
(2005) 05 GAU CK 0061
In the Gauhati High Court

Assam Tea Brokers (P.) Ltd. and Another APPELLANT
Vs
State of Assam and Others RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Income Tax Act, 1961 — Section 154
Limitation Act, 1963 — Section 5

Citation : (2007) 1 GLR 168 : (2005) GLT 433 Supp : (2007) 8 VST 621

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—The basic challenge in the instant petition is against the assessment order dated 29.9.1999 passed by the Superintendent of Taxes, Unit - A, Guwahati, in exercise of powers u/s 37 of the Assam General Sales Tax Act, 1993, (hereinafter referred to as the "Act"), for the period ending 1993-94 consequent whereupon an additional tax demand of Rs. 22,53,431.00 was made.

2. I have heard Mr. G.K. Joshi, Senior Advocate assisted by Ms. U. Chakravorty, Advocate for the petitioner and Mr. D. Saikia, Advocate for the Revenue.

3. The abbreviated facts as discernible from the writ petition are that the petitioner No. 1 is a private limited company engaged in the business of sale of tea in Gauhati Tea Auction Centre as a registered broker. It is also a registered dealer with the Superintendent of Taxes, Unit-A, Guwahati, under the Act. The petitioner No. 2 is the Director of the petitioner No. 1 - company. For the year 1993-94, the petitioner No. 1 submitted statement of turnover for the months July 1993 to March 1994 and deposited the admitted tax due as required under the Act. The petitioner No. 1 also submitted Annual Return on its turnover to be Rs. 43,79,56,211.87. It claimed exemption from tax on account of having effected sales worth Rs. 3,98,00,957.78 in course of export deals. In pursuance of notice issued by the assessing authority, respondent No. 3, the petitioner No. 1 produced its books of accounts and other relevant records, inter alia, the

declaration forms in support of export sales for the aforementioned amount. The respondent No. 3 being satisfied in all respects on scrutiny of the materials available before it completed assessment vide assessment order dated 30.1.1996 passed u/s 17(4) of the Act determining the gross turnover of the pensioner No. 1 at Rs. 43,79,56,212.00. The assessing authority thereby allowed the exemption claimed on account of export sales worth Rs. 3,98,00,958.00 and on adjustment of the admitted tax already paid to the tune of Rs. 79,63,277.00, an amount of Rs. 172.00 was taken to be the tax payable. The petitioner No. 1 duly paid the tax assessed to be due.

4. Subsequent thereto, the respondent No. 3 on 4.6.1997 issued a notice requiring, inter alia, the petitioner No. 1 to produce export certificates in support of the total export sales worth Rs. 9,83,92,553.00 for the period mentioned therein. In response thereto, the petitioner No. 1 addressed a letter dated 16.6.1997 informing the authority concerned that the relevant export certificates had been submitted in course of the assessment proceeding and requested the said authority to furnish the period wise break up of the amount of Rs. 9,83,92,553.00.00 for which the export certificates were not available, the respondent No. 3, was also intimated thereby that the petitioner No. 1 had in the meantime approached the export buyers to furnish the export documents. On being furnished with the break up figures as requested, the petitioner No. 1 submitted some duplicate copies of the export certificates and documents as could be traced out. It was after a gap of nearly two years thereafter that the respondent No. 3 issued a show cause notice dated 7.5.1998 asking the petitioner No. 1 to show cause as to why the assessment for the period ending 31.3.1994 under the Act should not be completed summarily in view of the audit objection on the ground of non-production of accounts for the said period. By the impugned assessment order dated 29.9.1999, u/s 37 of the Act, the petitioner No. 1's gross turnover was determined to be at Rs. 43,79,56,212.00 allowing exemption claimed at Rs. 3,07,75,885.00 against the claim of Rs. 3,98,00,957.78 raising an additional demand for Rs. 9,30,330.00. Further demand for an additional amount of Rs. 13,23,101.00 was also made on account of interest totalling an amount of Rs. 22,53,31.00 payable by the petitioner No. 1 after adjustment of the amount of Rs. 72,13,277.00 already deposited.

5. Being aggrieved, the petitioner No. 1 preferred an appeal under the Act before the respondent No. 2, the Deputy Commissioner, Taxes (Appeal), Guwahati. By order dated 30.03.2001, the appellate authority rejected the appeal and affirmed the order of assessment dated 29.9.1999. Being still aggrieved the petitioner No. 1 carried the matter in appeal before the Assam Board of Revenue, Guwahati, u/s 5A of the Act, which, however, met the same fate.

6. The principal ground taken by the petitioner No. 1 in both the appeals was that as the impugned assessment order which was by way of rectification of the original assessment order had been passed beyond the time as prescribed u/s 37 of the Act, it was illegal and without any authority of law. Both the appellate

authorities negated the contention on the ground that as the process for rectification had been initiated on 4.6.1997 which was within the permissible time limit, the impugned order of verification/assessment could not be construed to be time barred.

7. No affidavit has been filed on behalf of the revenue and, therefore, the statements made on oath in the writ petition remain unrebutted.

8. Mr. Joshi has reiterated the stand taken before the appellate authorities. Drawing the attention of the court to Section 37 of the Act, the learned senior counsel persuasively argued that having regard to the language employed in Sub-section (1) of Section 37 of the Act, it is manifestly clear that a suo motu rectification of any assessment order already made has to be mandatorily within a period of three years from the end of the financial year in which such assessment was made. He maintained that as the original order of assessment in question was made on 30.1.1996, any rectification by the concerned authority on its own motion u/s 37 of the Act could be made latest by 31.3.1999. As the impugned order has been passed only on 29.9.1999, the same was clearly beyond the prescribed time limit and was, thus, per se, illegal and without jurisdiction. He urged that in absence of any provision in the Act permitting extension of the time limit prescribed or condonation of delay in connection therewith, the mandate of Section 37(1) has to be strictly construed. There being no scope for enlargement of the period specified, the inescapable conclusion is that the impugned order of assessments was barred by time, he contended.

According to him, the relaxation in the time limit is only in cases where the rectification contemplated u/s 37 of the Act is sought to be introduced on the basis of any mistake brought to its notice by a dealer or a person affected by the original assessment order before the expiry of such time limit and, therefore, the instant case being one of suo motu rectification, purported initiation of the process, therefore, by the impugned notice dated 4.6.1997 was wholly insignificant and irrelevant. He, therefore, contended that the lower appellate authorities rejected the petitioner's contention on an erroneous view of the law. The impugned order of assessment/rectification and the orders in appeal being apparently illegal are, thus, liable to be set aside and quashed, he urged. In support of his submissions Mr. Joshi placed reliance on the following decisions in *State of Punjab and Ors. v. The P.O. Sales Tax Tribunal and Anr.* 119 STC 82, *E.M. Chokkalingam Chettiar Vs. Agricultural Income Tax Officer, and Commissioner of Income Tax Vs. Gangaram Chapolia and Co.,*

9. In reply, Mr. Saikia asserted that as the notice for rectification had been issued on 4.6.1997 admittedly within the prescribed time limit as ordained in Section 37 of the Act, the impugned order though passed after the said period could not be denounced as barred by time. The learned Counsel rested his submission on the following decisions, in *State of Punjab and Ors. v. Tora Chand Lajpat Rai* AIR 1964 SC 1408 and *Sha Vajeshankar Vasudeva & Co. v. The Assistant Commissioner of Commercial Taxes (Accounts), Mangalore* 134 STC 257.

10. I have extended my anxious consideration to the competing arguments. As the rival contentions have been built up around Section 37(1) of the Act, it would be apt to extract the same for ready reference.

37. Rectification of assessment and orders. - (1) The authority which made an assessment or order or passed an order in appeal or revision in respect thereof may, at any time within three years from the end of the financial year in which such assessment or order was made and of its own motion, rectify any arithmetical mistake or other mistake of a factual nature apparent from the record of the case, and shall even beyond such period, rectify any such mistake as is brought to its notice by a dealer or person affected by such order before the expiry of such time limit:

Provided that no such rectification shall be made having the effect of enhancing the assessment unless the authority concerned has given notice to the dealer or person of its intention so to do and has allowed him a reasonable opportunity of being heard.

11. A plain reading of the above provision of the Act yields the following features : (1) It permits rectification of an assessment order made under the Act by the authority comprehended therein. (2) The authority concerned may at any time of its own motion rectify any arithmetical mistake or any other mistake of a factual nature apparent from the records of the case appearing in the assessment or the order made. (3) Such rectification if made on the own motion of the authority concerned, the same has to be within a period of three years from the end of the financial year in which such assessment order had been made. (4) The authority can effect such rectification beyond the period of three years as above if the mistake sought to be rectified had been brought to its notice by a dealer or a person affected by such order before the expiry of the time limit prescribed.

12. The proviso to Sub-section (1), however, makes it incumbent on the part of the authority concerned to inform the dealer or the person about its intention of causing such rectification and to allow him a reasonable opportunity of being heard. Considering the issue in hand the other sub-sections are not being referred to.

13. A reading between the lines of the above section of law, makes it unmistakably clear that rectification of an earlier order of assessment can be made either suo motu by the authority concerned or at the instance of a dealer or person effected by such order. The time limits for doing so, however, are distinctly different.

14. Whereas in case of suo motu rectification, the same has to be caused within three years from the end of the financial year in which the earlier assessment order had been made, such rectification may be made even beyond the said time limit provided the related mistake had been brought to the notice of the authority concerned by a dealer or a person affected by it within the period prescribed. The

legislative intention, having regard to the unequivocal language applied, in my view, is manifest. A clear distinction has been provided between the two eventualities. Had it been the intention of the Legislature to relax the time limit for rectification also in the event of suo motu exercise of power of the authority to the said effect, it would have provided for the same. The differentiation appears to be a conscious edict of the law. In the face of the above legislative scheme any construction suggesting that in case of suo motu rectification as well it is permissible for the authority concerned to make the order even beyond the prescribed time limit only because the process thereof had been initialled within the period prescribed, would be opposed to the obvious mandate of law. Besides it would tantamount to presupposition of an unmindful omission on the part of the Legislature - a notion uncounatenanced by the fundamental principles of interpretation.

15. The High Court of Punjab and Haryana in the State of Punjab and Ors. v. Presiding Officer, Sales Tax Tribunal and Anr. (supra) dealing with an identical issue arising out of Section 21A of the Punjab General Sales Tax Act, 1948, authorizing suo motu rectification of mistake apparent from the record within two years of the date of the earlier order, adjudged the impugned order passed beyond the period as invalid being barred by time.

16. In Commissioner of Income Tax v. Gangaram Chopadia & Co. (supra) the Orissa High Court while dealing with the same contention, vis-a-vis, Section 154(7) of the Income Tax Act, 1961, prescribing a time limit of four years for the amendment as envisaged therein annulled the impugned order passed beyond time observing that in absence of any provision akin to Section 5 of the Limitation Act for condoning the delay, the same was unsustainable.

17. The Karnataka High Court in E.M. Chokkalingam Chettiar (supra) was seized with an identical issue arising out of Section 37(7) of the Karnataka Agricultural Income Tax Act, 1957 mandating that no amendment under the section would be permissible after expiry of four years from the date of the order sought to be amended. A similar argument On behalf of the Revenue was advanced. It was urged that as the proceeding for amendment/verification was initiated within four years of the original assessment year, the same could be completed beycnd that the period. Rejecting the contention it was held that the language u/s imperatively required the authority to make its order within four years from the date of the original order and that period of the limitation prescribed should be construed strictly.

The decision of the Apex Court in State of Punjab and others and Tarachachand Lajpat Rai pressed into service on behalf of the Revenue, turns on its own facts. Section 11 of the Punjab General Sales Tax Act, 1948, involved was couched in a different language and embodied the different stages of assessment provided under the said Act. The ratio of this decision, having regard to the unequivocal attributes of Section 37(1) of the Act, does not advance the case of the Revenue.

18. The High Court of Karnataka in *Sha Vaje Shankar Vasudeva Company (supra)* while dealing with an identical contention with reference to Section 25A of the Central Sales Tax Act, 1956, permitting rectification of mistakes by amendment of an earlier order passed held that a notice to the assessee to show cause against the proposed rectification would be an integral part of the rectification proceeding and that the order of rectification passed pursuant to the notice even after the expiry of the prescribed period would not be a defective one. In coming to this conclusion, his lordship relied on the decision of the Apex Court in *The Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons*, The Apex Court in the above reported case had to deal with the same contention based on Rule 33(1) of the Travancore Cochin General Sales Tax Rules, 1950 permitting determination of any escaped turnover and assessment of tax/licence fee payable within three years of the period to which such tax or licence fee was payable. The Apex Court, in the contextual facts, held that the word "determination" could not be accorded a different meaning than the words "proceed to assess". It was of the view that the word "assessment" is comprehensive denoting entirety of the proceeding taken with regard to it and could not be limited to the final order alone unless there was something in the context of a particular provision necessitating such a meaning being contributed to it. The Apex Court, however, was categorical in observing that it was undoubtedly open to the Legislature or the rule making authority to make its intention clear that on expiry of a prescribed period no final order of assessment could, be made. It ruled that in such a case, the taxing authority certainly would be debarred from completing the proceeding beyond the period prescribed. The Apex Court noticed that no such intention was decipherable from the legal provision involved.

19. In view of the unambiguous language appearing in Section 37(1) of the Act conveying the pronounced intention of the Legislature interdicting the concerned authority from effecting suo motu rectification of any earlier assessment order beyond the period of three years from the end of the financial year in which such assessment or order had been made, the above decision in *Sha Vaje Shankar Vasudeva and Company (supra)* does not further the case of the Revenue.

20. If two views are possible on reading a taxing statute, one in favour of the assessee needs to be adopted has been held by the Apex Court in *Union of India (UOI) and Others Vs. Onkar S. Kanwar and Others*, . The rudimentary principles of interpretation outlining the contours of a court while deciphering the intention of the Legislature have been succinctly expressed by the Apex Court in *Dadi Jagannadham Vs. Jammulu Ramulu and Others*, , in the following words:

The settled principles of interpretation are that the court must proceed on the assumption that the Legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the Legislature. Undoubtedly if there is a defect or an omission in the words used by the Legislature, the court would not

go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot add the Legislature's defective phrasing of an act, or add and man and by construction, make up deficiencies which are there.

21. In *The State of Kerala and Others Vs. Dr. S.G. Sarvothama Prabhu*, , the Apex Court laid down that the function of the court is to interpret the law made by the Legislature which ought to be ascertained from the language of the statute. It held that when the words are unambiguous, clear and explicit there need be no recourse to any rule of interpretation.

22. The narration would stand aptly completed with the following extracts from the decision of the Apex Court in *J.P. Bansal v. State of Rajasthan* (2003) 5 SCC 131, providing the beacon light to the courts in the interpretative pursuit.

It is said that a statute is an edict of the Legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the Legislature.

...Where, however, the words are clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provision. In that situation the judges should not proclaimed the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an" alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See Frankfurter : Some Reflections on the Reading of Statutes in "Essays on Jurisprudence", Columbia Law Review, 51.

23. In view of the exhaustive and elucidative exposition of the law regarding interpretation of statutes and the unequivocal and determinate language of Section 37(1) of the Act, I am of the considered view that the impugned order of assessment/rectification having admittedly breached the time limit prescribed thereby, cannot be sustained in law and on facts. The notice dated 4.6.1997 initiating the process of such rectification though within the time limit sanctioned cannot save the order in the teeth of clear legislative precept conveyed by the contents of the said provision of the Act. The lower appellate forums, in my view proceeded in the wrong legal perspective and consequently the orders passed in the appeal cannot be sustained as well as.

24. The upshot of the above discussion, therefore, is that the impugned order of assessment/rectification dated 29.9.1999 and the orders passed in the statutory appeals are hereby set aside and quashed. The petition is allowed. There would no order as to costs.