

(2004) 06 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 5934 of 1997

Hanuman Prasad

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-06-2004

Acts Referred:

Assam Finance (Sales Tax) Act, 1956 — Section 11(1), 20, 20(1), 9(3)
Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLT 169 : (2007) 7 VST 566

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : G.K. Joshi, for the Appellant; H.K. Mahanta, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The petitioner is a sole proprietorship concern and is a registered dealer under the Assam Finance (Sales Tax) Act, 1956 (since repealed with effect from 1.7.1993). The petitioner is aggrieved by order dated 27.11.1990 passed by the Assistant Commissioner of Taxes, Nagaon Zone, Nagaon exercising suo-motu power of revision under the Assam Finance (Sales Tax) Act, 1956 for period ending 30.9.1982 to 30.9.1987 and the revised orders of assessment dated 4.4.1991 issued pursuant thereto.

2. The petitioner filed its returns of turnover for the periods ending 30.9.1982, 30.9.1984, 30.9.1986, 31.3.1987 and 30.9.1987 under the aforesaid Act of 1956 showing therein the gross turnover of onions it deals with as per books of account maintained at Rs. 27,217/-; Rs. 50,144/-; Rs. 76,000/-; Rs. 40,000/- and Rs. 4,83,000/- respectively. The petitioner paid the admitted taxes due as per the said return @ 7% on taxable sales of onion as specified under item No. 56 of the schedule attached to the Act. The respondent No. 2 upon examination and verification of the same, completed the assessment u/s 9(3) of the Act by his orders of assessment dated 6.10.1982, 22.6.1986, 17.3.1987, 15.2.1988 and 15.2.1988 for the aforesaid periods. He accepted the books of accounts and the

sales shown as correct and complete. The demands raised in pursuance of the above assessment were paid by the petitioner.

3. When the matter rested thus, the respondent No. 3 issued notice to the petitioner invoking its suo-motu power of revision u/s 20(1) of the Act for the periods ending 30.9.1982 to 30.9.1987 in the light of the communication dated 9.3.1988 issued by the Commissioner of Tax. The petitioner responded to the notice and produced relevant books of accounts which were earlier verified by the respondent No. 2. The respondent No. 3 upon hearing the petitioner and on perusal of records cancelled the original assessments for the above five periods by the impugned order dated 27.11.1990 and directed the respondent No. 2 to make fresh assessment by determining the sale price as determined by him in the impugned order. However, the respondent No. 3 did not interfere with the original assessment orders for the six periods ending 31.3.1983, 30.9.1983, 31.3.1984, 31.3.1985, 30.9.1985 and 31.3.1986 since the same were found correct and complete.

4. In pursuance to the above suo-motu revision order dated 27.11.1990, the respondent No. 2 completed revised assessment order for the periods in question by orders of assessment dated 4.4.1991 passed u/s 9(3) of the Act read with Section 11(1) of the Act and raised additional demand on account of tax. Penal interest was also charged in respect of the additional demand of tax as a consequence of which the petitioner was required to deposit the additional demand of tax at Rs. 41,6547-and interest at Rs. 35,922/- for the above return periods as per notice of demand issued by the respondent No. 2.

5. The petitioner preferred revision petitions before the Commissioner of Taxes against the revised orders of assessment along with the petitions for stay of the disputed demand till disposal of the revision petitions. The revision petitions were rejected by a common order dated 11.6.1997 holding the same to be not maintainable against the revisional orders passed as delegated by and on behalf of the Commissioner of Taxes under the law. However, an observation was made that the petitioner might seek redressal of its grievance before the higher forum if aggrieved. This Court while entertaining the writ petition by its order dated 18.12.1997 passed an interim order of stay of the impugned order dated 4.4.1991 subject to payment of Rs. 40,000/- by the petitioner.

6. I have heard Mr. G.K. Joshi, learned counsel appearing for the petitioner and Mr. H.K. Mahanta, learned State counsel appearing for the respondents. Mr. Joshi submitted that the action on the part of the respondent No. 3 in his purported exercise of power u/s 20(1) of the Act is most arbitrary, illegal and without any jurisdiction. According to Mr. Joshi, the conditions precedents for exercising the power u/s 20(1) of the Act were absent in the instant case and yet the impugned order was passed. According to Mr. Joshi the original assessments of turnovers were completed after examining the books of accounts and records and on being satisfied with the same and thus there was no justification and jurisdiction to invoke the suo-motu revision power u/s 20(1) of the Act and that too on the

basis of altogether new facts and circumstances. Mr. Joshi placed reliance on the following decisions :

MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX,

Sirpur Paper Mills Ltd. Vs. Income Tax Officer, "A" Ward and Another,

(1998) 2 GLR 474 (Rajnath Biswanath and Anr. v. State of Assam and Ors.

(1990) 1 GLR 449 (Sri Rajendra Singh v. Superintendent of Taxes)

(2002) 1 GLR 197 (Santlal Mehandi Ratta v. Commissioner of Taxes)

Laxmikant V. Patel Vs. Chetanbhat Shah and Another,

(2003) 1 GLR 448 (Shyam Sundar Agarwal v. State of Assam and Ors.)

(2003) 3 GLR 214 (Herbertsons Ltd., v. Commissioner of Taxes)

7. Mr. H.K. Mahanta, learned State counsel on the other hand made submissions supporting the impugned order. According to him the impugned order is within the competence and jurisdiction of the respondent No. 3. He submitted that there being no infirmity in the impugned order and the consequential revised re-assessment orders, no interference is called for with the same in exercise of the power of judicial review under Article 226 of the Constitution of India.

8. The power of suo-motu revision was available under the Act, a ground of the order passed under the Act being erroneous in so far as the same was prejudicial to the interest of revenue. In all the above referred cases the scope and ambit of the powers of revision and the circumstances under which such a power can be exercised have been dealt with. Interpreting the provisions of Section 20 of the aforesaid Act of 1956 and perimateria provisions of other Acts, it has been held that the power of suo-motu revision is in the nature of supervisory jurisdiction and the same can be exercised only when the order is erroneous and by virtue of the same is prejudicial to the interest of the revenue. It must be erroneous and also prejudicial to the interest of revenue. If an order is erroneous, but of prejudicial to the revenue, the power of suo-motu revision cannot be exercised. If an officer acting in accordance with law makes certain assessments and determines the turnover of a dealer, the same cannot be said to be erroneous. The provisions of Section 20(1) does not virtualise a position in which a judgment can be substituted by the revising authority on the basis of his own reasoning. The order must be erroneous being not in accordance with law or having been passed in haste without any enquiry.

9. A wrong order passed cannot be said to be erroneous. In absence of any jurisdictional error on the part of Assessing Authority, it will not be open for the Revisional Authority to re-open an assessment already made exercising its suo-motu power of revision which would naturally lead to confusion, chaos and uncertainty. The power cannot be exercised mechanically or at the behest of some other authority other than on own application of mind of the Revisional

Authority. The power is not available merely because in the opinion of the Revisional Authority it is of the view that the order is incorrect or that a higher quantum of tax or penalty should have been levied. The admission of fundamental and primary fact cannot be withdrawn and a fresh litigation cannot be started with a view to obtain another assessment on assumption of new facts and views. The power of revision cannot be invoked to correct each and every type of mistake or error committed by the Assessing officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue, unless the view taken by the Assessing Authority is unsustainable in law.

10. Keeping in mind the above principles relating to the suo-motu power of revision as laid down in various decisions, the impugned order dated 27.11.1990 will have to be judged. The power of revision has been exercised on grounds of assessment "found a bit low", "found under assessed" etc. The Revisional Authority re-determined the sales at a particular rate higher than the earlier assessment made by the Assessing Authority. Referring to the report of the Inspector of Taxes to the effect that there was no fixation of price of onion and that no report was also received from the Chamber of Commerce during the periods under question and that the prices of onion was fixed at Rs. 4.90 to Rs. 5.00, the Revisional Authority re-assessed the same against the earlier assessment made. The balance amount was directed to be brought as under assessment and to issue demand notice on that basis.

11. Thus, it appears that the Revisional Authority without arriving at any finding as to how the earlier assessment made was erroneous and pre-judicial to the interest of revenue re-determined the sale price on the above grounds of "a bit low", "under assessed" etc. without elaborating and discussing anything as to how it was so. It also relied upon the report of the Inspector towards re-assessment of the sale price, The Revisional Authority fell into error on relying upon the report of the Inspector in re-determining the sale price, in absence of any authentic material regarding sale price on the date of assessment. It ought not to have acted only on the basis of the report of the Inspector. It was required to set on materials available an records. It could not have acted on conjectures and surmises. In absence of any evidence like sale receipts of the commodity indicating the price or any others acceptable evidence, the re-assessment of the sale price cannot be said to be based on any lawful evidence.

12. It appears that the respondent No. 3 invoked its jurisdiction of suo-motu revision u/s 20(1) of the Act on the basis of altogether new materials and that too as per direction of the higher authority. As reflected in the impugned order, the Inspector of Taxes himself stated in his report that there was no fixation of onion price prior to April 1987 and no categorical report had also been received from the Chamber of Commerce as to the fixation of price of the onion during the periods under consideration. Further, it appears that the materials considered by the Revisional Authority did not form part of the records as it stood at the time of

completion of the original assessments. Such materials could not have been made the basis for exercising the jurisdiction and power u/s 20(1) of the Act.

13. The power and jurisdiction conferred u/s 20(1) of the Act is required to be exercised with due application of mind. Exercise of such a power must be independent of any extraneous consideration and dehortative of any dictation or direction of other authority. The impugned order itself reflects that the notice u/s 20(1) of the Act was issued and served on the petitioner in the light of the letter dated 9.3.12988 of the Commissioner of Taxes. The Revisional Authority fell into error in acting on that basis and manner. As noticed above, the Revisional Authority was solely guided by the report of the Inspector to arrive at a particular sale price which in my considered opinion cannot be legally sustained.

14. For the foregoing reasons the impugned order dated 27.11.1990 (Annexure-II) passed by the Assistant Commissioner of Taxes, Nagaon Zone, Nagaon exercising suo-motu power of revision for the period ending 30.9,1982, 30.9.1987 under the Assam Finance (Sales Tax) act, 1956 in respect of the petitioner cannot be sustained and consequently orders of re-assessment on that basis dated 4.4.1991 (Annexure-III) are also not sustainable. Accordingly same are set aside and quashed. The amount paid by the petitioner in terms of the interim order of this Court dated 18.12.1997 shall be refunded to the petitioner,

15. Writ petition stands allowed.