(1956) 02 MAD CK 0035

In the Madras High Court

Case No : Second Appeal No. 2379 of 1952

C.P. Azeez Haji APPELLANT

Vs

The Government of Madras RESPONDENT

Date of Decision : 09-02-1956

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 11

Citation : (1956) 69 LW 450 : (1956) 7 STC 323

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : V.P. Gopalan Nambiar and P. Bhaskara Menon, for the Appellant; The Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Krishnaswami Nayudu, J.—The plaintiff is the appellant. The suit out of which this second appeal arises was for a declaration that the order

of the Commercial Tax Officer revising the assessment is null and void. The plaintiff is a fish merchant. The turnover of the assessable sales for

1948-49 came to Rs. 30,914-10-0 within the State of Madras, and to Rs. 23,363-10-0 outside the State of Madras. He paid the tax due on

amount so calculated for the period 1948-49. The Deputy Commercial Tax Officer, Perintalamanna, has assessed the turnover at Rs. 81,300 as

he did not accept the accounts of the plaintiff. An appeal was preferred to the Commercial Tax Officer who issued a notice to the plaintiff as

required under the rules and enhanced the turnover to Rs. 90,000 and assessed him on that figure. The plaintiff preferred a revision to the Board of

Revenue which was rejected. The order of the Commercial Tax Officer dated 16th March, 1950, was attacked as being ultra vires and null and void. The trial court accepted the contention of the plaintiff and granted the declaration. In appeal the learned Subordinate Judge found that it was

within the competence of the Commercial Tax Officer by virtue of the power vested in him under the Act and the rules, to revise the assessment

and such an order therefore was not liable to be challenged and allowed the appeal and dismissed the action. The Commercial Tax Officer had

power under the then provision of the Madras General Sales Tax Act (IX of 1939), not only to hear appeals but also to exercise powers of

revision which ordinarily were exercised by the Board of Revenue and by virtue of the powers of revision which the Commercial Tax Officer could

exercise suo motu, he interfered with the assessment as determined by the Deputy Commercial Tax Officer and found that the assessee was liable

on a larger turnover.

2. Section 11 of Act IX of 1939 provides the right to an assessee to object to an assessment by way of appeal and the appellate authority under

Sub-section (3) is competent to pass such orders as he thinks fit. Every order passed in appeal was, subject to the powers of revision conferred

by Section 12, to be final. Section 12 as it then stood empowered the Board of Revenue in its discretion to call for and examine any record of any

order passed or proceeding recorded by any authority, officer or person under the provisions of the Act, including sub-section(2) for the purpose

of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding, and pass such order in reference thereto as

it thinks fit. Under Sub-section (2) of Section 12, the powers conferred on the Board of Revenue may also be exercised by such authority or

officer and in such class of cases as may be prescribed, including cases where an inferior authority or officer has exercised its or his powers under

the sub-section. Rule 14 enumerates the authorities who are competent to exercise the powers of revision u/s 12(1). Under Rule 14, the Deputy

Commissioner of Commercial Taxes and the Commercial Tax Officer have been authorised to exercise the powers of the nature referred to in

Section 12(1). Rule 14A provides :-

Where the tax as determined by the initial assessing authority appears to the appellate or revising authority to be less than the correct amount of the

tax payable by the dealer, the appellate or revising authority shall, before passing orders, determine the correct amount of tax payable by the dealer

after issuing a notice to the dealer and after making such enquiry as such appellate or revising authority considers necessary.

3. It may be mentioned here that Section 12 has subsequently been amended after the date of the order that is now impugned and under the

present section the Commercial Tax Officer is specially empowered suo motu or in cases in which an appeal does not lie to him u/s 11, an

application, to call for and examine the record of any order passed or proceeding recorded and exercise the powers of revision. But we are not

now concerned with the amended section as the provision applicable to this case is the unamended Section 12. In view of the law then prevailing,

the Commercial Tax Officer had authority not only to hear appeals but also to hear revision petitions on applications by the assessee or call for any

record suo motu and examine and satisfy himself as to the legality or propriety or regularity of such proceeding. The Commercial Tax Officer was

therefore competent, notwithstanding that an appeal lay u/s 11, which in fact was filed, to exercise his powers in revision, which he has sought to

do, as could be seen from the order complained of. The order exhaustively deals with the respective contentions and the evidence placed before

the Deputy Commercial Tax Officer. After giving an opportunity to the assessee as required under the rules, the Commercial Tax Officer has come

to the conclusion that, in view of the several items not having been entered in the appellant''s accounts and the manipulation and suppression of

accounts with a view to escape assessment, the books are incorrect, incomplete and unreliable, and revised the turnover to Rs. 90,000 from Rs.

81,300 which was the figure arrived at by the Deputy Commercial Tax Officer. The decision in Ramachandra Rao v. The State of Madras (1954)

2 M.L.J. 148 was referred to in support of the contention that the appellate authority has no power to increase the quantum of the turnover in

appeal by the assessee; in that case the appeal was to the Appellate Tribunal. This would not help the appellant since the Commercial Tax Officer

has exercised the powers of revision u/s 12(1) though such powers of revision were exercised in the appeal preferred by the assessee when the

matter came to his notice. It would therefore be open to the Commercial Tax Officer who is empowered suo motu to call for and examine the record of any order, to take note of the facts of the case when they come to his notice in the course of the appeal preferred by an assessee and to

revise the turnover after giving notice to the assessee, which has been done in this case, and so the order of the Commercial Tax Officer, though

passed in an appeal preferred by the assessee, is not in pursuance of his powers as an appellate authority, but by virtue of the powers which he

had to revise the assessment u/s 12(1) of the Act.

4. It was further urged that Rule 14A itself is ultra vires the rule-making power as the rule purports to confer on the authority such powers beyond

his jurisdiction. I am unable to appreciate the contention since not only the Board of Revenue but any authority could be empowered u/s 12(1) to

exercise the revisional powers, and in this case Rule 14 confers such powers on the Deputy Commissioner of Commercial Taxes and the

Commercial Tax Officer, and Rule 14A provides for the determination by the appellate or revising authority of the correct amount of tax payable

by the dealer after issuing a notice to the dealer and after making such enquiry as the appellate or revising authority considers necessary. From the

order of the Commercial Tax Officer I am satisfied that not only notice has been given but an enquiry has been held and on the material that was

placed before him and after hearing the assessee the order that is now attacked has been passed. The meaning of the words ""legality and

propriety"" has been the subject of various decisions and the principle is that where the discretion is vested with the authorities exercising the

powers of revision, such discretion could not be arbitrary but should be sound and reasonable, guided by judicial principles. It has been held that

the meaning of the word ""proper"" would be ""reasonable"" and if an order is reasonable and honestly passed on the material that was available and

placed before the authority and after notice to the dealer and after giving him an opportunity to explain and adduce evidence, it could not be said

that the order is without jurisdiction. The legality and propriety of the order of the Deputy Commercial Tax Officer can therefore be examined by

the revising authority. If in fact the taxing officer has overlooked certain aspects of the case or failed to give due weight to the circumstances arising,

as in this case, like the manipulation of accounts and suppression of sales and if it comes to the notice of the revising authority that these factors have not been given their due weight, it cannot be said that the order of assessment by the Deputy Commercial Tax Officer could be either legal or

proper and such legality and propriety can therefore be examined by the revising authority and corrected by passing such order as he thinks fit, as

he has purported to do in this case. I am unable to find that the Commercial Tax Officer has exceeded the jurisdiction vested in him as a revising

authority u/s 12 and there is no error in the view taken by the learned Subordinate Judge in upholding the validity of the order complained of.

5. The result is this second appeal fails and is dismissed with costs. No leave.