(1987) 07 CAL CK 0024

In the Calcutta High Court

In Re: Garg Glass Tubes (P.) Ltd.

Date of Decision : 31-07-1987

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 20, 3, 3A, 3A(1), 3A(2)
Constitution of India, 1950 — Article 227, 265

Citation : 92 CWN 345 : (1989) 175 ITR 422 : (1988) 69 STC 347

Hon'ble Judges : Nirendra Krishna Mitra, J

Bench : Single Bench

Advocate : A.K. Chakraborty, Sudipa Roy, Prohlad Ghosh and Supriya Mukherjee, Sakthinath Mukherjee, Amicus Curiae, for the Appellant; S. Bose, for opposite parties Nos. 1 to 4, for the Respondent

Judgement

Nirendra Krishna Mitra, J.—A preliminary objection was raised at the time of hearing of the revision application by Mr. Bose regarding the maintainability of the application under Article 227 of the Constitution of India on the ground that the Additional Commissioner, Commercial Taxes, West Bengal, is not a Tribunal within the meaning of Article 227 of the Constitution of India. Mr. Bose based his argument mainly on the interpretation of Sections 3, 3A and 3B of the Bengal Finance (Sales Tax) Act, 1941, and also on the decision of the Supreme Court in the case of Jagannath Prasad v. State of Uttar Pradesh [1963] 14 STC 536. Since the preliminary objection so raised was of some importance, I requested Mr. Sakthinath Mukherjee, a senior counsel of this court, to act as amicus curiae in the matter. Before I deal with the points at issue in the present case, I record my sincerest appreciation of the very valuable assistance rendered by Mr. Mukherjee as amicus curiae.

2. Article 227(1) of the Constitution of India runs as follows :

"Every High Court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction."

3. Now, the question is, whether the Additional Commissioner, Commercial Taxes, West Bengal, is a Tribunal within the meaning of the said article. Let us first of all see what are the functions of the said officer as stated in the Bengal Finance

(Sales Tax) Act, 1941. Sub-section (1) of Section 3 of the said Act states that for carrying out the purposes of the said Act, the State Government may appoint a person to be a Commissioner of Commercial Taxes, together with such other persons to assist him as it thinks fit and may specify the area or areas over which they shall exercise jurisdiction. Sub-section (2) of the said Section 3 states that persons appointed under Sub-section (1) shall exercise such powers as may be conferred and perform such duties as may be required by or under the said Act. Sub-section (1) of Section 3A of the said Act states that the State Government may appoint one or more persons to be the Additional Commissioner or the Additional Commissioners of Commercial Taxes. Sub-section (2) of the said Section 3A states that the Additional Commissioner of Commercial Taxes shall have such powers and shall be entitled to exercise such duties of the Commissioner as the State Government may, by notification in the Official Gazette, direct and amongst others, is empowered to exercise the powers conferred by Section 20 apart from other sections of the said Act. Sub-section (1) of Section 3B of the said Act states, inter alia, that with effect from such date as may be notified by the State Government and subject to such rules as may be prescribed, the State Government may constitute a Tribunal to be called the West Bengal Commercial Taxes Tribunal. Clause (a) of Sub-section (3) of Section 20 of the said Act states that subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any assessment made or order passed by the person appointed u/s 3 to assist him and Clause (b) of the said Sub-section (3) of Section 20 states that subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, upon application, revise any order other than an order referred to in Clause (c) and an order against which an appeal lies under Sub-section (1), passed by a person appointed u/s 3 to assist him. In the Explanation to the said Section 20, it is stated that the word "assessment" as used in the said section includes assessment of tax, surcharge and additional surcharge and imposition of penalty under Sections 5A, 5B, 6A, 11 and 20A of the Act.

4. From the Notification No. 3 F. T. dated January 3, 1952, issued by the State Government in exercise of the powers conferred by Sub-section (2) of Section 3A of the Bengal Finance (Sales Tax) Act, 1941, it would appear that the Governor was pleased to direct, inter alia, that the Additional Commissioner of Commercial Taxes shall have such of the powers and shall be entitled to exercise such of the duties of the Commissioner, Commercial Taxes, as are vested in him u/s 20 of the said Act. Therefore, from a combined reading of the aforesaid Sub-sections (1) and (2) of Section 3A and the aforesaid notification issued under the aforesaid Act, it clearly appears that so far as the powers u/s 20 of the said Act are concerned, the Additional Commissioner, Commercial Taxes, West Bengal, has been equated with the Commissioner, Commercial Taxes, West Bengal. The powers conferred under Sub-section (3) of Section 20 of the aforesaid Act give to the Commissioner or the Additional Commissioner, as the case may be, the

power to revise the assessment of tax either suo motu or on application made by the parties concerned and such officers are definitely taxing authorities.

5. Article 265 of the Constitution of India, in clear terms, states that no tax should be levied or collected except by authority of law which means, inter alia, that the tax so imposed or levied must be authorised by a valid piece of legislation. The Bengal Finance (Sales Tax) Act, 1941, is no doubt a valid piece of legislation but the tax levied under the said Act must be in accordance with the provisions thereof. It can, therefore, be said that the taxing authority in order to levy tax must act according to the provisions of Article 265 of the Constitution of India. Revision of assessment of tax by the Additional Commissioner of Commercial Taxes also amounts to levying taxes afresh after revising the original tax so levied and in such view of the matter, the authority concerned having such power of revision must act according to the provisions of the aforesaid Act and also within his powers. Reference may be made to the decision of the Supreme Court in the case of Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta [1964] 34 Comp Cas 435, wherein the Supreme Court has said, inter alia, dealing with the concept of "Tribunal" under Article 136(1) of the Constitution of India, that the Customs Officer is not a court or a Tribunal under the said article but the Central Board of Revenue exercising appellate power u/s 190 of the Sea Customs Act and the Central Government exercising revisional power u/s 191 thereof are "Tribunals" within the meaning of the said article, inasmuch as those authorities are constituted by the Legislature and they are vested with the judicial powers of the State and are required to act judicially while dealing with the disputes brought before them by the aggrieved persons which they are empowered to do under the statute. In the case of Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi [1967] 33 FJR 83 (SC), the order of the administrative authority appointed u/s 20(1) of the Minimum Wages Act, 1948, was challenged under Article 227 of the Constitution of India. The Supreme Court did not dismiss the appeal on the ground that such an authority was not a "Tribunal" but observed that under Article 227 of the Constitution of India, the High Court will not review the discretion of the authority judicially exercised, but it may interfere if the exercise of such discretion is capricious or perverse or ultra vires. The High Court may refuse to interfere under Article 227 unless there is grave miscarriage of justice. In the case of Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, , the Supreme Court held in clear terms that the Settlement Commission under the Income Tax Act, as amended by the Taxation Laws (Amendment) Act, 1975, are Tribunals within the meaning of Article 136(1) of the Constitution of India.

6. Even the initial authority, namely, the Commercial Tax Officer, was held to be a Tribunal under Article 227 of the Constitution of India in the case of Srinivasa and Co. Vs. Commercial Tax Officer, , as he was found to be exercising quasi-judicial functions and determining the rights of the parties in making the assessment under the sales tax laws. The Gujarat High Court in the case of Saurashtra Cement and Chemical Industries Ltd. Vs. Commissioner of Income Tax, Gujarat, ,

clearly held, intei alia, that it is obvious that the different authorities like the Income Tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal functioning under the provisions of the Income Tax Act are all quasi-judicial Tribunals. In the case of Sreemany Optician v. Commercial Tax Officer [1977] Sales Tax Digest 179 , Mrs. Jyotir-moyee Nag J. also interfered under Article 227 of the Constitution of India with the order passed by the Assistant Commissioner of Commercial Taxes, Calcutta. Lastly, reference may also be made to the case of Commissioner of Income Tax Vs. Bansi Dhar and Sons, , to show that taxing authorities are Tribunals. The decision of the Supreme Court cited by Mr. Bose in the case of Jagannath Prasad v. State of Uttar Pradesh 1963 14 STC 536 is clearly distinguishable on the point as, in that case, the question was whether the Sales Tax Officer was a "court" within the meaning of Section 195 of the Code of Criminal Procedure but whether such officer was a Tribunal or not did not come up for consideration before the Supreme Court in the said case. Moreover, Section 3B of the Bengal Finance (Sales Tax) Act, 1941, also has no manner of application in the present case as that section speaks of the Government''s power to set up Appellate Tribunals under the said Act invested with the powers of the State and are definitely Tribunals being set up by the Legislature, but this does not mean that apart from statutory Tribunals, authorities set up under the statute who perform quasi-judicial functions cannot be termed as "Tribunals" under the provisions of the Constitution of India including Article 227 thereof, even if such authorities are not statutory Tribunals. From the overall conspectus of the aforesaid judgments and also upon a plain reading of Article 265 of the Constitution of India, it clearly appears that every taxing officer and/or authority must levy tax according to the provisions of the particular taxing statute as the case may be and in order to levy or assess such tax, the taxing officers are to act judicially thereby performing quasi-judicial functions and, therefore, no doubt, are "Tribunals" within the meaning of Article 227 of the Constitution of India and the High Court can definitely interfere under the said article in order to keep such Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. The Additional Commissioner, Commercial Taxes, West Bengal, while revising an assessment order u/s 20 of the Bengal Finance (Sales Tax) Act, 1941, is, therefore, required to act judicially and in a legal manner in exercising such functions when the disputes come to his notice or are brought before him by the parties and thereby performs quasi-judicial functions and is thus definitely a "Tribunal" within the meaning of Article 227 of the Constitution of India, subject to the superintending powers of the High Courts under the said article. The preliminary objection is, therefore, overruled.

7. So far as the merits of the case are concerned, it clearly appears that the Additional Commissioner, Commercial Taxes, was wrong in refusing to grant eligibility certificates and the declaration forms to the petitioner-firm for the disputed period as there is nothing on record to show that the condition of economic viability as provided under Rule 3(66) of the Bengal Sales Tax Rules,

1941, had been violated by the petitioner, as he had to close down his factory for a particular period not with any mala fide intention but under circumstances over which he had no control. The impugned order is, therefore, set aside and opposite parties Nos. 1 to 4 are directed to issue the necessary eligibility certificates and the declaration forms under the said rule to the petitioner. The revisional application, therefore, succeeds and is allowed without, however, any order as to costs.

8. Let this order be communicated to the office of opposite parties Nos. 1 to 4 forthwith.

9. Prayer for stay as made is refused.