

(1965) 01 MAD CK 0028

In the Madras High Court

Case No : Writ. Petition No's. 38 and 39 of 1963

Banda Brothers

APPELLANT

Vs

Board of Revenue, Madras

RESPONDENT

Date of Decision : 22-01-1965

Acts Referred:

Constitution of India, 1950 — Article 286(2)

Citation : AIR 1966 Mad 179 : (1965) 78 LW 483 : (1965) 16 STC 664

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

(1) In these two writ petitions, the petitioners seek writs of certiorari to quash the orders of the Board of Revenue in so far as they relate to the assessments of the assessment years 1954-55 and 1955-56 in the following circumstances. The petitioners have been carrying on business at Bombay as commission agents in piecegoods. Against orders received from their constituents in this State, they were purchasing and supplying piecegoods. The Deputy Commercial Tax Officer called for returns, but as the account books of the petitioners were with the Sales-tax authorities of Bombay they could not furnish the returns. For the two years in question, the Deputy Commercial Tax Officer made assessments on a best of judgment basis, fixing the turnover for the two years at Rs. 15 lakhs and 7 lakhs respectively. The petitioners preferred appeals. By this time, the account books had been returned to the party by the Sales Tax Authority of Bombay, and on the basis of those accounts, the appellate Assistant Commissioner accepted the returns of the petitioners and fixed the turnover at Rs. 5,72,000 for 1954-55 and Rs. 2,06,000 for 1955-56 upto the 6th September 1955. Shortly thereafter, the decision of the Supreme Court in the The Bengal Immunity Company Limited Vs. The State of Bihar and Others, was rendered, with the result that the petitioners received demands from their constituents for refund of the sales tax which had been collected from them by the petitioners. In accordance with these demands the petitioners did refund such sales tax either by giving credit to them in their respective accounts, or by payment by cheque, or by the issue of credit

notes, or the like methods. Such refunds are said to have been made by the petitioners before 29-1-1956. The petitioners accordingly contended in the course of their appeals that they should not be called upon to pay sales tax in respect of such transactions. Though certain certificates were produced by the petitioners from their customers to prove the refund of the sales tax collected by them, the Appellate Assistant Commissioner would not accept them. Even entries in the day-books and the ledgers showing the refund of the sales tax or payments by cheques or the issue of credit notes were not accepted by the Appellate Assistant Commissioner.

(2) The State of Madras issued a Government Order dated 13-6-1958, which directed the subordinate authorities of the department to take certain steps with regard to the claims to refund of sales tax. The relevant portion of this Government order directed thus:

"As regards the period from 1-9-1953 to 6-9-1955, action shall be taken to assess and collect such sales tax on inter-State transactions validated by the Ordinance in all cases, except those in which non-resident dealers had not collected the tax or had collected and refunded it."

It may be mentioned here that the Sales Tax Laws Validating Ordinance of 1956 has been passed validating the collection of sales tax on inter-State sale transactions upto 6-9-1955, the date of the judgment of the Supreme Court in the *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . The Government Order in question had been issued with a view to give relief to dealers who might not have collected sales tax on inter-State sale transactions, or who, after such collection, might have refunded it. The petitioners' claim that their case came within the purview of the above Government Order and that they should not be assessed to tax was not accepted by the Appellate Assistant Commissioner.

(3) Further appeals were carried by the petitioners to the Tribunal but the Tribunal declined to interfere with the orders passed, on the ground that the Tribunal could not enforce compliance with administrative directions. It directed the petitioners to obtain the relief by other means. When however the petitioners sought to obtain the relief from the Board of Revenue as the highest Revenue authority, the Board of Revenue rejected their request.

(4) It is in these circumstances that the petitioners have approached this court. What in effect is demanded by the petitioners is not only writs of certiorari to quash the orders of the Board of Revenue, but a writ in the nature of mandamus as well to direct the appropriate Sales Tax Authorities to give effect to the Government order in question.

(5) On behalf of the Board of Revenue, the facts set out above are not disputed in the counter-affidavit filed. What is however contended is that the relief sought from the Board of Revenue is purely an ex gratia discretionary one and that the Board, after satisfying itself as to the merits, had come to a conclusion against

the petitioner. It is urged that the order of the Board is not affected by any error of law or otherwise, and that the petition is liable to be dismissed.

(6) In a reply-affidavit filed on behalf of the petitioners it is stated that the view expressed by the Board or the Appellate Assistant Commissioner that satisfactory proof of having refunded the amounts of tax collected by the petitioners was not produced is wholly erroneous. In so far as the Board was concerned, the petitioners were not called upon to produce any proof before it. It was also alleged that the very books upon which the turnover had been computed contained evidence of the refund of the tax collected and that the appellate Assistant Commissioner refused to look into those parts of those account books in deciding against the petitioners.

(7) The question that is before me is whether this court cannot issue a direction to the Sales Tax Authorities to give effect to a Government Order in the matter of assessment and levy of sales tax. The position is somewhat like this. The Madras General Sales Tax Act, as it stood, could not authorise the levy of any sales tax on transactions of an inter-State nature so long as Art. 286(2) of the Constitution imposed a ban. There had been considerable doubt about the legal position which was not set at rest till the Supreme Court rendered its decision in the *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . The result of that decision is that the various State Government had unlawfully collected sales tax from dealers who had engaged in inter-State sale transactions and were under a liability to refund such tax collections. In these circumstances, the Sales Tax Law Validating Ordinance 1956, was passed, which validated such collections upto the date of the judgment of the Supreme Court, 6-9-1955. The case of dealers who did not collect any sales tax on inter-State transactions, or who either independently or as a result of the Supreme Court decision had refunded the sales tax collected by them had to be considered. It would certainly be highly inequitable if such dealers were called upon to pay sales tax to the States when they could not validly levy such sales tax from their constituents. It was in these circumstances and to provide relief to such dealers that the State of Madras issued the Government Order in question. The Government Order clearly specified that except in the case of non-resident dealers who did not collect the tax or who had collected and refunded it, action should be taken to assess and collect sales tax on inter-State transactions validated by the Ordinance. The Government order accordingly directed the subordinate assessing authorities not to assess to tax non-resident dealers who fell within the category indicated above.

(8) That the Board did not deal with the question on merits is clear. It is not in dispute before me that the Board did not call upon the petitioners to produce any documents or records in order to prove that the case of the dealers fell within the purview of the Government Orders in question. The contention of the Board that since the matter was disposed of on merits and the Board was satisfied that there was no acceptable evidence in support of the petitioners' claim is certainly

untenable. The order of the Board is a bald one refusing relief and contains no indication that the merits of the case were at all considered. On a perusal of the orders of the Appellate Assistant Commissioner also, I am not satisfied that there was any examination of the records produced by the petitioners which justified the outright dismissal of the petitioners' claims. There was to my mind no disposal of the question on merits at any stage of the proceeding.

(9) On behalf of the State, it has been urged by Mr. Ramaswami, the learned Additional Government Pleader, that a decision of this court, to which I was a party, has held that it is not open to the petitioners to seek, in the exercise of the writ jurisdiction of this court, relief based primarily upon an executive order of the Government. I am not satisfied that this interpretation of that decision is correct. The case that came before us was one where the Sales Tax Appellate Tribunal had refused to give effect to an executive order of the Government. When the matter came before us in revision under the provisions of the Sales Tax Act, the question this court had to consider was whether the order of the Tribunal was correct. The Tribunal is charged with the application of the Sales Tax Law and if it refused to apply an executive order which did not stem from any of the provisions of the Sales Tax Act, it is quite obvious that the Tribunal was acting within the scope of its functions, and in that revision proceeding, this court had merely to consider whether the Tribunal had applied the provisions of the Act, and not whether it should have applied any executive direction of the Government. In dealing with the present matter, I am not considering the impact of the provisions of the Sales Tax Act. I am called upon to examine whether, when the State in the exercise of its lawful authority had granted a particular concession and had issued instructions to the subordinate authorities to give effect to the terms of the Government Order, it is open to these subordinate authorities to refuse to give effect to or misapply those directions. While the case I have referred to above was one which went upon an examination of the provisions of Sales Tax Law, I am dealing in the present instance with the exercise of the extraordinary jurisdiction of this court.

(10) In *Dhandapani Powerloom Factory, Erode v. Commercial Tax Officer, Coimbatore*, 1961 12 STC 304 this question was considered by a learned single Judge of this court. That was a case where by the provisions of Act III of 1956, additional sales tax was imposed on certain varieties of cloth and this levy was made retrospective from an anterior date. As such retrospective operation would act harshly on such of the dealers as had not collected the tax under the existing law, the Government passed a Government Order whereby they waived the collection of the additional sales tax in certain cases specified in the Government Order. One of the assesseees who had been assessed appealed unsuccessfully. At the time of the disposal of the appeals, the assessee was unaware of the Government Order, but on coming to know of the relief contemplated by that order, he sought for a review of the appellate order at the hands of the Tribunal. The Tribunal rejected that application. A similar application made by the assessee to the Commercial tax officer was also rejected by that authority in the view that

the order of assessment had become final. It was this order of the Commercial Tax Officer that was impugned before this court in writ proceedings. On behalf of the State it was contended that this court would have no jurisdiction to issue a writ of certiorari, as what the Commercial Tax Officer did was merely to decline to grant refund in respect of which the petitioner had no statutory right. This contention was repelled in the following words:

"Here the Commercial Tax Officer is not exercising any independent or statutory jurisdiction of his own. He as a subordinate of the Government was directed to do a public duty, and if he failed to do that duty on a misapprehension of the scope of the very direction given to him it should be open to this court to issue the appropriate writ."

The principle followed was that where a public authority has been directed by a superior authority to perform a particular act, the refusal by that public authority to perform that act is capable of correction in the writ jurisdiction of this court. The learned Judge refers to an earlier Bench decision in W.P. Nos. 832 to 834 and 887 of 1958 (Mad) as supporting his view.

(11) It seems to me that these decisions fully apply to the present case. The Government order in question incorporates a specific direction to the subordinate authorities not to assess non-resident dealers who had either not collected the tax or after collection had refunded it. I am satisfied that it was the duty of the appropriate authorities, including the Appellate Assistant Commissioner, to have examined the evidence tendered by the petitioners in this regard. I am satisfied that though the evidence was considered, it was only considered in part and the entirety of the evidence consisting of the account-books and other records was not scrutinised. I have already pointed out that in so far as the Board was concerned, though it appears to have called for a report from the subordinate officers, it did not examine the matter by itself. At any rate, it gave no notice to the petitioners or give the petitioners an opportunity of showing how the petitioners came within the scope of the Government Order. It seems to me to be clearly a case where the assessing authorities who are bound to obey the lawful directions issued by the Government in the shape of a Government Order have failed to perform their duty. It follows that the orders of the Board necessarily have to be quashed. There will be a direction that the matter be considered afresh by the appropriate assessing authority in the light of the evidence placed before him by the petitioners. In the circumstances, there will be no order as to costs.

(12) Petitions allowed.