(1981) 01 MP CK 0001

In the Madhya Pradesh High Court

Case No : M.C.C. No. 46 of 1979

Commissioner of Sales Tax — APPELLANT

Vs

Indore Iron Traders — RESPONDENT

Date of Decision : 09-01-1981

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 39(1), 39(2)

Citation : (1981) 48 STC 375

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : Surjit Singh, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 44 of the M. P. General Sales Tax Act, 1958, hereinafter called the Act, the Board of Revenue has referred the following question of law to this Court for its opinion :

Whether Section 39(2) of the M. P. General Sales Tax Act empowers the Commissioner of Sales Tax to revise an order passed by the Deputy Commissioner of Sales Tax u/s 39(1) of the Act in case the order of the Deputy Commissioner is found to be erroneous and prejudicial to the interest of revenue ?

2. The material facts giving rise to this reference briefly are as follows : The assessee, a dealer in iron goods, was assessed to tax under the Act for the period from 1st January, 1960, to 31st December, 1960. Best judgment assessment was made by the assessing authority. An appeal preferred by the assessee before the Appellate Assistant Commissioner was dismissed. The assessee then preferred a revision petition before the Commissioner of Sales Tax u/s 39(1) of the Act, The revision petition was transferred by the Commissioner u/s 30 of the Act to the Deputy Commissioner who, by his order dated 22nd November, 1972, remanded the case for a fresh assessment. The Additional Commissioner of Sales Tax, exercising powers u/s 39(2) of the Act, set aside the

order passed by the Deputy Commissioner on the ground that it was erroneous. Aggrieved by that order the assessee preferred an appeal before the Board of Revenue. It was contended before the Board on behalf of the assessee that the order of the Deputy Commissioner passed u/s 39(1) of the Act could not be quashed in revision by the Additional Commissioner because the Deputy Commissioner, in passing an order u/s 39(1) of the Act, exercised the powers of the Commissioner as a delegate and hence the order passed by him would be deemed to be an order passed by the Commissioner which could not be revised by the Additional Commissioner u/s 39(2) of the Act. This contention was upheld by the Board and the appeal was allowed. Hence, at the instance of the department, the aforesaid question of law has been referred to this Court for its opinion.

3. Before we turn to appreciate the contentions advanced on behalf of the parties it would be useful to refer to the relevant provisions of law which were in force at the material time. The provisions of Section 39(2) of the Act, which were in force at the material time, were as under :

39. Power of revision by Commissioner.-(1) ...

(2) The Commissioner may of his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person appointed u/s 3 to assist him is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the dealer or person an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

The provisions of Section 39(2) were subsequently amended, and under the amended Sub-section (2) of Section 39 of the Act, it has been provided that an order, passed by an officer to whom the Commissioner has delegated his powers under Sub-section (1) of Section 39, can be revised under the provisions of Section 39(2) of the Act by the Commissioner. But under the unamended provisions of Section 39(2) of the Act, there was no such provision empowering the Commissioner to exercise revisional jurisdiction in respect of an order passed by an officer to whom he had delegated his powers conferred by Sub-section (1) of Section 39 of the Act. The question that arises for consideration is whether an order passed by a delegate could be revised by the authority which delegated its functions, in the absence of any express provision to that effect.

4. In this connection, we may usefully refer to the decision of the Supreme Court in Roop Chand Vs. State of Punjab, . In that case, the question for consideration before the Supreme Court was whether an order passed by an officer exercising the power delegated to him by the State Government u/s 41 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, could be revised by the State Government u/s 42 of that Act. The majority decision of the

Supreme Court was that the order could not be revised by the State Government. Dealing with this matter, it was observed as follows :

The question then arises, when the Government delegates its power, for example, to entertain and decide an appeal u/s 21(4), to an officer and the officer pursuant to such delegation hears the appeal and makes an order, is the order an order of the officer or of the Government ? We think it must be the order of the Government. The order is made under a statutory power. It is the statute which creates that power. The power can, therefore, be exercised only in terms of the statute and not otherwise. In this case the power is created by Section 21(4). That section gives a power to the Government. It would follow that an order made in exercise of that power will be the order of the Government for no one else has the right under the statute to exercise the power. No doubt the Act enables the Government to delegate its power but such a power when delegated remains the power of the Government, for the Government can only delegate the power given to it by the statute and cannot create an independent power in the officer. When the delegate exercises the power, he does so for the Government. It is of interest to observe here that Wills, J., said in Huth v. Clarke (1890) 25 Q.B.D. 391, that ''the word delegate means little more than an agent. An agent of course exercises no powers of his own but only the powers of his principal. Therefore, an order passed by an officer on delegation to him ''under Section 41(1) of the power of the Government u/s 21(4), is for the purposes of the Act, an order of the Government. If it were not so and it were to be held that the order had been made by the officer himself and was not an order of the Government-and of course it had to be one or the other -then we would have an order made by a person on whom the Act did not confer any power to make it. That would be an impossible situation. There can be no order except as authorised by the Act. What is true of Section 21(4) would be true of all other provisions in the Act conferring powers on the Government which can be delegated to an officer u/s 41(1). If we are wrong in the view that we have taken, then in the case of an order made by an officer as delegate of the Government''s power u/s 21(4) we would have an appeal entertained and decided by one who had no power himself under the Act to do either. Plainly, none of these things could be done.

This decision of the Supreme Court has been held to be inapplicable by the Bombay High Court in H.B. Munshi, Commissioner of Sales Tax, Bombay and Another Vs. The Oriental Rubber Industries Pvt. Ltd., in a taxing statute like the Bombay Sales Tax Act, 1959, and reliance was placed on that decision by the learned counsel for the department. But, with respect, we are unable to agree with the view taken in H.B. Munshi v. Oriental Rubber Industries Pvt. Ltd. [1974] 34 S.T.C. 113 (SC) . The decision of the Supreme Court in Roop Chand Vs. State of Punjab, , in our opinion, lays down in unambiguous terms that when a delegate exercises powers conferred on him by an authority, he does not exercise powers of his own but only the powers of his principal. In view of this decision of the Supreme Court, it must be held that the Deputy Commissioner, while exercising powers u/s 39(1) of the Act, exercised those powers as a delegate of the Commissioner and hence the order passed by the Deputy Commissioner could not be revised by the Additional Commissioner u/s 39(2) of the Act, in the absence of any express provision to that effect. On behalf of the department, reliance was also placed on the decision of this Court in Asbestos Cement Ltd., Kymore v. Commissioner of Sales Tax (1976) 9 V.K.N. 44. But that decision is distinguishable on facts. The question for consideration in that case was whether the Commissioner had the power to revise the appellate order of the Deputy Commissioner. The contention advanced before the court was that the Deputy Commissioner could not be considered to be an authority appointed to assist the Commissioner. This contention was negatived by this Court by observing that under the provisions of the Act the Deputy Commissioner exercised powers of the first appellate authority independently. In the instant case, as we have observed, the Deputy Commissioner exercised powers as a delegate of the Commissioner. In our opinion, therefore, the Board was right in holding that the Additional Commissioner was not justified in setting aside the order passed by the Deputy Commissioner u/s 39(1) of the Act.

5. For all these reasons, our answer to the question referred to us is in the negative and against the department. In the circumstances of the case, parties shall bear their own costs of this reference.

