(1965) 11 CAL CK 0008

In the Calcutta High Court

Case No : Civil Revision Case No. 143 (W) of 1963

Hind Associated Corporation Private Ltd. APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 16-11-1965

Acts Referred:
Bengal Finance (Sales Tax) Act, 1941 — Section 11(4B)
Bengal Finance (Sales Tax) Rules, 1941 — Rule 71

Citation : AIR 1966 Cal 197 : (1966) 17 STC 414

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : A.K. Dutta and Amal Kumar Ghosal, for the Appellant;N.C. Chakravarti and Debesh Chandra Mukherjee, for the Respondent

Judgement

B.N. Banerjee, J.—The petitioner company moved this application against an order of assessment of sales tax as also against a notice calling upon it to show cause why there should not be a penalty imposed upon it u/s 11 (4B) of the Bengal Finance (Sales Tax) Act, 1941.

2. The Rule was issued on three limited grounds, namely, grounds Nos. I, II and VII. The petitioner has, pending this Rule, got some relief against the order of assessment of tax from the departmental authorities. Mr. Arun Kumar Dutta, learned Advocate for the petitioner, did not, therefore, press grounds Nos. I and VII. He, however, urged ground No. II, which is couched in the following language:

"For that the delegation provided for under Rule 71 of the Bengal Finance (Sales Tax) Rules cannot include and cover the power founded on Section 11(4B) of the Act inserted by the West Bengal Act XIV of 1961 inasmuch as the existing delegation referred to a notification made on 4th February, 1946 when Section 11(4B) was not on the Statute Book".

3. In order to understand this argument, it is necessary for me to refer to certain

provisions of the Bengal Finance (Sales Tax) Act, 1941. Section 15 of the Bengal Finance (Sales Tax) Act, 1941 permits delegation of the Com-missioner''s powers in the following language:

"Subject to such restriction and conditions as may be prescribed, the Commissioner may by order in writing delegate any of his powers under this Act (except those under Sub-section (2) of Section 22) to any person appointed u/s 3 to assist him".

Under Rule 71 of the Bengal Sales Tax Rules there are certain limitations prescribed in respect of delegation of Commissioner''s powers Rule 71 is couched in the following language:

"The Commissioner shall not delegate to any officer appointed to assist him any powers other than those enumerated below in respect of the sections mentioned, nor shall he delegate any power specified in column 8 to any officer below the rank specified in the corresponding entry in column 4:

Serial No Section. Description of power Designation of officer

5. 11.

To make an assessment of tax or penalty, or to fix a date for payment or to extend a date for payment of such tax or penalty or to allow the payment of such tax or penalty by instalments and to exercise all other powers u/s 11 of the Act.

Commercial Tax Officer

On June 14, 1954, the Commissioner of Commercial Taxes made the following notification concerning delegation of his powers:

"In exercise of the powers conferred by Section 15 of the Bengal Finance (Sales tax) Act, 1941, (Bengal Act VI of 1941), I hereby delegate to all Commercial Tax Officers appointed to assist me u/s 3(1) of the said Act, read with Rule 1(2) (f) of the Bengal Sales Tax Rules framed thereunder, the power under the different sections of the Act as specified below to be exercised in respect of dealers within their jurisdiction:

Serial No. Section Description of power delegated.

4. 11.

To make an assessment of tax or penalty or to fix a date for payment or to extend a date for payment of such tax or penalty or to allow the payment of such tax or penalty by instalments and to exercise all other powers u/s 11 of the Another than for any period not falling beyond the year ending on a date immediately following 26th May,1948 in respect of a dealer whose gross turnover of the year immediately preceding such period exceeds Rs. 15 lakhs or whose taxable turnover in such previous year exceeds Rs. 3 lakhs."

Long after the making of the notification, on August 4, 1961 Sub-section (4B) was incorporated in Section 11 of the Bengal Finance (Sales Tax) Act, 1941, couched in the following language:

"(4B) Where any dealer is in default in making payment of any tax payable under this Act after the assessment of such tax has been made and the date for the payment there of has expired, the Commissioner may by notice issued in this behalf, direct that in addition to the amount of arrears of such tax, such sum not exceeding that amount as the Com-missioner may specify in the notice, shall be paid by the dealer by way of penalty, by such date as may be specified in the notice, and the amount of any such tax or penalty which remains unpaid after the date so specified in the notice shall be recoverable as an arrear of land revenue payable to the Collector:

Provided that if the Commissioner is satisfied that the default in making payment of the tax has been due to circumstances beyond the control of the dealer, he may, by order recording reasons for so doing, exempt the dealer from payment of any penalty".

4. According to Mr. Dutta, Sub-section (4B) to Section 11 not being in existence on June 14, 1954, when the notification was made, there could not be any delegation of authority u/s 11(4B) unless there was a fresh delegation of authority in respect of that particular power made to the Commercial Tax Officer.

5. I am unable to uphold this contention. A point of almost identical nature arose in Civil Rule Nos. 3168 to 3170 of 1960 (Cal), Kishan Chand Arora v. Assistant Commissioner, Commercial Taxes, Calcutta.--per Sinha J., unreported--in which a similar point was negatived in the following language:

"With regard to the first ground, Mr. Dutt has argued as follows: At the relevant time the Commercial Tax Officer who dealt with the matter had not the power because the power had not been delegated to him. The position is as follows: The taxing authorities have been mentioned in the body of the Act and the powers of the Commissioner can be delegated. Under the rules, the Commissioner has in fact delegated his powers. These delegations are to be found in Rule 71. In respect of Section 11, there is a general delegation of powers, namely, to make an assessment of tax or penalty or to fix a date for payment or to extend a date for payment of such tax or penalty or to allow the payment of such tax of penalty by instalments and to exercise all other powers u/s 11 of the Act. The delegatee is the Commercial Tax Officer. Penalty in this case was imposed u/s 11 (4A). Mr. Dutt has argued that there is no mention of 11(4A) in Rule 71. In my opinion, this argument cannot he accepted. The delegation is of the entirety of Section 11, and there is a general delegation of the power to assess and impose a penalty. Section 11 has been amended from time to time, but it does not follow that every time an amendment has been made, there must be a fresh delegation. As long as the power to be exercised is derivable from Section 11, or as long as it is an assessment of tax or penalty, it would be covered by the delegation contained in Rule 71. Therefore, the very basis of this argument fails and I must hold that the Commercial Tax Officer had sufficient power to make an assessment order and to impose a penalty".

I respectfully agree with the observations made by Sinha, J. in the above judgment.

6. Mr. Dutta, however, tried to distinguish the present case from the above judgment on the following line of argument. He contended that the Commissioner was at liberty to delegate his powers but he had no liberty to delegate his duties such as were cast upon him u/s 11(4B) In my reading section 11(4B) also contains a power and if there is any element of duty that is only an adjunct to the exercise of the powers. In the view that I lake I find inspiration from a decision of the Supreme Court in Daluram Pannalal Modi Vs. The Assistant Commissioner of Sales Tax etc., .

7. Mr. Dutta also invited my attention to two other decisions of this Court, namely, Shree Shew Sakti Oil Mills v. Member. Board of Revenue, West Bengal ILR (1949) 2 Cal 347 and Balihari Colliery Co. Ltd. Vs. Commercial Tax Officer and Another, . It is not necessary for me to consider those decisions further because there is nothing contained in those two decisions which is contrary to the view which I have expressed hereinbefore.

8. For the reasons stated above, this Rule is discharged with costs, hearing fee being assessed at three gold mohurs.

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