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(1968) 01 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 211 of 1965

Gian Chand Mehta APPELLANT

Vs

Commr. of Sales Tax RESPONDENT

Date of Decision : 18-01-1968

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 11A, 22(5)
Madhya Pradesh General Sales Tax Act, 1958 — Section 39(2), 52

Citation : AIR 1968 MP 145 : (1968) JLJ 597 : (1968) 13 MPLJ 351 : (1968) 22 STC 212

Hon'ble Judges : K.L. Pandey, J;A.P. Sen, J

Bench : Division Bench

Advocate : J.S. Verma, for the Appellant; K.K. Dube, for the Respondent

Final Decision : Allowed

Judgement

Sen, J.

By this application under Article 226 of the Constitution, the applicant G. C. Mehta, a P. W. D. contractor, applied for issue of a writ in the nature of prohibition and other appropriate writ, direction or order, in respect of a notice issued by the Commissioner of Sales Tax. Madhya Pradesh.

The applicant was assessed to tax for the period between 1st April 1953 and 31st March 1954 by an order of the Sales Tax Officer, Satna, dated 13th October, 1954, u/s 11(3) of the C. P. and Berar Sales Tax Act (Act XXI of 1947), as extended to the Vindhya Pradesh region. Thereafter, the Sales Tax Officer reviewed his order and passed a fresh order of assessment. In accordance therewith, the applicant was found to have paid a sum of Rs. 6,900 in excess of the tax due. and the applicant, therefore, applied for a refund of the amount. During these proceedings the Assistant Commissioner of Sales Tax acting suo motu revised the assessment and passed an order dated 1st October 1957 whereby the resultant tax payable was determined at Rs. 6,825/9/-. Thus, the excess payment in consequence of this revisional order worked out to be Rs.

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1,977/6/6. On appeal by the applicant, the Deputy Commissioner of Sales Tax, Jabalpur, enhanced that tax from Rs. 7,662/1/- to Rs. 14,561/10/-. The applicant, thereafter, preferred a revision before the Tribunal, which accepted his contention that the enhancement of the tax in revision by the Assistant Commissioner of Sales Tax was without jurisdiction as no notice required under Rule 80 of the Rules framed under the Act had been issued to him. The Tribunal, accordingly, had quashed the proceedings for enhancement and set aside the orders of the Assistant and Deputy Commissioner of Sales Tax. As a result, the original order of assessment made by the Sales Tax Officer was restored.

Pretending to act in his suo moto revisional jurisdiction, the Commissioner of Sales Tax has now issued a notice under Rule 80 dated 8th January 1965/4th March 1965, to the following effect:

"It is proposed to pass an order suo motu in revision u/s 39(2) of the Madhya Pradesh General Sales Tax Act, 1958, read with Section 22(5) of the C. P. and Berar Sales Tax Act, 1947. as extended to the Vindhya Pradesh region, with a view to levying tax amounting to Rs. 14,387/10/-on a taxable turnover totalling Rs. 4,69,395."

The contention that the initiation of proceedings in revision by the impugned notice for enhancing the assessment made in the year 1954-55, after a lapse of nearly 10 years from the date of assessment, is in excess of iurisdiction. must be accepted.

Under the C. P. and Berar Sales Tax. Act, 1947, as extended to the Vindhya Pra-j desh region, the power to revise suo motu u/s 22(5) an order of assessment was controlled and limited by Section 11-A, under which any turnover which had "escaped assessment" or had been "assessed at a lower rate" could be brought to tax "with-in three calendar years" of the expiry of the period. The power of revision u/s 22(5) ibid for enhancing the tax for any period could not. therefore, be invoked or exercised after expiry of the period fixed u/s 11-A. The initiation of proceedings in revision by the Commissioner of Sales Tax by the impugned notice dated 8th January 1965/4th March 1965, for enhancing the assessment made in the year 1954-55. after a lapse of nearly 10 years, must be regarded as altogether in excess of iurisdiction.

While interpreting Section 22-B of the C. P. and Berar Sales Tax Act which conferred similar revisional powers upon the Commissioner where an assessment was considered by him as being prejudicial to the revenue, one of us (Pandey J.) in Purushottam Kalidas v. Commissioner of Sales-tax 1961 MPLJ 35 has stated:

"Even apart from this, Section 11-A of the Act specifically provides for assessment of the tax payable if. in consequence of any information, the Commissioner is satisfied that the turnover of a dealer during any period escaped assessment. In view of this special provision, any turnover which has escaped assessment must be dealt with as provided there. The power of revision u/s 22-B of the Act cannot be exercised to tax a turnover, which has escaped assessment,

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especially when the period of limitation prescribed u/s 11-A ibid, namely three calendar years from the expiry of such period, has already lapsed. It is true that the essential difference between Section 11-A and Section 22-B is that, while under the former only the turnover escaping assessment is taxed leaving the finality of the original order of assessment unimpaired, an exercise of powers under the latter affects the finality of the original order which is displaced by the order passed in revision. Even so, the powers of revision u/s 22-B cannot be invoked to deal with a turnover escaping assessment which falls substantially within the ambit of Section 11-A." We are fully in accord with this view- The view stands fortified by the decision of their Lordships of Privy Council in (1938) 6 ITR 414 (Privy Council) where Lord Romer J. stated:

"It is true that the Act nowhere imposes any limit of time within which an assessment under the provisions of Sections 23 and 29 is to be made, and that the service of the notice of demand can therefore be made at any time. But it is not true that after a final assessment under those sections has been made, the Income tax Officer can go on making fresh computations and issuing fresh notices of demand to the end of all time. When once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in Section 34 and Section 35 of the Act and within the time limited by those sections. It is quite possible to suppose that the Income Tax Officer may in every kind of circumstance and after any lapse of time make fresh assessment or issue fresh notices of demand: or that the Commissioner can direct him to do so. The Commissioner''s power under Sfction 33 can only be exercised subject to the provisions of the Act, of which the provisions in Sections 34 and 35 are in this respect of the greatest importance".

We must accordingly, hold that the powers of revision u/s 22(5) cannot be invoked to deal with a turnover escaping assessment or under-assessed which falls substantially within the ambit of Section 11-A.

Viewing the matter from another angle, we are constrained to hold the impugned notice to be invalid. After repeal ol the C. P. and Berar Sales Tax Act, 1947. as extended to the Vindhya Pradesh region, by the Madhya Pradesh General Sales Tax Act. 1958 (Act II of 1959), the power of the commissioner to revise an assessment suo motu exercisable u/s 22(5) of the repealed Act. could only be brought into play within the four corners of Section 39(2) of the new Act. The saving is with a limitation. The power can now only be exercised u/s 39(2) ibid and is subject to the proviso contained therein which is to the following effect:

"Provided that no proceeding shall be initiated under this sub-section after the expiry of three years from the date of the order sought to be revised."

The impugned notice having been issued beyond the period stated, is invalid as upon the expiry of that period, the power itself was non-existent and. therefore, no such notice could be issued.

Even otherwise, the same result is brought about by reference to the fiction

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introduced by Section 52(1) of the new Act. As a consequence of this legal fiction, the order of assessment passed by the Sales Tax Officer in the year 1954-55 must be "deemed" to have been made under the new Act. Their Lordships of the Supreme Court have in The Sales Tax Officer. Jabalpur v. Hanuman Prasad 1967 MPLJ 138 = (AIR 1967 SC 5651, held in like circumstances that a notice of reassessment was barred by time, after stating:

"The period of reassessment on the ground of under assessment, escapement or wrong deduction had to be as provided in Section ll-A(1) of the repealed Act. so that the period was three years "

When the original assessment was in respect of a period when the new Act had not come into force and when the assessment was under the repealed Act. In regard to the proviso creating a fiction their Lordships, stated

"It was u/s 52 of the new Act that the repealed Act was repealed, and that section itself, under the proviso laid down that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder. There was also the further addition that subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule, form, Regulation, certificate or licence) in the exercise of any power conferred by or under the said Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act. as if this Act were in force on the date on which such thing was done or action was taken. In view of this proviso it has to be held that when this new Act came into force on 1st April, 1959, all rights, title, obligation or liability already acquired, accrued or incurred under the repealed Act by the respondent remained unaffected and intact. The rights and liabilities, which had been acquired or incurred under the repealed Act, included the right of liability to be assessed in accordance with the provisions of the repealed Act in respect of turnover of sales effected during the time when that Act was in force. The repealed Act laid down what turnover was taxable, how it was to be computed, and at what rate the tax was to be charged. These provisions clearly created rights as well as liabilities of the dealers. Those rights and liabilities were thus preserved by Section 52 of the new Act."

A fortiori, it must be held that the applicant acquired a right not to be reassessed in respect of a turnover which had been reassessed after expiry of the period mentioned in Section 11-A of the repealed Act.

The result is that the application suc ceeds and is allowed. The notice issued by the Commissioner of Sales Tax dated 8th January 1965/4th March 1965. is hereby quashed and he is further commanded to desist from giving effect to the same in the manner threatened. Hearing fee Rs. 100, if certified.

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