(1984) 08 RAJ CK 0006

In the Rajasthan High Court

Case No : Sales Tax Reference No. 42 of 1975

Commercial Taxes Officer APPELLANT

Vs

S. Zoraster and Co. RESPONDENT

Date of Decision : 01-08-1984

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 15(1)

Citation : (1985) 59 STC 214

Hon'ble Judges : S.N. Bhargava, J;S.C. Agrawal, J

Bench : Division Bench

Advocate : G.S. Bafna, for the Appellant; V.K. Singhal, for the Respondent

Judgement

S.C. Agrawal, J.—In this reference made u/s 15(1) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"), the Board of Revenue has referred the following question :

Whether under the facts and circumstances of the case the Board was right in holding that the revision petition presented by the Commercial Taxes Officer, Special Circle II, Jaipur who was the assessing authority at the relevant time of presentation of revision was not proper ?

2. M/s. S. Zoraster and Company, non-applicant (hereinafter referred to as "the assessee"), is a dealer registered under the Act. In respect of assessment years 1963-64, 1964-65 and 1965-66 the assessee filed one consolidated return of its turnover for each assessment year. The Assistant Commercial Taxes Officer, Jaipur City Circle A (Special Ward) imposed penalty on the assessee u/s 16(1)(c) of the Act. The assessee filed appeals against the aforesaid orders passed by the Assistant Commercial Taxes Officer, Jaipur City Circle A, Special Ward and the said appeals were allowed by the Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur. Feeling aggrieved by the aforesaid order passed by the Deputy Commissioner (Appeals) I, Commercial Taxes, the Commercial Taxes Officer, Special Circle II, Jaipur filed two revision petitions in respect of the assessment

years 1964-65 and 1965-66. The said revision petitions were dismissed as incompetent by the learned single Member of the Board of Revenue by order dated 27th February, 1974 on the ground that u/s 14 of the Act the revision could only be filed by the assessing authority and that the Assistant Commercial Taxes Officer, Jaipur City Circle A (Special Ward) who was the assessing authority in respect of the assessment years in question, alone could have filed the revision petitions and that the Commercial Taxes Officer, Special Circle II, Jaipur was not the assessing authority of the assessee for the relevant period and therefore, he could not have filed the revisions. Against the aforesaid order of the learned single member of the Board of Revenue, special appeals were filed by the Commercial Taxes Officer, Special Circle I, Jaipur and the said special appeals were dismissed by the Division Bench of the Board of Revenue by judgment dated 18th February, 1974. The Division Bench held that the learned single member was perfectly justified in holding that the revisions were not maintainable as the same were not filed by the real assessing authority. Thereupon a reference application was moved u/s 15(1) of the Act by the Commercial Taxes Officer, Special Circle I, Jaipur. In the said reference application it was stated that after passing of the assessment orders, the office of the Assistant Commercial Taxes Officer, Jaipur City, Circle A (Special Ward) was abolished and the files of the cases were sent to the Commercial Taxes Officer, Special Circle II, Jaipur by virtue of order dated 23rd

3. October, 1967 passed by the Commissioner, Sales Tax under Rules 3 and 4 of the Rajasthan Sales Tax Rules and that on the date of filing of the revision petitions, the Commercial Taxes Officer, Special Circle II, Jaipur alone was the assessing authority. In the said reference application it was further stated that thereafter there was a change in the place of business of the assessee and as a result thereof the jurisdiction over the dealer came to be exercised by the Commercial Taxes Officer, Special Circle I, Jaipur and the special appeal against the order of the learned single Member of the Board of Revenue was, therefore, filed by the Commercial Taxes Officer, Special Circle I, Jaipur. On the basis of the aforesaid reference application the Board of Revenue has referred the question mentioned above for the opinion of this Court.

4. We have heard Shri G. S. Bafna, the learned Counsel for the department and Shri V. K. Singhal, the learned Counsel for the assessee. Before dealing with the contentions of the learned Counsel, we may refer to the relevant provisions of the Act.

5. The expression "assessing authority" is defined in Section 2(b) of the Act as under :

''Assessing authority'' in relation to a dealer means the Commercial Taxes Officer or the Assistant Commercial Taxes Officer having jurisdiction.

6. The aforesaid definition of the assessing authority as contained in Section 2(b) was amended by Act No. 9 of 1976 and the words "for the time being" were

added at the end. Since the present case relates to the period prior to the enactment of Act No. 9 of 1976, we are concerned with the definition of "assessing authority" as it stood prior to the amendment introduced by Act No. 9 of 1976.

7. Section 10 of the Act makes provision for assessment and determination of tax by the assessing authority. Section 11 provides for recovery by the assessing authority of the tax determined as payable by the assessee. Section 12 provides for reopening of the assessment by the assessing authority in cases where whole or any part of the business of a dealer has escaped assessment to the tax, or if the registration fee or exemption fee has escaped levy or has been assessed at too low a rate in any year. Sub-section (1) of Section 14 of the Act at the relevant time provided that the Board of Revenue may, on being moved by the assessing authority, call for and examine the record of any proceedings under this Act and if it considers that any order is illegal or improper or erroneous, it may pass such orders as it may think fit. The proviso to Sub-section (5) of Section 14 empowered the Board of Revenue to stay the recovery of the disputed amount of tax or any part thereof pending disposal of the revision if the assessee furnishes sufficient security to the satisfaction of the assessing authority in such form and in such manner as may be prescribed. Section 17 of the Act contains the power of rectification of mistakes by the assessing authority.

8. A perusal of the aforesaid provisions shows that in addition of power for making assessments, the assessing authority has also been conferred with the power to recover the tax assessed as payable, u/s 11 the power to rectify the order of assessment made by it u/s 17 of the Act, the power to reopen an assessment u/s 12 of the Act and the power to file revision petition before the Board of Revenue u/s 14 of the Act.

9. Shri Bafna, the learned Counsel for the applicant, has submitted that the expression "assessing authority" has the same meaning in Sections 10, 11, 12, 14 and 17 of the Act and that the authority who is competent to assess the assessee at the particular time should be treated as the assessing authority in relation to that assessee. According to Shri Bafna if the expression "assessing authority" is construed to mean the authority who had passed the original assessment order, it may not be possible to exercise the powers conferred under Sections 11, 12, 14 and 17 in certain cases when the authority which passed the original assessment order has ceased to exist as a result of reorganisation of and reconstitution of the tax administration. The submission of Shri Bafna was that a construction which leads to such a consequence should be rejected.

10. Shri Singhal on the other hand, has submitted that for the purpose of Section 14 of the Act the assessing authority can only be the authority which passed the original assessment order. According to Shri Singhal there are adequate provisions in the Act and the Rules to deal with a situation when the assessing authority has ceased to exist as a result of reorganisation and reconstitution and that in such a case the cases dealt with by the said authority can be transferred

under Rule 52 of the Rules to the authority who has been conferred the jurisdiction to assess the assessee. Shri Singhal has submitted that in the absence of transfer of the case under Rule 52 of the Rules, the authority which passed the original assessment "order alone can be regarded as the assessing authority.

11. After giving consideration to the above submissions, we find ourselves in agreement with the submissions of Shri Bafna and we are unable to accept the contentions of Shri Singhal.

12. A perusal of Section 2(b) of the Act, as it stood at the relevant time, shows that the expression "assessing authority" had used the words "in relation to a dealer means the Commercial Taxes Officer or Assistant Commercial Taxes Officer having jurisdiction". While considering the aforesaid definition of "assessing authority" u/s 2(b) of the Act, it is necessary to lay stress on the words "in relation to a dealer" and "having jurisdiction". These words indicate that the assessing authority has been defined with reference to the dealer. The words "having jurisdiction" indicate that the Commercial Taxes Officer or the Assistant Commercial Taxes Officer who had jurisdiction in relation to the dealer was the assessing authority in so far as that dealer is concerned. In other words these expressions mean that the assessing authority who had jurisdiction over a particular dealer at a particular time was the assessing authority for that dealer at that time.

13. If the provisions of Section 11 of the Act which provide for recovery of the tax determined are examined it would be seen that the said power to recover the tax has been conferred on the assessing authority. For the purpose of such recovery the assessing authority can only mean the officer who has jurisdiction to assess the dealer at the time of recovery and it cannot mean the officer who had passed the order of assessment but has ceased to have jurisdiction. Similarly for the purpose of exercising the power to reopen the assessment conferred u/s 12 of the Act and the power to rectify the mistakes in the order of assessment conferred u/s 17 of the Act can also be exercised by the officer having jurisdiction to assess the dealer at the time the aforesaid power is being exercised and it cannot be said that the said powers have to be exercised by the officer who had passed the original order of assessment even though he may have ceased to have jurisdiction to deal with the assessee at that time. In other words the expression "assessing authority" in Sections 11, 12 and 17 of the Act must be construed to mean the officer who has jurisdiction in relation to the dealer at the time the said powers are being exercised. It cannot be assumed that in Section 14 the expression "assessing authority" has been used in a different sense to mean the officer who had passed the original assessment order even though he has ceased to have jurisdiction at the time when the power conferred by Section 14 is being exercised. In our view there is no basis for making this distinction and the expression "assessing authority" must be construed in the same sense in Sections 11, 12, 14 and 17 of the Act. It must,

therefore, be held that for the purpose of exercising powers conferred on it under Sections 10, 11, 12, 14 and 17 of the Act referred to above, the assessing authority should be the authority having jurisdiction over the dealer at the particular time when the said power is being exercised.

14. We are unable to accept the contention of Shri Singhal that the authority who had passed the assessment order in the particular year alone is to be treated as the assessing authority in relation to that assessment year for the reason that the assessment proceedings for each assessment year are separate and independent proceedings. It is true that the assessment proceedings for each assessment year are separate proceedings but the expression "assessing authority" has been defined u/s 2(b) of the Act with reference to the dealer and not with reference to the assessment year which indicates that the expression "assessing authority" has to be construed in relation to the dealer or the assessee and not with reference to the assessment year and that the officer who has jurisdiction over a particular dealer is the assessing authority in so far as the said dealer is concerned.

15. We are also unable to accept the contention of Shri Singhal that an officer other than the officer who had passed the original order of assessment could be regarded as the assessing authority for the purpose of Section 14 of the Act, only when the assessment case has been duly transferred to him under Rule 52 of the Rajasthan Sales Tax Rules. It is no doubt true that Rule 52 of the Rules makes provision for transfer of a case from one assessing authority to another and in view of the explanation to the said rule, a case which has been completed can also be transferred and therefore, it is permissible for the transfer of a case from one assessing authority to another assessing authority after the assessment order has been passed. This would only mean that the jurisdiction in respect of a case which has been transferred under Rule 52 of the Rules, has been vested in the assessing authority to whom the case has been transferred and after the aforesaid transfer has been made, the said assessing authority has been conferred the jurisdiction in relation to the dealer in respect of the case that has been transferred. But this is not the only mode by which jurisdiction over a dealer may be acquired by an assessing authority other than the authority who had passed the original order of assessment. Rule 3 of the Rajasthan Sales Tax Rules provides that the Commercial Taxes Officer for the area within his jurisdiction as fixed by the Commissioner, shall be the assessing authority for that area and such area shall be called his "circle". The said rule further lays down that the jurisdiction of the assessing authority shall be determined with reference to the place of business of the dealer and that if a dealer carries on business within the limits of jurisdiction of more than one assessing authority, the assessing authority within whose jurisdiction the principal place of business is situated, shall be the assessing authority in respect of such dealer. The said rule also lays down that where a dealer has declared a place to be his principal place of business in writing, that place shall ordinarily be regarded as his principal place of business. Rule 4 of the Rules makes provision for distribution of business

amongst various Commercial Taxes Officers in a circle and lays down that where there are more than one Commercial Taxes Officer in a circle, their respective jurisdictions and the distribution of business amongst them shall be such as may be fixed by the Commissioner. A perusal of the aforesaid Rules shows that the jurisdiction of the Commercial Taxes Officer and the Assistant Commercial Taxes Officer is to be fixed by the Commissioner with reference to the area and out of the area with reference to the dealers within that area. It is possible to visualise a situation where on account of reorganisation and re-allocation of work between the various Commercial Taxes Officers, a dealer who was earlier being assessed by one particular officer may fall within the jurisdiction of a different officer. In such a case the officer who has acquired jurisdiction over the dealer as a result of reorganisation and reallocation becomes the assessing authority in relation to said dealer. In such cases of reorganisation and reallocation the jurisdiction is acquired by the other officer by virtue of the order of reorganisation and reallocation and it is not necessary to pass orders for transfer of cases from one officer to another under Rule 52 of the Rules. In other words, apart from acquisition of jurisdiction by virtue of transfer of a case under Rule 52 of the Rules an officer also acquires jurisdiction over a particular dealer by virtue of reorganisation and reallocation of work in accordance with the provisions of Rules 3 and 4 of the Rules and in such an event the officer who has thus acquired the jurisdiction over the dealer is to be treated as the assessing authority in relation to said dealer for all purposes including the filing of the revision petition u/s 14(1) of the Act.

16. In the present case it appears that after the assessment orders had been passed by the Assistant Commercial Taxes Officer, Jaipur City Circle A (Special Ward) the office of the Assistant Commercial Taxes Officer, Jaipur City Circle A (Special Ward) was abolished and the file was sent to the Commercial Taxes Officer B, Jaipur and subsequently in August, 1971 it was sent to the Commercial Taxes Officer, Special Circle II, Jaipur. This would show that at the time when the revision petition was filed the Commercial Taxes Officer, Special Circle II, Jaipur was having jurisdiction over the assessee. The Commercial Taxes Officer, Special Circle II, Jaipur was thus the assessing authority in so far as the assessee was concerned on the date of filing of the revision petition and the Commercial Taxes Officer, Special Circle II, Jaipur was, therefore, competent to file the revision petition.

17. In this context we may refer to the decision of the Andhra Pradesh High Court in State of Andhra Pradesh v. Sri Immadisetty Venkateswarlu 1970 25 STC 46. In that case the original assessment order was made by the Commercial Tax Officer, Guntur and thereafter the file was transferred from the office of Commercial Tax Officer to the Deputy Commercial Tax Officer, Macherla on account of change of jurisdiction consequent to certain amendments made in the Andhra Pradesh General Sales Tax Act and the Rules framed thereunder. The Deputy Commercial Tax Officer revised the assessment order that was passed by the Commercial Tax Officer and he also started proceedings for levying of penalty

and imposed the penalty. The aforesaid order of the Deputy Commercial Tax Officer with regard to imposition of penalty was challenged by the assessee on the ground that the authority which had made the original assessment order alone could levy penalty and the authority who had levied the penalty was not the same as that which made the original assessment order. A Division Bench of the Andhra Pradesh High Court held that the Deputy Commercial Taxes Officer was competent to impose the penalty as it was the assessing authority at the relevent time. In this context the learned Judges have observed that:

It is wrong to think that the ''assessing authority'' used in Sub-section (2) implies the same person or officer who had made the original assessment. It cannot be accepted on principle also that the person who imposes penalty should be the same as the person who had made the assessment order. If immediately on making the assessment, the officer is transferred or the jurisdiction is conferred on another authority, certainly such authority is competent to take up the case from that stage to its final stage. What is required by law is that the assessing authority has to initiate the proceedings for the levy of penalty and not whether the same person or officer, who had made the assessment.

18. We have carefully perused the decisions on which relience has been placed by Shri Singhal but in our opinion the said decisions have no application to the present case.

19. We may also mention that after the Division Bench of the Board of Revenue passed the order dated 18th February, 1974 dismissing the special appeals of the Commercial Taxes Officer, Special Circle, Jaipur in the present case, this very question arose before the Board of Revenue in A. C. T. 0., Ward III, Circle D, Jaipur v. Raj. Jewellers, Cutters Co-op. Society 1978 RRD 498 and A. C. T. 0., Ward II, Circle B, Jaipur v. Phoolchand Gangaram 1979 RRD 130 and in both the cases the Board of Revenue has taken the view that for the purpose of filing a revision u/s 14(1) of the Act, the assessing authority would be the officer having jurisdiction at the time the revision is to be filed.

20. In the result the question referred to is answered in the negative and it is held that under the facts and circumstances of the case, the Board of Revenue was not right in holding that the revision petition presented by the Commercial Taxes Officer, Special Circle II who was the assessing authority at the time of presentation of revision petition was not proper. In the facts and circumstances of the case, the parties are left to bear their own costs.

