
(1991) 04 DEL CK 0016

In the Delhi High Court

Case No : Sales Tax References No's. 25 to 29 of 1979

J. S. Bhalla and Bros

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Citation : (1991) 04 DEL CK 0016

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Balram Sangal, for the Appellant; Chattar Singh, for the Respondent

Judgement

D.K. Jain, J.—There are five reference u/s 45(1) of the Delhi Sales Tax Act, 1975, made at the instance of the dealer. The two questions referred to us for our opinion in all the five references, arising out of common order of the Tribunal, in respect of the assessment years 1966-67, 1967-68, 1968-69, passed under the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as "the Act"), as extended to the Union Territory of Delhi, are the same. As such all the five references are being disposed of by this common judgment.

2. During the relevant periods of assessments the petitioner (hereinafter referred to as "the dealer") was engaged in the business of paper and exercise books, etc. While completing assessments for the relevant years, the assessing authority did not accept the returned versions of sales on the ground that during the raids in the months of December, 1968 and January, 1969, duplicate sets of account books and loose papers had been recovered which indicated suppression of sales, under-invoicing and also taxable sales shown as tax-free sales. Consequently, the turnover of the dealer for the relevant periods was enhanced under the local as well as the central Sales Tax Act, 1956 and some penalties were also imposed in respect of the three assessment years.

3. The dealer took the matter in appeals before the Assistant Commissioner, Sales Tax. The Assistant Commissioner granted some relief to the dealer. Not

being satisfied, the dealer filed revisions against the order of the Assistant Commissioner, which were partly allowed by the Deputy Commissioner, Sales Tax.

4. Aggrieved still, the dealer filed second revision petitions before the Financial Commissioner u/s 20 of the Act, who vide his order dated 18th November, 1971, allowed the revisions and remanded the cases to the assessing authority in the following terms :

"In other words, whereas a transfer of assessment of proceedings can be effected by the Commissioner, Sales Tax, on the basis of the inherent and implicit power vested in him from the record on pending cases of one assessing authority to another, such a transfer without an implicit order from the Commissioner, Sales Tax, has necessarily be deemed to be without jurisdiction. In the circumstances, Therefore, I cannot but accede to the averment made by the learned counsel for the petitioner that the proceedings finalised by Shri Birdhi in the matter of sales tax assessment of the petitioner-firm for the aforesaid three years under the two Acts being without jurisdiction is void in law. I accordingly accept the petitions, set aside the assessment orders as formulated by Shri Birdhi and remand the cases back to the record of the Sales Tax Officer/Notified Authority of competent jurisdiction to proceed in the matter of the assessment of the petitioner-firm in accordance with law on the basis of the notices issued by the then Sales Tax Officer/Notified Authority of Ward No. 14 in form ST XIV."

5. The said order of the Financial Commissioner was not challenged by either of the parties and it thus became final.

6. After remand, assessments for the relevant assessment years were completed by the assessing authority on 10th May, 1974. The assessing authority framed fresh assessments in accordance with the decision of the Assistant Commissioner in the first revisions. The dealer preferred appeals against the fresh assessments to the Assistant Commissioner, which were dismissed. Thereupon, second appeals were filed by the dealer to the Appellate Tribunal, Sales Tax, Delhi. Before the Tribunal it was, inter alia, contended that in view of section 11(2a) of the Act, assessments made after the remand on 10th May, 1974, were barred by limitation inasmuch as these were completed after the expiry of four years from the end of the year in respect of which, or part of which, the assessments were made. It was also pleaded that there was no provision under Central Sales Tax Act, 1956 (for short "the Central Act") for framing best judgment assessment. None of the contentions found favor with the Tribunal and consequently dealer's appeals were dismissed. The dealer thereafter, moved applications requiring the Tribunal to state the case and refer the questions of law to this Court upon which the following two questions were referred :

"1. Whether, on the facts and circumstances of the case, this Tribunal was justified in holding that the assessment orders passed by Shri Raizada on 10th May, 1974 were within the period of limitation ?

2. Whether, best judgment assessment could be framed under the Central Sales

Tax Act, 1956 ?"

7. To answer question No. 1 it would be necessary to refer to the relevant provisions of the Act which are contained in section 11(1) and 11(2a) :

"11(1). If no returns are furnished by a registered or certified dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer and in making such assessment shall give the dealer a reasonable opportunity of being heard; and in the case of failure by a registered or certified dealer to submit in respect of any period a return accompanied by a receipt from a Government Treasury or the Reserve Bank of India, as required under subsection (3) of section 10, by the prescribed date, the Commissioner, may, if he is satisfied that the default was made without reasonable cause direct that the dealer shall pay by way of penalty in addition to the amount of the tax so assessed a sum not exceeding one and half times that amount.

(2a) No assessment under sub-section (1) shall be made after the expiry of four years and no assessment under sub-section (2) shall be made after the expiry of six years from the end of the year in respect of which or part of which the assessment is made :

Provided that where any proceeding for assessment under sub-section (1) or sub-section (2) are pending at the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, such assessment may be made at any time within four years or six years respectively of the date of such commencement :

Provided further that when a fresh assessment is required to be made in pursuance of an order u/s 20 or u/s 21 or in pursuance of any other order of any court such fresh assessment may be made at any time within four years from the date of such order."

8. Sub-section (2a) of section 11 of the Act lays that no assessment under sub-section (1) shall be made after the expiry of four years from the end of the year in respect of which or part of which the assessment is made. The second proviso to the said sub-section further provides that when a fresh assessment is required to be made in pursuance of an order u/s 20 or u/s 21 or in pursuance of any order of any court, such fresh assessment may be made at any time within four years from the date or such order.

9. Mr. Balram Sangal, the learned counsel appearing for the dealer, contended that the original assessment proceeding taken by the first assessing authority, having been held to be without jurisdiction and void ab initio, the period of four years for completing the fresh assessments, as prescribed in section 11(2a) of the Act should be reckoned from the close of each assessment year. He sought to

derive support from the directions issued by the Financial Commissioner in his order dated 18th November, 1971 made u/s 20 of the Act, to the effect that the assessing authority should proceed in the matter of assessment on the basis of notices issued in form ST-14 by the then Sales Tax Officer. He, Therefore, urged that in terms of section 11(2a) of the Act, the assessments made on 10th May, 1974, were clearly barred by time.

10. The learned counsel, in support, placed reliance on the decision of the Patna High Court in the case of *Spree Ganesh Stores of Deoghar v. State of Bihar* [1972] 29 STC 726. In that case the Patna High Court, while interpreting proviso to section 13(6) of the Bihar Sales Tax Act, 1947, had held that when an assessment is annulled in appeal, revision, review or reference, to be made de novo, such as assessment will be a fresh assessment and the Sales Tax Officer may have to take all the proceedings which are required for framing a fresh assessment. Where, however, the assessment has been set aside with a direction to make it in a particular matter, the Sales Tax Officer is left with no volition of his own regarding the assessment, and has to follow the directions given by the superior authority. In such a case there is no question of initiation of any proceeding or making the assessment. The assessment is already made and it is only the corrections which the assessing officer is now required to make as per direction given by the superior authority. The court held that either way where an assessment had been made on the basis of the returns filed by a dealer, or if such assessment is set aside for being made afresh, the period of limitation as laid down under the proviso to section 13(6) of the said Act will have no application.

11. The next case to which our attention was invited by Mr. Sangal is a decision of this Court in the case of *Narinder Singh Dhingra Vs. The Commissioner of Income Tax*, . In that case the assessing officer, instead of framing an assessment under the Indian Income Tax Act, 1922, framed an assessment under the Income Tax Act, 1961. In the second appeal, the Tribunal set aside the assessment and restored the case to the file of the Income Tax Officer with a direction that he should proceed from the returns" stage and make a fresh assessment according to law under the old Act. When the Tribunal passed this order, the period of limitation for completion of assessment under the old Act had already run out. On assessed application, the Tribunal referred the question "Whether having held that the assessment was invalid, the Tribunal could restore the case and direct the officer to make a fresh assessment ?" The department, however, did not not raise any question regarding the validity of the assessment. On these facts, these Court held that the question having been based on the invalidity of the assessment, which finding having become final, the Tribunal could not confer jurisdiction on the Income Tax Officer to remove the bar of limitation and proceed on the basis of the return long after the expiry of the period of limitation.

12. We feel, in the instant case, where we are not called upon to adjudicate on

the validity of the directions made by the Financial Commissioner in his order dated 18th November, 1971, which as already noticed above, having become final for all intents and purposes, the above cited decisions are not applicable to the facts of this case.

13. In the case before us, the order of the Financial Commissioner had become final and in order to give effect to this order, the assessment had to be framed in accordance with the said directions, within a period of four years, commencing from the date of the said order as prescribed in the second proviso to section 11(2a) of the Act. We are, Therefore, of the opinion that the said second proviso exactly applies to the facts of this case and the assessments made on 10th May, 1974, in response to the order made by the Financial Commissioner u/s 20 of the Act, are not barred by limitation.

14. This brings us to the second question. It was contended by the learned counsel for the dealer that the Central Act does not confer any power on the assessing authority to frame a "best judgment assessment" under the Act. Before we proceed to consider the controversy raised in the question, we may refer to the relevant provision of the Central Act, which is section 9 :

"9(1). The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected -

(a) Where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods, and

(b) Where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.

(2) Subject to the other provisions of this Act and the Rules made there under, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law

of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this subsection."

15. Sub-section (2) of section 9 of the Central Act prescribes the authority which is to levy and collect tax under the said Act, the powers to be exercised by such authority and the procedure to be adopted by it. It provided that the authority which is to act on behalf of the Government of India in this respect is the same authority which is empowered to do so under the general sales tax law of the appropriate State. It further provides that for the purpose of assessment, reassessment, collection and recovery of the Central sales tax from a dealer, the assessing authority may exercise all or any of the powers, which it has under the general sales tax law of the State and the provisions of such law, enumerated in sub-section (2) of the said section shall apply to these proceedings. As is evident from the said provision that if an assessing authority has the power to make the "best judgment assessment" under the general sales tax law of the State, it has a similar power under the Central Act. Even otherwise we feel, the term "best judgment assessment" is a misnomer inasmuch as all assessments under the local Act or Central Act have to be to the best of judgment an assessing authority, whether based on estimate or not. A "best judgment assessment" could only mean an assessment which the assessing authority has to make on the basis of facts and circumstances brought on the record by his own effort. Even so, a "best judgment assessment" does not cease to be an assessment u/s 11(1) of the Act.

16. Thus it is clear from a conjoint reading of section 9 of the Central Act and section 11(1) of the Act that a "best judgment assessment" can be made under the Central Act.

17. The question may also to be looked into from another angle. If the contention of the dealer were correct, then a dealer could always escape his liability to be assessed under the Central Act because all he has to do is to refrain from filing a return or refuse to produce his books of accounts before the assessing authority. It is difficult for us to conceive that such could be the position in law.

18. For the reasons stated above, we hold and we are of the considered opinion

that, the Tribunal was right in holding that the assessments made on 10th May, 1974, could not be said to be barred by limitation and that there is no bar to the framing of a "best judgment assessment" under the Central Act. We, accordingly, answer both the question in the affirmative, i.e., in favor of the department and against the dealer, but we leave the parties to bear their own costs in all the five references.

19. References answered in the affirmative.