

(1974) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 104 of 1969

Commissioner of Sales Tax

APPELLANT

Vs

Rameshlal Keshavlal

RESPONDENT

Date of Decision : 08-11-1974

Acts Referred:

Madhya Pradesh General Sales Tax (Amendment) Act, 1964 — Section 8
Madhya Pradesh General Sales Tax Act, 1958 — Section 19, 19(1)

Citation : (1976) ILR (MP) 489 : (1975) JLJ 215 : (1975) 20 MPLJ 37 : (1974) 35 STC 242

Hon'ble Judges : P.K. Tare, C.J.;S.S. Sharma, J;G.P. Singh, J

Bench : Full Bench

Advocate : Y.S. Dharmadhikari, -General, for the Appellant; None, for the Respondent

Judgement

P.K. Tare, C.J. and S.S. Sharma, J.

The Board of Revenue, Madhya Pradesh, at the instance of the Commissioner of Sales Tax, Madhya Pradesh, has in this reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, referred the following questions for the opinion of this court:

(1) Whether, under the facts and circumstances of the case, the limitation for initiating the proceedings u/s 19(1) expired on 31st October, 1964, or on 31st December, 1964, ignoring the amendment by M. P. Act No. 20 of 1964 ?

(2) Whether, in view of the facts and circumstances of the case, the period of limitation will extend to 31st December, 1967, in view of the aforesaid amendment made by Section 8 of M. P. Act No. 20 of 1964?

The present reference arises on the following facts : The respondent, a trader liable to pay sales tax, was being assessed for the period from 1st April, 1959, to 31st October, 1959. The order of assessment was passed on 9th July, 1962. The department further scrutinised the affairs of the respondent and found that the

assessment made was low. Consequently, a notice dated 15th February, 1965 (vide annexure B) was issued to the respondent to show cause as to why the assessment made be not revised. That notice was served on the respondent on 17th February, 1965. In pursuance of that an order of reassessment was passed on 22nd September, 1965, wherein the assessment was enhanced. Aggrieved by that order the respondent filed an appeal before the Appellate Assistant Commissioner, who by order dated 24th January, 1966 (vide annexure D), dismissed the appeal. The respondent filed a second appeal against that order and the Board of Revenue by order dated 25th January, 1967, allowed the assessee's appeal and held that the reassessment proceedings were barred by time in view of Section 19(1) of the Act. Consequently, the second appeal was allowed and at the instance of the department, the present reference has been made. At this stage it may be pertinent to note that Section 19 of the M. P. General Sales Tax Act, 1958, was amended by M. P. Amendment Act No. 20 of 1964. There were some amendments made in the years 1961 to 1963. Presently, we shall scrutinise as to which of the amending Acts would govern the present case. 3. Section 19 of the M. P. General Sales Tax Act, 1958, at the relevant time, i. e., in the year 1959, stood as follows :

Section 19. Assessment of turnover escaping assessment.-(1) Where an assessment has been made under this Act and the Commissioner, in consequence of any information which has come into his possession, is satisfied that any sale or purchase of goods chargeable to tax under this Act, during any year has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within five calendar years from the expiry of such year, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed, in such manner as may be prescribed, to reassess the tax payable on any such sale or purchase and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount:

Provided that in the case of an assessment made under any Act repealed by Section 52, the period for reassessment on the ground of under-assessment, escapement or wrong deduction shall be as provided in such Act notwithstanding the repeal thereof.

Thereafter, Section 19 of the Act was amended vide Section 7 of the M. P. General Sales Tax (Amendment) Act No. 20 of 1961. The changes effected by the said amending Act were as follows:

Section 7. (a) for the words "the Commissioner, in consequence of any information which has come into his possession, is satisfied that", the words "if for any reason" shall be substituted;

(b) for the words "any year" and "such year", the words "any period" and "such period" shall respectively be substituted ;

(c) for the words" on any such sale or purchase", the words "by such dealer" shall be substituted.

Evidently, this amending Act had no retrospective operation. It was to come into force on such date as was to be notified by the State Government in the official Gazette. Therefore, this amending Act did not have any effect so far as the present case is concerned.

Thereafter, the M. P. General Sales Tax (Amendment) Act No. 7 of 1963, was passed, which came into effect from 1st April, 1963. However, it did not amend Section 19 of the Act. Thereafter, the M. P. General Sales Tax (Second Amendment) Act No. 23 of 1963 was enacted, which effected some change in Section 19 of the Act. Section 3 of the amending Act provided that "in Sub-section (1) of Section 19 of the principal Act, after the words "this Act" occurring twice, the words and figures "or any Act repealed by Section 52", shall be inserted". The amendments made by Section 3 of the amending Act were given retrospective operation from the commencement of the principal Act. This also would have no effect on the present case.

Thereafter, the M. P. General Sales Tax (Amendment) Act No. 20 of 1964 was enacted. Section 8 of the amending Act provided that "in Sub-section (1) of Section 19 of the principal Act, for the words "expiry of such period", the words "date of order of assessment- shall be substituted". Therefore, by this Act the limitation of five years was to be computed not from the expiry of such period, but from the date of order of assessment. This amendment was made by Section 8 of the amending Act. Although Section 21 of the amending Act provided for retrospective operation of other amendments, the amendments made by Section 8 of the amending Act were not to be retrospective, but they were to be prospective. As such, this amending Act was to come into force from the date appointed by the State Government by a notification. Therefore, we are concerned with the original Act as it stood in the year 1959, which we have reproduced above. The question, therefore, arises as to what will be the period of limitation u/s 19(1) of the original Act, as it stood in the year 1959. According to the wording of the original Act, five years are to be computed from the expiry of such year in which the assessment was made incorrectly.

Section 2(u) of the Original Act defined the word "year" as follows : " "year" means the twelve months ending on the 31st day of March or, if the accounts maintained by any dealer are made up to any other day in respect of a year ending on any date other than the 31st day of March, then at the option of the dealer the year ending on the day to which his accounts have been so made up :

Provided that if this option has once been exercised by the dealer, it shall not again be exercised as to vary the meaning of the expression "year" as then applicable to such dealer except with the consent of the Commissioner and upon such conditions, as he may think fit.

Explanation.-An option exercised by any dealer before the commencement of this

Act under the corresponding law then in force shall be deemed to be an option under this clause.

Therefore, the word "year" would ordinarily mean twelve months ending on the 31st day of March. That year could be changed by the assessee exercising his option. In the present case there is no material to indicate that the assessee had exercised his option to adopt any other year, for instance, the Diwali year or calendar year. Therefore, the word "year" occurring in Section 19 of the M. P. General Sales Tax Act, 1958, as it stood originally would mean the financial year and as such, the assessment year will be from 1st April, 1959, to 31st March, 1960. Therefore, five years will have to be counted from the expiry of that year, that is, from 31st March, 1960. As such, the period of five years would end on 31st March, 1965. As the notice of reassessment was issued on 15th February, 1965, it was well within limitation. The interpretation adopted by the Board of Revenue was incorrect. The Board of Revenue took it for granted that limitation will start from 31st October, 1959, as the assessment was to be made for the period from 1st April, 1959, to 31st October, 1959. Obviously, this interpretation was erroneous in view of the definition of the word "year", which clearly means a financial year and, as such, the starting point of limitation will be five years from 31st March, 1960.

This case was referred to a Full Bench as the Division Bench hearing this reference was of the view that the view taken by another Division Bench of this Court in *Jeewakhan Musabhai, Ujjain (Firm) v. Madhya Pradesh State* 1970 M.P.L.J. 220 would require reconsideration in the light of the pronouncement of their Lordships of the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* AIR 1964 S.C. 763. We may observe that the case of *Jeewakhan Musabhai, Ujjain (Firm) v. Madhya Pradesh State* 1970 M.P.L.J. 220 was clearly governed by the M.P. General Sales Tax (Amendment) Act No. 20 of 1964, which effected a substantial change in Section 19(1) of the M. P. General Sales Tax Act, 1958. That situation does not obtain in the present case, which is governed by the original Act, as it stood in the year 1959. Consequently, we would reserve our opinion on that aspect for some suitable occasion in which the M. P. General Sales Tax (Amendment) Act No. 20 of 1964 might arise for consideration.

In the view that we take, it is not necessary to enter into the controversy as to what would be the implication of the phrase "five calendar years". This case would stand concluded on the interpretation of the word "year", as provided by Section 2(u) of the M. P. General Sales Tax Act, 1958, and the period of five years would clearly have to be computed from the expiry of the year as per the said definition, that is, from 31st March, 1960, and not from 31st March, 1959. Consequently, we answer the reference as follows:

(1) That under the facts and circumstances of the case, the limitation for initiating the proceedings u/s 19(1) of the M. P. General Sales Tax Act, 1958 (as it stood in the year 1959), expired on 31st March, 1965, and not on 31st

October, 1964, or on 31st December, 1964. Clearly, the M. P. General Sales Tax (Amendment) Act No. 20 of 1964 was not applicable to the present case.

(2) That in view of the facts and circumstances of the case, the period of limitation will not extend up to 31st December, 1967, as Section 8 of the M. P. General Sales Tax (Amendment) Act No. 20 of 1964 was inapplicable. But, it would be five years from the end of the financial year relating to which the assessment was to be made.

Let the reference be returned to the Board of Revenue for passing a final order in accordance with our opinion. There shall be no order as to costs of this court. Parties to bear their own costs.

G.P. Singh, J.

I have had the benefit of reading the opinion of my Lord the Chief Justice. The facts have been fully stated by him and I will not repeat the same.

During the period of assessment which is from 1st April, 1959, to 31st October, 1959, Section 19(1) of the Madhya Pradesh General Sales Tax Act, 1958, read as follows :

19. (1) Where an assessment has been made under this Act and the Commissioner, in consequence of any information which has come into his possession, is satisfied that any sale or purchase of goods chargeable to tax under this Act, during any year has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within five calendar years from the expiry of such year, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed, in such manner as may be prescribed, to reassess the tax payable on any such sale or purchase and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount....

The notice of reassessment was issued on 15th February, 1965. At that time Section 19(1) was in the following shape :

19. (1) Where an assessment has been made under this Act, or any Act repealed by Section 52, and if for any reason any sale or purchase of goods chargeable to tax under this Act or any Act repealed by Section 52 during any period has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within five calendar years from the date of order of assessment, after giving the dealer a reasonable opportunity of being heard and after making such enquiry, as he considers necessary, proceed, in such manner as may be prescribed, to reassess the tax payable by such dealer and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding that amount....

There are two significant changes in the section. Proceedings for reassessment could be taken under the section as it originally stood only when the Commissioner was satisfied about escapement "in consequence of any information" coming into his possession. Further, the limitation for commencement of proceedings for reassessment was then five calendar years from the expiry of the year during which the escapement occurred. Under the provisions of the section, as it stood at the time of notice of reassessment, the proceedings for reassessment could be taken if "for any reason" there had been escapement of tax and the proceedings could be commenced within five calendar years "from the date of order of assessment". The changes introduced in the section not only enlarge the period of limitation for reassessment, but also widen the grounds on which reassessment can be made.

The question before the Sales Tax Appellate Tribunal, which made this reference, was whether the period of limitation for making reassessment would be governed according to the provisions of Section 19(1), as it stood at the time when the notice for reassessment was issued, or in accordance with its provisions existing during the period of assessment. The contention of the department was that if a change is made in the period of limitation for reopening assessment before expiry of the original period of limitation, the change so made will also govern reassessment for the old periods. It was also contended that a calendar year u/s 19(1) means the year beginning from 1st January and ending on 31st December. These contentions found favour with the Tribunal on the authority of the decision of this court in *Jeewakhan Musabhai, Ujjain (Firm) v. Madhya Pradesh State* 1970 M.P.L.J. 220.

When this reference first came before a Division Bench, it was felt that *Musabhai's* case 1970 M.P.L.J. 220 required reconsideration in view of the decision of the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* AIR 1904 S.C. 766, and, therefore, the case was referred to a Full Bench. In *Ghanshyamdas'* case 1958 M.P.L.J. 33, the Supreme Court counted the period of reassessment on the footing as if a calendar year meant a year, i. e., a year commencing from any date and ending on the corresponding date in the next year and not necessarily a year commencing from 1st January. The point regarding the distinction between a calendar year and a year was, however, not argued before the Supreme Court. In *Kanhayyalal v. Deputy Commissioner, Sales Tax* AIR 1904 S.C. 766, a Full Bench of this Court held that a calendar year meant a year beginning from 1st January and ending on 31st December and this was the view which was followed in *Musabhai's* case 1970 M.P.L.J. 220.

I find myself in agreement with the view of my Lord the Chief Justice that the notice of reassessment was within limitation even in accordance with the provisions of Section 19, as it stood during the period of assessment. According to the section, as it then stood, the limitation for reassessment commenced from the expiry of the year during which any sale or purchase of goods had been

under-assessed or had escaped assessment. The word "year" is defined to mean twelve months ending on 31st of March or at the option of the dealer, the year ending on the date up to which his accounts have been made up. There is no material to show that the assessee had chosen any year different from the financial year. It has, therefore, to be taken that the assessee's year was the financial year ending on 31st March. The period of escapement is from 1st April, 1959, to 31st October, 1959. The relevant year for this period ended on 31st March, 1960. Five years from this date expired on 31st March, 1965. The learned Advocate-General submitted that five calendar years will have to be counted from 1st January, 1961, and not from 31st March, 1960. He argued that *Kanhayyalal Shivasahay Sharma Vs. Deputy Commissioner of Sales Tax and Others*, was not impliedly overruled by the Supreme Court in *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, and it was binding on us. I need not go into this controversy because even counting five years from 31st March, 1960, the notice for reassessment, which was issued on 15th February, 1965, was well within limitation. For the same reason, it is not necessary to go into the question whether the extended period of limitation u/s 19(1), as it stood at the time when notice of reassessment was issued, can be applied. It is also not necessary to consider whether the changes introduced in Section 19, subsequent to the relevant period of assessment, were merely procedural or affected substantive rights.

For the reasons stated above, I will answer the reference as follows:

- (i) Under the facts and circumstances of the case, the limitation for initiation of proceedings u/s 19(1), even ignoring the changes introduced in the section after the period of assessment, continued at least up to 31st March, 1965, and the notice of assessment was issued within limitation.
- (ii) In view of the answer given to question No. (1), question No. (2) becomes of no consequence and need not be answered.