(1994) 04 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 4588 and 9103 of 92

Champaran Sugar Company Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 15-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0006

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—Both the Writ applications which relate to different assessment years involving similar facts and law have been heard analogous and as such, they are being disposed of by this common judgment.

2. The case of the Petitioner in both the writ applications is that for the first time notice bearing No. 468 dated 3.5.88 for assessment u/s 27 of the Bihar Agriculture Produce Market Act, 1960 (hereinafter referred to as ''the Act'') was issued by the secretary of the Agriculture Produce Market Committee, Chanpatia in form 27 Ga, inviting objection. In response to the said notice the representative of the Petitioner company produced all books of account on the date fixed and on 2.8.88 the Respondent Special Officer passed order of assessment for the period 1979-80, 80-81 and 81-82, photostat copies of which are annexed to this writ petition as annexure ''6'' in C.WJ.C. No. 4588 (hereinafter referred to as the first case) and as annexures 6 and 6/A in C.W.J.C. No. 9103/92 (hereinafter referred to as the second case).

3. The Petitioner filed appeal against the said order of assessment of market fee on the purchase of sugar cane by it during the period aforementioned before the Regional Director, Muzaffarpur, who by his order dated 25.7.89 set aside the order of assessment and directed the Respondent Market Committee to pass a fresh order in the light of Section 27A of the Act as also in regard to the penalty he directed for passing of a fresh order after full consideration.

4. Thereafter, it appears that the Assessment Sub-Committee of the Market

Committee passed fresh order of assessment on 28.12.1990. The Petitioner company again filed appeal before the same appellate authority, who finally dismissed it on 24.10.91 along with, other appeals preferred for the subsequent periods including 1980-81 and 81-82. This time, however, penalty was reduced from 100% to 15% of assessed Market fee. The said appeals were dismissed on the sole ground that in view of Section 27B(2) of the Act one-third of the total fee assessed had not been deposited. The Petitioner company preferred revision before the Managing Director against the aforesaid order, who by his order dated 5.2.92 rejected the contention of the Petitioner and held that as condition of Section 27B(2) had not been complied with by the Petitioner, the appeal proceeding before the Regional Director, Muzaffarpur against the assessment order on the purchase of sugarcane for the periods mentioned above as also the order dated 24.10.91 passed therein by the Regional Director, being violative of the scheme of the Act were quashed with further direction that as a consequence, the order of the assessment passed by the A.P.M.C. Chanpatia, should be deemed to be un-interfered. A true copy of the same has been annexed as Annexure 8. The Petitioner prays for quashing of assessment order, the appellate order as also the Revisional Order contained in Annexures 6, 7 and 8 respectively.

5. A counter affidavit has been filed on behalf of the Managing Director of the Board, the Market Committee, Chanpatia and the Secretary of the said Market Committee, in which it is stated inter alia that the Petitioner is liable to pay market fee on purchase of sugarcane as well as on sugar molasses and other agricultural produce mentioned, in the schedule of the Act in which the Petitioner deals. Further, it is stated that as per the account of the Market Committee, the Petitioner, has not paid any market fee on produce of sugarcane for the aforementioned periods. In paragraph 8 of the said counter affidavit it has been stated that much prior to the aforementioned notice dated 3.5.88 the Petitioner was issued notice in form ''C'' vide letter No. 93 dated 24.1.87 by the Respondent Market Committee in respect of determination of fee for the financial year 1970-80 and was asked to produce his books of account on 30.1.87, which the Petitioner failed to comply. It has been stated in the counter affidavit that the Petitioner company failed to comply with the direction of the appellate authority despite several notices to it for producing its books of account and as such, the Assessment Sub-Committee made assessment, taking lenient view and reducing the amount of penalty from 100% to merely 15%.

6. Mr. Agrawal, learned Counsel appearing for the Petitioner has raised a short question that the aforementioned notices, the assessment proceedings and order passed therein including the revisional order are wholly without jurisdiction as the very notices impugned are barred by limitation prescribed u/s 27AA of the Act. Thus, according to the learned Counsel this application must succeed on the simple question of limitation in starting a proceeding under the said provision which expired long before. Section 27AA(a) of the Act provides for assessment of the fee by the Sub-Committee if upon information received it is satisfied that

reasonable ground exists to believe that assessment of market fee for any period on the amount of purchase or sale by the trader has escaped assessment or has been under assessed u/s 27Ka, or there has been wrong deduction made, then the Fee Assessment Sub-Committee before expiry of six years of the end of that year has reasons to believe that the trader has concealed, omitted or has failed to disclose fully the particulars or has furnished incorrect particulars of such trade and thereby furnished return showing figures below the real amount and under Clause (b) in any other case within four years of the completion of the period the Fee Assessment Sub-Committee shall serve notice upon the trader in form Ka, in which the details of the information to be included shall be given and thereafter for assessment or re-assessment of the amount of fee in respect of the purchase and sale made by such traders. The said provision, which is only available in Hindi is being re-produced hereunder:

27 & ,,- & ;fn Qhl fu/kkZj.k & mi & lfefr dks izkIr tkudkjh ds vuqlkj lfefr dk lk/kku gks tk;] fd mls fo''okl djus dk leqfpr vk/kkj gS fd fdlh O;kikjh }kjk fdlh vof/k esa fd;s x;s fc?h ;k [kjhn & lEcU/kh laO;ogkj fd fdlh jde ij] fdlh dkj.ko''k Qhl fu/kkZj.k ugha gks ik;k gS vFkok 27 d ds v/khu fdlh O;kikjh ij de Qhl fu/kkZjk fd;k x;k gS ;k mlls dksbZ xyr dVkSrh dj yh x;h gS rks Qhl fu/kkZj.k milfefr &

?d? ,slh vof/k lekIr gksus ds N% o"kksZa ds Hkhrj ;fn mls ,slk fo''okl djus dk dkj.k gks fd O;ikjh us fc?h ;k [kjhn lEcU/kh laO;ogkj dh viuh jde ds C;ksjksa dks fNik;k gks] NksM+ fn;k gS ;k mUgsa iwjk & iwjk izdV ugha fd;k gS vFkok mlus vius laO;ogkj dk xyr C;ksjk izLrqr djds okLrfod jde ls de vkadM+s izLrqr fd;s gSa A

?[k? fdlh vU; ekeys esa ,slh vof/k lekfIr ds pkj o"kksZa ds Hkhrj Qhl fu/kkZj.k mi &b lfefr O;kikjh ij Qkje ^d* esa ,d lwpuk ''kkfey djsxh] ftlesa fdlh lwpuk esa ''kkfey dh tk ldus okyh lHkh vis{kk,sa nh jgsaxh vkSj mlds ckn ,sls O;kikjh }kjk dh xbZ [kjhn & fc?h dh jde ds lEcU/k esa O;kikjh }kjk ns; Qhl dh jde fu/kkZfjr ;k iqufuZ/kkfjr djus dh dkjokbZ djsxh A

7. In the present writ applications it can be seen that the period of assessment involved are of 1979-80, 80-81 and 81-82 and the proceeding was initiated by the notice dated 3.5.1988 contained in annexure 5 to the writ application, although in the counter affidavit, filed in the first writ application it is claimed that the notice for the period 79-80 was issued for the first time on 24.1.1987 and in support thereof a photo copy of the same has been annexed as Annexure-B, but in my opinion, that is of no avail in support of the case of the Respondents to sustain the impugned proceeding and orders passed therein.

8. It will be seen that the proceeding in any case in respect of the aforementioned period of assessment were beyond period of six years, which is the maximum period of limitation provided for taking action u/s 27AA. Thus, I find substance in the submission of the learned Counsel for the Petitioner that the impugned notice, assessment proceeding and the orders passed in connection thereof were barred by limitation prescribed u/s 27AA of the Act.

9. However, Mr. Bajla, learned Counsel appearing for the Market Board and Market Committee submitted that liability to pay cannot stand obliterated merely because of the limitation prescribed u/s 27AA of the Act. The learned Counsel further submitted that in this view of the matter this provision being machinery section and not the charging provision, interpretation should be given to effectuate the very purpose of the Act and not to defeat the same. Section 27 of the Act is really the charging section providing for power to levy fee. Part VI of the Bihar Agriculture Produce Market Rules, 1976 provides for the manner and procedure for levy of fee and its collection. Rule 82(2) of the said part provides that if the buyer is a licensee he shall within a week of the purchase, deposit the market fee with the market committee. It is not in dispute that the Petitioner is a company incorporated under Indian Companies Act having its factory at Chanpatia in the district of West Champaran with its registered office at Kanpur in the State of Uttar Pradesh. It is also true that the Petitioner is engaged in the business of manufacturing sugar from sugarcane purchased from areas specified specifically reserved or allotted to it by the State Government. Further, it cannot be disputed that the Petitioner is a licensee and buyer of sugarcane.

10. According to the learned Counsel for the Petitioner, the present impugned notice will be covered by Clause (b) of Section 27AA which provides for only four years limitation but in any case even if it is taken to be covered by Clause (a) of the said section which provides for six years limitation for initiation of the proceeding for assessment u/s 27AA, the case of the Petitioner goes beyond its provision as far as in respect of the aforementioned assessment years are concerned. By this provision it is manifest that the Legislature intended the Market Committee or Board to be very much vigilant and to net all such persons who also were liable to file return had omitted to do so during the period in question was out, inasmuch as under Sub-section (2) of Section 27A every licensee is required to file his reture in form Ka, in respect of his business for every trade in respect of purchase or sale within 15 days of the end of the month to the Secretary of the Market Committee or to any officer authorised by the Board. Under the provision contained in Section 27AA the period is enlarged to net all such persons who donot file returns within time provided the condition precedent contemplated in that section were available in any given case.

11. In my opinion, therefore, this view cannot be said to be involving any interpretation based upon any rule of construction of the relevant provisions and the conclusion is inevitable. The Supreme Courts in the case of Gursahai Saigal Vs. Commissioner of Income Tax, Punjab, observed as follows:

Now it is well recognised that the rule, of construction on which the Assessee relies applies only to taxing provisions in a taxing statute. It does not, for example, apply to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure for its collection. The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say in accordance with the clear intention of the legislature which is to make a charge levied effective.

12. In the instant case, I do not consider it necessary, nor I am called upon to give any meaning of law by giving my own construction. In my opinion, the scheme of the Act itself is unambiguous and clear. Thus, the principle laid down in the aforesaid decision of the Supreme Court has no application to the facts of the cases in hand.

13. As regards the submission of Mr. Bajla, learned Counsel appearing for the Respondents that the liability to pay cannot stand obliterated only because of limitation prescribed u/s 27AA of the Act. I am unable to accept the same. If the said submission of the learned Counsel appearing for the Respondents is accepted, then it shall make the provisions contained u/s 27AA redundant, which is against the well-known rule of interpretation of the statute. It is well-settled that every provision of statute has to be given full effect and that the Court should not place that construction which will make the provision redundant or to overlap other provision or to limit its application unless that is the only reasonable construction. The Supreme Court in the case of Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, dealing with taxing statute, held that construction attributing redundancy to legislation shall not be accepted, except for compelling reason. While laying down the cardinal rule of construction the Supreme Court in the case of Dinesh Chandra Sangma Vs. State of Assam and Others, held that no words should be considered redundant or surplus in interpreting provision of statute or rule.

14. In the instant case the Respondents have not come up with any compelling reasons which can have any impact to deviate from the cardinal rule and accept the aforementioned submission, of Mr. Bajla.

15. A Division Bench of this Court in the case of Hazari Sah Vs. Agricultural Income Tax Officer and Others, in similiar situation, though dealing with the provisions of the Bihar Agricultural Income Tax Act, 1948 where there was a provision similar to Section 27AA of the Act prescribing limitations, held that the proceeding taken by Respondent No. 1 being beyond the prescribed period of limitations must be held to be invalid. In the said case also the proceeding was initiated beyond the period of six years which was largest period of limitation provided for initiation thereof from the end of the agriculture year and the Court held the proceeding to be invalid.

16. From the facts of the present cases it would appear that the period of assessment involved in the first writ application is from 1.4.79 to 31.3.80 and in the second case from 1.4.80 to 31.3.82. Thus, in view of the aforementioned provisions as contained in Section 27AA of the Act, the proceeding can only be started before the expiry of six years from the end of that year i.e. 31.3.1980 in the first case and 31.3.82 in the second case.

17. Thus even assuming that both the Cases are covered by clauses (a) of Section 27AA, then in that case in the first case the proceeding could have been

initiated before 31.3.1986 and in the second case before 31.3.1987 and 31.3.1988. But even for argument sake, the statement made in the counter affidavit filed in the first case is taken to be correct, wherein it is stated that the notice was issued on 24.1.87, yet the proceeding will be barred by limitation. So far as the periods of assessment involved in the second ease are concerned, it is not in dispute that the notices were issued for the first time on 3.5.1988, i.e. beyond the statutory period prescribed u/s 27AA. Accordingly, I hold that the notices, proceedings and the orders passed thereunder are not sustainable.

18. In the result, the writ application have to succeed on the simple ground that the proceedings taken with respect to the periods aforementioned were barred by limitation. Accordingly the orders of assessment impugned in these applications including the subsequent orders passed in appeal and revision are hereby quashed. However in the facts and circumstances of the cases, there shall be no order as to costs.