act empowers the Income-tax Officer to rectify any mistake apparent from the record of the assessment within one year from the date of any demand made upon the assessee. Their Lordships observed at page 180 :

In view of these express provisions of the Act, it is in their Lordships' opinion quite impossible to suppose that the Income-tax Officer may in every kind of circumstance and after any lapse of time make fresh assessments or issue fresh notices of demand; or that the Commissioner can direct him so to do. In their Lordships' opinion, the provisions of the two sections are exhaustive, and prescribe the only circumstances in which and the only time in which such fresh assessments can be made and fresh notices of demand can be issued.

19. These observations can have no effect on the interpretation of the powers of Judge (Revisions) under Section 10 of the Sales Tax Act.

20. Sub-section (3) of Section 10 of the Sales Tax Act does not provide that the Judge (Revisions) or the revisional authority can, subject to the provisions of the Sales Tax Act, pass such orders as he thinks fit. The orders are not subject to the provisions of the Act. There is a substantial difference between the powers of the Commissioner of Income-tax under Section 33 of the Income-tax Act and the powers of the revisional authority under Section 10 of the Sales Tax Act. We have, however, held already that taking into consideration the provision of Sub-section (3) of Section 9 of the Act with respect to the powers of the appellate authority, the powers of the revisional authority includes the power to set aside an assessment and direct a fresh assessment, and that the order of the Judge (Revisions) dated 28th of March, 1955, in no way contravenes the provisions of the Sales Tax Act. The case reported in the Income-tax Law Reports simply followed the Privy

Council case in cases arising out of the orders of the Income-tax Act.

21. The case reported in *Firm Bangali Mal Satish Chandra Jain v. The Sales Tax Officer, Agra* (1958) A.L.J. 228; 9 S.T.C. 492 simply held that any notification which was issued by the Governor under certain provisions of the Sales Tax Act and which was declared invalid by the Court required validation and was not validated by merely an amendment of the provisions of the Act to the effect that the Governor did have a power to issue a similar notification on the date the notification, which had been held void, had been made ; because in issuing that notification the Governor had not exercised the power which he neither possessed in fact on the date of issuing the notification but was deemed to possess that power that day on account of the subsequent amendment under the Act.

22. In view of the above, we are of opinion, with respect to the learned Judge, that the order under appeal is wrong, and should be set aside. We accordingly allow the appeal, set aside the order of the learned Judge and dismiss the petition of the respondent. In the circumstances of the case we make no order as to costs.

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