(1984) 11 BOM CK 0046

In the Bombay High Court

Case No : Sales Tax Reference No. 19 of 1979 in Reference Application No. 151 of 1971

Commissioner of Sales Tax APPELLANT

Vs

Kalidas Mulji RESPONDENT

Date of Decision : 21-11-1984

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 14, 3, 3(1), 30, 30(1)

Citation : (1985) 58 STC 166

Hon'ble Judges : Sujata V. Manohar, J;M.H. Kania, J

Bench : Division Bench

Judgement

Smt. Sujata V. Manohar, J.—Respondent M/s. Kalidas Mulji is a registered dealer under the Bombay Sales Tax Act, 1953. The original assessment proceedings in respect of the respondent for the period 1st April, 1959 to 31st December, 1959 were initiated before the Sales Tax Officer, B-Ward, Bombay. Thereafter on receipt of information that the respondent was not keeping a correct account of purchases and sales, the place of business of the respondent was "visited" by the Sales Tax Officer, Enforcement Branch, Bombay on 8th November, 1960. Therefore the assessment proceedings were transferred from the Sales Tax Officer, B-Ward, Bombay, and were assigned to the Sales Tax Officer (IV), Enforcement Branch, Greater Bombay under an order dated 23rd January, 1961 passed by the Deputy Commissioner of Sales Tax, Bombay City Division (Enforcement), Bombay.

2. The Sales Tax Officer, Enforcement Branch, eventually passed an order of assessment which was confirmed in appeal by the Assistant Commissioner. The first revision application was filed before the Deputy Commissioner. The contentions raised before the Deputy Commissioner by the respondent were rejected by the Deputy Commissioner by his order dated 28th March, 1969.

3. Being aggrieved by the order of the Deputy Commissioner, the respondent filed a second revision application before the Tribunal. One of the contentions

raised before the Tribunal was to the effect that the Sales Tax Officer, Enforcement Branch, had no jurisdiction to assess the respondent because there was no valid transfer of assessment proceedings from the Sales Tax Officer, B-Ward, to the Sales Tax Officer, Enforcement Branch. This contention was accepted by the Tribunal. The Tribunal set aside the order of assessment passed by the Sales Tax Officer, Enforcement Branch, and the subsequent orders passed in appeal and revision by the Assistant Commissioner and the Deputy Commissioner. Mr. Patel, who appeared for the respondent before the Tribunal, stated before the Tribunal that he should not be taken to have given up the other contentions raised by him before the Tribunal in respect of the merits of the assessment itself. This statement is recorded by the Tribunal.

4. From this order of the Tribunal the present reference has been preferred before us. We are required to answer the following question :

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the order dated 23rd January, 1961 of the Deputy Commissioner of Sales Tax, Bombay City Division, Bombay is not valid in law because the order was passed without giving reasons and without giving any opportunity to the respondent of being heard ?"

5. In order to answer this question it is necessary to look at the relevant provisions of law relating to the power of the Collector or the Additional Collector to pass such order under the Bombay Sales Tax Act, 1953 as well as the Bombay Sales Tax Act, 1959. The Bombay Sales Tax Act, 1959 came into force from 1st January, 1960. The present assessment proceedings relate to a period prior to the coming into operation of the Bombay Sales Tax Act, 1959. Under the Bombay Sales Tax Act, 1953 which was the Act in force prior to the coming into operation of the Bombay Sales Tax Act, 1959 the power of transfer is set out in section 44, sub-section (2), which is as follows :

"44. (1) ....

(2) The Collector may transfer any proceeding or class of proceedings under any provision of this Act from himself to any person to whom he has delegated his powers and duties in respect thereof, and he may likewise transfer any such proceeding (including a proceeding already transferred under this sub-section) from one such person to another to whom the said powers and duties have been delegated or to himself."

Under section 3 of the Bombay Sales Tax Act, 1953 as in force at the relevant time, it was provided as follows :

"3. (1) For carrying out the purposes of this Act the State Government may appoint -

(a) a person to be the Collector of Sales Tax, and

(b) one or more persons to be Additional Collectors of Sales Tax, and

(c) such other persons to assist the Collector as the State Government thinks fit.

(2) A person appointed under sub-section (1) shall, within the limits of the area specified to be within his jurisdiction, exercise such powers as may be conferred and perform such duties as may be imposed on him by or under this Act.

(3) The State Government may, subject to such restrictions and conditions as it may impose, by notification in the Official Gazette, delegate to the Collector the powers conferred on it under clause (c) of sub-section (1) to appoint persons to assist the Collector, and sub-section (2) of specify the limits of the area which shall be within the jurisdiction of such persons."

Thereafter by an order dated 18th May, 1953 the Collector of Sales Tax delegated his powers and duties, inter alia, u/s 14 and 15 of the Bombay Sales Tax Act, 1953 to all Sales Tax Officers. On 20th August, 1955 a notification was issued by the State Government u/s 3(1) of the Bombay Sales Tax Act, 1953 which is as follows :

"FINANCE DEPARTMENT

Sachivalaya, Bombay, 20th August, 1955.

No. STO. 2255/135393-XIX. - In exercise of the powers conferred by sub-section (1) of section 3 of the Bombay Sales Tax Act, 1953 (Bom. III of 1953), Government is pleased to direct that the Assistant Collector of Sales Tax, Enforcement Branch, and the Sales Tax Officers, Enforcement Branch, shall have jurisdiction over the whole State of Bombay in respect of such dealers as are from time to time assigned to them for all or any of the purposes of the Bombay Sales Tax Act, 1953 by the Collector or the Additional Collector of Sales Tax, Bombay State, Bombay with effect from the date mentioned below :-

Designation of the Officer Date Assistant Collector of Sales Tax, 7th April, 1955 Enforcement Bench. Sales Tax Officers, Enforcement Branch. The date on which they assumed charge of their respective posts.

By order and in the name of the Governor of Bombay, V. L. Gidwani Secretary to Government."

6. In view of certain difficulties which arose relating to the validity of this notification and some other notifications, section 52 was introduced in the Bombay Sales Tax Act, 1953 by Bombay Act No. XXII of 1959. Section 52 is as follows :

"52. Validation of certain jurisdiction conferred on certain persons. - Notwithstanding anything contained in this Act and notwithstanding any judgment, decree or order of a Court or Tribunal, the jurisdiction conferred, -

(a) by Government Notification in the Finance Department, No. STO-2254/169083-XIX, dated the 31st January, 1955 on the Sales Tax Officers, specified therein, and

(b) by Government Notifications in the Finance Department, No. STO-2355/125661-XIX, dated the 10th June, 1955 and No. STO-2255/135393-XIX, dated the 20th August, 1955 on, -

(i) the Assistant Collector of Sales Tax, Enforcement Branch, with effect from the 7th day of April, 1955 and

(ii) the Sales Tax Officers, Enforcement Branch, with effect from the date on which they assumed charge of their respective posts,

in respect of dealers assigned to them from time to time for all or any of the purposes of this Act by the Collector, the Additional Collector of Sales Tax, Bombay state, Bombay or as the case may be, the Assistant Collector of Sales Tax having jurisdiction over the respective district or city, shall be deemed to have been validly conferred on them and the Collector, the Additional Collector of Sales Tax, Bombay State, Bombay or as the case may be the said Assistant Collector of Sales Tax shall be deemed to have been duly invested with power so to assign dealers to the officers specified in clauses (a) and (b) (hereinafter referred to as ''the said officers''); and accordingly all powers exercised and all duties performed and anything done or action taken or purported to be done or taken (including any notices issued, orders made, assessments, imposition or recoveries of taxes made) under the provisions of this Act in exercise of the aforesaid jurisdiction by the said officers shall be deemed to have been validly and effectually exercise, performed, done or taken and shall not be called in question on the ground only that the jurisdiction was not duly conferred on the said officers under the said notifications or that the Collector, the Additional Collector of Sales Tax, Bombay State, Bombay, or the said Assistant Collector of Sales Tax was not duly invested with powers so to assign dealers to the said officers."

As a result, the jurisdiction conferred on the Sales Tax Officers, Enforcement Branch, inter alia, under the notification of 20th August, 1955 and assignments made by the Collector or the Additional Collector of Sales Tax, Bombay City of dealer to Sales Tax Officers, Enforcement Branch, are all validated.

7. It is the contention of Mr. Jetly, learned Advocate for the applicant, that the order of assignment in the present case has been passed by the Deputy Commissioner of Sales Tax by virtue of the powers conferred on him under the said notification of 20th August, 1955 read with section 52 of the said Act. Hence the assignment of the case of the respondent to the Sales Tax Officer, Enforcement Branch, is valid. The Sales Tax Officer, Enforcement Branch, thus had jurisdiction to deal with the assessment of the respondent and the order cannot be challenged on that ground.

8. As against this submission, it was the contention of Mr. Patel, learned Advocate for the respondent, that the order of assignment in the present case was passed on 23rd January, 1961 much after the introduction of section 52 in the Bombay Sales Tax, 1953. Mr. Patel contends that section 52 validates only

orders of assignment which were already passed before the coming into operation of section 52. Section 52 does not validate any future orders of assignment. Hence the present order of assignment is bad in law.

9. In order to examine this contention of Mr. Petal, it is necessary to look at the language of section 52. u/s 52 what is validated is the conferment of jurisdiction on the persons referred to therein. Thus section 52 states that the jurisdiction conferred (inter alia) on the Sales Tax Officers, Enforcement Branch, in respect of dealers assigned to them, from time to time by (inter alia) the Additional Collector of Sales Tax shall be deemed to have been validly conferred on them. The words "in respect of dealers assigned to them from time to time" are wide enough to cover future assignment also. It is the jurisdiction conferred (inter alia) under the notification of 20th August, 1955 that is validated. If one turns to the language of the notification of 20th August, 1955 the notification also confers jurisdiction (inter alia) on Sales Tax Officers, Enforcement Branch, over the whole State of Bombay in respect of such dealers as are from time to time assigned to them by (inter alia) the Additional Collector of Sales Tax. In other words, the notification empowers (inter alia) the Additional Collector of Sales Ta to assign dealers to the Sales Tax Officers, Enforcement Branch and the Sales Tax Officers, Enforcement Branch, are given jurisdiction over such dealers. Their territorial jurisdiction covers the entire State of Bombay (as then in existence). The notification of 20th August, 1955 does not deal with any specific orders of assignment. Hence it would not be correct to hold that the jurisdiction which is conferred by the notification dated 20th August, 1955 which is validated by section 52, refers only to jurisdiction in respect of orders which were already passed prior to the coming into operation of section 52. The present order of assignment, therefore, is validly passed u/s 52 read with the said notification of 20th August, 1955.

10. The order of assignment is passed on 23rd January, 1961 after the coming into operation of the Bombay Sales Tax Act, 1959. Under the new Act of 1959 the posts of Collector and Additional Collector of Sales Tax are abolished. Instead, the new posts created are those of Commissioner of Sales Tax, Deputy Commissioner of Sales Tax, etc. The present order of assignment is passed by Deputy Commissioner of Sales Tax. It is nobody''s case that he did not have the power to pass an order of assignment under the notification of 20th August, 1955 read with section 52 of the Bombay Sales Tax Act, 1953 because of his new designation.

11. u/s 77(1) of the Bombay Sales Tax Act, 1959 notwithstanding the repeal of the Bombay Sales Tax Act, 1953 "those laws (including any earlier law continued in force under any provisions thereof), and all rules, regulations, orders notifications, form and notices issued under those laws and in force immediately before the appointed day shall, subject to the provisions of section 42 continue to have effect for the purposes of he levy, assessment, reassessment, collection, refund or set-off of any tax, or the granting of a drawback in respect thereof, or

the imposition of any penalty, which levy, assessment, reassessment, collection, refund, set-off, drawback or penalty relates to any period before the appointed day, or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid". In the present case the assessment pertains to a period prior the coming into operation of the Bombay Sales Tax Act, 1959. By virtue of section 77 of the Bombay Sales Tax Act, 1959 the old Bombay Sales Tax Act, 1953 continues to apply to the present assessment. It is, therefore, not necessary to consider in this connection the provisions of section 70 of the Bombay Sales Tax Act, 1959. These provisions do not apply to the present assessment period.

12. We have next to consider whether an order of assignment and/or transfer of proceedings of this nature entails any right in the respondent to be heard before such an order is passed and whether principles of natural justice require such a hearing. Secondly we have to consider whether the principles of natural justice requires that the order of transfer should contain some reasons for the order. In this connection it is not now strictly necessary for us to decide whether such an order of transfer or assignment is an administrative order or a quasi-judicial order. It is now well-settled that even in the case of administrative orders, if such orders have any "civil" or adverse consequences, the principles of natural justice would have to be followed while passing such orders. There are no hard and fast rules as to what exactly are these principles of natural justice. Essentially, the concept of justice and fair play as commonly understood requires that a person should be heard before any decision is taken in a matter which affects him (audi alterem partem). The extent to which the principles of natural justice will be made applicable will depend upon the circumstances of each case. But in essence, these principles are extended only to those administrative orders which result in adverse consequences for the party affected by the orders. In the present case, nothing has been pointed out to us which would show that the order of assignment caused any hardship or created any difficulties for the respondent. The order of transfer was from one Sales Tax Officer to another Sales Tax Officer in the same city and possibly in the same building. Nothing has been pointed out to us which would indicate that the respondent was put to any disadvantage as a result of such a transfer of his proceedings. It is true that the assignment was made to the Sales Tax Officer, Enforcement Branch. But there is nothing to show that this by itself caused any harm or embarrassment to the respondent. The Enforcement Department had already paid a visit to the respondent''s place of business on 8th November, 1960 before the order of assignment was passed. Hence the mere fact that the order of assignment was to the Sales Tax Officer, Enforcement Branch, cannot be said to have caused any hardship to the respondent. At least none was pointed out to us. The present order, therefore, is not an order which invites an application of the principles of natural justice.

13. In the case of PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., the Supreme Court was required to

consider the provisions of section 5(7A) of the Income Tax Act, 1922 which are somewhat similar. u/s 5(7A) the Commissioner of Income Tax had the power to transfer any case from one Income Tax Officer subordinate to him to another. Before the Supreme Court his power of transfer was challenged on the ground that it was an arbitrary power conferred on the Commissioner of Income Tax. It was submitted that the section was ultra vires because it conferred an unlimited and unfettered power of transfer. This contention was rejected by the Supreme Court. It held that the power was conferred on the Income Tax Officer purely for administrative convenience and the power was not unguided. This power had to be exercised bearing in mind the purpose for which the Income Tax Act was enacted. The Supreme Court, therefore, held that the section was not violative of article 14 and it did not impose any unreasonable restriction on the fundamental right to carry on trade or business. The Supreme Court, however, observed that it will be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer u/s 5(7A) of the Act is made by the Commissioner of Income Tax and notice is given to the party affected and he is afforded a reasonable opportunity of representing his view on the question; and the reasons of the order are reduced, however briefly, to writing. The Supreme Court made these observations because it felt that this will help the Court in determining the merits of the order as passed if and when the same is challenged in any Court as a mala fide order. Therefore, according to the Supreme Court, this was merely a rule of caution or prudence. It did not give any right to a party to insist on a hearing or a reasoned order in every case.

14. Thereafter u/s 127(1) of the "new" Income Tax Act, 1961 more detailed provisions were made relating to the transfer of a case from one Income Tax Officer to another. This section in terms states that the Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one Income Tax Officer subordinate to him to another also subordinate to him, provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any Income Tax Officer to any other Income Tax Officer, whose offices are situate in the same city, locality or place.

15. The provisions of this section came up for consideration before the Supreme Court in the case of Kashiram Agarwala Vs. Union of India (UOI) and Others, . In that case the order of transfer was from an Income Tax Officer, D-Ward to an Income Tax Officer of another ward in the same city. It was submitted on behalf of the assessee that the proviso to section 127(1) merely dispensed with the requirement of a reasonable opportunity of hearing being given to the assessee. It did not dispense with the requirement of recording reasons for the order. This submission was negatived by the Supreme Court. The Supreme Court held that where the transfer order is from one officer to another officer in the same city, there is hardly any occasion for mentioning any reasons as such because such transfers are invariably made on the grounds of administrative convenience. In

principle, therefore, neither a notice is necessary nor is it necessary to record any reasons for such transfer. The Supreme Court in that case has referred to its earlier decision in the case of PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., and has held that the observations made in that case to the effect that it would be better if an opportunity is given to the assessee of being heard before such orders are passed, etc., are observations which have a reference to cases where transfers are intended to be made from Income Tax Officer in one place to Income Tax Officer in another place. Presumably this can result in hardship to the assessee. But where transfers are within the same city or locality there is no hardship. In such cases an opportunity need not be given to an assessee to be heard and there is also no need to record reasons for the transfer.

16. In the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, the transfer of proceedings was from an Income Tax Officer in one city to an Income Tax Officer in another city. The Supreme Court in that case set aside the order on the ground that the requirement of recording reasons for such a transfer was a mandatory requirement of section 127(1) and non-communication of such reasons was a fatal defect in the order.

17. The above observations of he Supreme Court have no bearing on the present case where the transfer of proceedings is within the same city. All these cases are of course under the Income Tax Act. But the provisions are, to some extent, comparable to the provisions of the Bombay Sales Tax Acts. They all pertain to transfer of proceedings from one officer to another. The Supreme Court has held such orders to be purely administrative orders. Hence the principles of natural justice have been and can be applied where the transfer order has been from an officer in one city to an officer in another city, when obviously, hardship would be caused to the assessee by reasons of such a transfer. In the present case, since no such hardship has been pointed out, the principles of natural justice need not be invoked. The order in question is, therefore, not invalid because a hearing was not given to the assessee or reasons for the transfer were not set out in the order.

18. It was submitted by Mr. Patel that the order of transfer is required to be a reasoned order because u/s 30 of the Bombay Sales Tax Act, 1953 an appeal is provided from such an order. Section 30(1) of the Bombay Sales Tax Act, 1953 is as follows :

"30. (1) Within sixty days from the making of an order of assessment either with or without penalty or the passing of any other order under this Act, any person may, in the prescribed manner, appeal to the prescribed authority against such order."

It is a moot point whether "any other order" should be read ejusdem generis with "an order of assessment" or would include an order of transfer of proceedings. We will assume that it includes an order of transfer. But an order need not be a speaking order simply because an appeal lies from it. Hence it would not be correct to hold that the order of transfer should state reasons simply because it is appellate. Reasons may be required when the order causes prejudice to the assessee or possibly where there are allegations of mala fides. Such is not the present case.

19. It was also contended by Mr. Jetly that it is not open to the respondent to challenge the order of transfer on the ground of non-compliance with the principles of natural justice because u/s 52 of the Bombay Sales Tax Act, 1953 all such orders of transfer are validated. According to him, section 52 precludes such a challenge to the order of transfer. It is not necessary to examine this submission of Mr. Jetly because of the conclusion we have came to earlier. Nevertheless since this point has been argued at some length before us, we propose to examine section 52.

20. u/s 52 jurisdiction conferred on the Assistant Commissioner of Sales Tax, Enforcement Branch and the Sales Tax Officer, Enforcement Branch, under he notifications referred to in the section has been validated. Section 52 thereafter goes on to say that, "accordingly all powers exercised and all duties performed and anything done or action taken or purported to be done or taken under the provisions of this Act in exercise of the aforesaid jurisdiction by the said officers shall be deemed to have been validly and effectually exercised ...". This part of section 52 validates powers already exercise and actions already taken before the enactment of section 52. The second further lays down that such an action shall not be called in question (1) on the ground that the jurisdiction was not duly conferred on the said officers and (2) that the Collector, the Additional Collector of Sales Tax, Bombay State, Bombay or the Assistant Collector of Sales tax was not duly invested with the power so to assign dealers to the said officers. Thus, section 52, apart from validating the conferment of jurisdiction, also validates all actions which have already been taken in purported exercise of that jurisdiction. Secondly such validation of actions is confined to the limits drawn in section 52, namely, jurisdiction is deemed to have been validly conferred on the officer concerned under the notifications in question and the Collector, etc., must be considered as having the power to assign dealers to these officers. Thus, other challenges to the exercise of such powers are kept open. A challenge to the exercise of power on the ground that such power was exercised in violation of the principles of natural justice would, therefore, remain a permissible challenge to the exercise of such power, especially in cases where such power is exercised after the coming into force of section 52 of the Bombay Sales Tax Act, 1953.

21. In the case of Commissioner of Sales Tax v. Hansraj Vishram Ravani reported in [1978] 42 STC 149 a Division Bench of this High Court has exhaustively analysed the provisions of section 52 of the Bombay Sales Tax Act, 1953 and the relevant notifications. In that case the High Court was required to consider whether on a true and proper interpretation of section 52 of the Bombay Sales Tax Act, 1953 the Sales Tax Officer, Enforcement Branch, had valid jurisdiction to

pass the orders in question there. All these orders had been passed after the said notifications but before the coming into operation of section 52. The High Court, after analysing the provisions of section 52, observed that "the concluding portion (of section 52) makes it expressly clear that the bar to the challenge was to two things only : (1) to the jurisdiction conferred upon the Sales Tax Officers and the Assistant Collector of Sales Tax, Enforcement Branch, under the said notification dated 20th August, 1955 and the other notifications referred to earlier and the orders of assignment made thereunder by the Collector and the Additional Collector and (2) to the exercise of the power of assignment of dealers, inter alia, by the Collector and the Additional Collector".

22. In that case, although there was a challenge to the orders on the ground of non-compliance with the principles of natural justice, that challenge was negatived on the basis that once the orders already passed had been expressly validated u/s 52, such orders which were passed at a time when the officer concerned did not have jurisdiction and which orders had been subsequently validated, could not now be challenged on the ground that those orders were passed without giving a hearing or without giving reasons. Such a reasoning, however, cannot be adopted in a case where the orders have been passed after the coming into operation of section 52 and in the exercise of jurisdiction conferred by reason of section 52 read with the notification concerned. In case of such orders, apart from the challenges which are precluded, other challenges are open to an assessee.

23. In the present case, however, the principles of natural justice are not attracted for reasons which have already been set out. The question which is posed before us is, therefore, answered in the negative, that is to say, against the respondent-assessee.

24. Mr. Patel has reserved his right to adduce arguments on any other aspect of the said order before the Tribunal. It will, therefore, be open to him to challenge the order on any other ground which may be open to him when the case goes back before the Tribunal.

25. Respondent will pay to the applicant the costs of the reference.

