
(1988) 01 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.C.C. No. 286 of 1984

Ajanta Printers

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 05-01-1988

Acts Referred:

Citation : (1988) MPLJ 339 : (1988) 68 STC 441

Hon'ble Judges : N.D. Ojha, C.J.; K.K. Adhikari, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; S.K. Dixit, Deputy Advocate-General, for the Respondent

Judgement

N.D. Ojha, C.J.

The Board of Revenue, Gwalior, which is the Tribunal constituted under the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Sales Tax Act"), has referred the following question to this Court for its opinion u/s 44(1) read with Section 13 of the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as "the Entry Tax Act"):

Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that no second appeal is provided for the period under assessment of entry tax ?

The facts in a nutshell, necessary for answering the aforesaid question, are that an order of assessment was passed in the instant case on 26th April, 1979 under the Entry Tax Act for the period from 1st May, 1976 to 22nd October, 1976. An appeal against that order was preferred by the assessee u/s 15 of the Entry Tax Act which was dismissed on 18th June, 1980. Aggrieved by that order, the assessee preferred a second appeal before the Board of Revenue which was dismissed on 15th April, 1981 on the ground that it was not maintainable inasmuch as no provision for second appeal was in existence with regard to an order of assessment passed for the period in question, namely, 1st May, 1976 to

22nd October, 1976. The Tribunal, however, at the instance of the assessee, referred the aforesaid question to this Court for its opinion.

Having heard Learned Counsel for the parties, we are of the opinion that the view taken by the Tribunal cannot be sustained. It is true that Section 15 of the Entry Tax Act made a provision only for a first appeal against an order of assessment made under the said Act and there was no provision for second appeal. However, the provisions of the Entry Tax Act were amended by the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar (Sanshodhan) Adhiniyam, 1977 (hereinafter referred to as "the amending Act No. 22 of 1977"). By Section 9 of the amending Act No. 22 of 1977, Section 13 of the Entry Tax Act was amended, whereby the provisions of Section 38 of the Sales Tax Act were made applicable to the proceedings under the Entry Tax Act. This amendment, as is apparent from Section 1(2) of the amending Act No. 22 of 1977, came into force with effect from 1st May, 1977. The effect of this amendment was that a right of second appeal, as provided under Sub-section (2) of Section 38 of the Sales Tax Act, was created even under the Entry Tax Act. Since Section 38 of the Sales Tax Act makes a provision for first appeal also, Section 15 of the Entry Tax Act obviously become redundant and was consequently omitted by Section 10 of the amending Act No. 22 of 1977. The effect of this amendment was that even under the Entry Tax Act, a second appeal became maintainable with effect from 1st May, 1977. Even so, as already indicated above, the Tribunal took the view that since the assessment proceedings in the instant case were for the period from 1st May, 1976 to 22nd October, 1976 which fell prior to 1st May, 1977 when the amending Act No. 22 of 1977 came into force, a second appeal was not maintainable. As already indicated earlier, in our opinion, the view taken by the Tribunal is not sustainable.

In *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, , Section 5B of the East Punjab Evacuees" (Administration of Property) Act, 1947 and 27(1) of the Central Act 31 of 1950 came up for consideration. Section 5B of the East Punjab Act provided that if the original order u/s 5A was passed by an Assistant or Deputy Custodian of Evacuee Property, any person aggrieved by such order may appeal within sixty days from the date of the order to the Custodian of Evacuee Property and subject only to the decision on such appeal, if any, the order passed by the Assistant or Deputy Custodian would be final and conclusive.

An application made by the appellants of that case for confirmation, was pending and before any order u/s 5B aforesaid could be passed, the East Punjab Evacuees" (Administration of Property) Act, 1947, was repealed by Ordinances which in their turn were eventually replaced by the Administration of Evacuees" Property Act, 1950 (Central Act 31 of 1950). Section 27(1) of the Act empowered the Custodian-General either on his own motion or on an application made to him in this behalf to call for the record of any proceeding in which any District Judge or Custodian had passed an order for the purpose of satisfying himself as

to the legality or propriety of any such order and to pass such order in relation thereto as he thought fit. In other words, the section gave a power of revision to the Custodian-General.

Orders on the application made for confirmation in that case were passed on 20th March, 1952 by the Additional Custodian and the appellant was put in possession on 5th May, 1952. Thereupon a notice was issued u/s 27(1) of the Central Act (31 of 1950) to the appellant to show cause why the order of the Additional Custodian dated 20th March, 1952 should not be set aside. Ultimately the Custodian did set aside that order on 20th May, 1953. The matter was taken up to the Supreme Court by obtaining special leave to appeal. It was contended before the Supreme Court that since in view of Section 5B of the East Punjab Act, the order of the Additional Custodian was final, the appellant had a vested right which could not be taken away by Section 27(1) of the Central Act 31 of 1950. This contention of the appellant was repelled and it was held in para 12 of the report that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action, no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. It was pointed out that by the very terms of Section 5B of the East Punjab Act, finality is attached to it on the making of the order. Even if there be, in law, any such right at all as the right to a determination with the attribute of finality, it can, in no sense, be a vested or accrued right. It does not accrue until the determination is, in fact, made when alone the right to finality becomes an existing right.

In the instant case also, as seen above, the assessment order and the order passed in appeal u/s 15 of the Entry Tax Act as it stood prior to the amendment by the amending Act No. 22 of 1977, had not been passed before the commencement of the amending Act on 1st May, 1977, but were passed long "thereafter and on dates when a second appeal had already been provided for under the Entry Tax Act. Consequently, on the principles laid down by the Supreme Court in the case of Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others, , the second appeal preferred by the assessee before the Tribunal was clearly maintainable.

In Hardeodas Jagannath Vs. State of Assam and Others, , an amendment had been made in Section 30 of the Assam Sales Tax Act (17 of 1947) which laid down certain conditions for maintainability of an appeal. The amendment came into force on 1st April, 1958. Assessments for the period ending on dates prior to 1st April, 1958 were completed after the commencement of the amending Act. A question arose as to whether the conditions incorporated in Section 30 for the maintainability of an appeal by the amending Act were applicable or not. It was held that since the assessments were completed after the amendment of Section 30 had come into force and the appeals against the assessments were filed after the amendment, the appeals were governed by the amended section.

In view of the foregoing discussion, our answer to the question referred to us is that on the facts and in the circumstances of the case, the Tribunal was not justified in holding that no second appeal is provided for the period under assessment of the entry tax. In other words, the said question is answered in the negative in favour of the assessee and against the department. However, there shall be no order as to costs.