

(1981) 03 MAD CK 0036

In the Madras High Court

Case No : Tax (Revision) Case No. 682 of 1977

Jeewanlal (1929) Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-03-1981

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 16(1), 16(4), 55

Citation : (1982) 49 STC 58

Hon'ble Judges : V. Ramaswami-II, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramaswami, J.—For the assessment year 1969-70, the assessee returned a total and taxable turnover of Rs. 1,49,55,860.54 and Rs.

66,22,883.58 respectively. In the return, it had claimed exemption, among orders, of a turnover of Rs. 3,20,600 representing sale of old assets as

not liable to tax on the ground that they are not dealers in such assets. This was accepted and after making a small addition, taxable turnover was

determined at Rs. 66,41,195.64 by an assessment order dated 15th March, 1971. Subsequently to this order, the Supreme Court in its judgment

in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, dated 10th October, 1972, held that the sale

of such scraps by a dealer should be treated as transactions which are incidental or ancillary to the trade in spite of the fact that there was no

profit-motive or that the dealer was not a dealer in such assets and that the turnover relating to the same is liable to be included in the taxable

turnover. In the light of the Supreme Court judgment, on the ground that such

sales of old assets were to be included in the taxable turnover, notice u/s 55 of the Tamil Nadu General Sales Tax Act, 1959, was issued and served on the dealer on 4th January, 1974, proposing to assess the sales turnover of Rs. 3,20,600 and called for objections to the proposed rectification. The assessee submitted their objections to the proposal, and after hearing the objections, on the ground that in view of the Supreme Court judgment the turnover is taxable, the assessing officer included the sum in the taxable turnover by an order dated 6th March, 1974. This order was confirmed in appeal by the Appellate Assistant Commissioner by his order dated 18th June, 1974. The assessee preferred a further appeal to the Tribunal. When the appeal against the rectification order was pending, on 11th March, 1975, the assessing officer issued a notice u/s 16 of the Act on the ground that the turnover relating to sale of old assets has escaped assessment to tax and proposing to include that turnover and the assessee was called upon to submit its objection, if any, to such proposal. When this proceeding u/s 16 was pending, the Tribunal by its order dated 24th June, 1975, set aside the order of rectification made u/s 55 on the ground that the turnover relating to sale of old assets was excluded from assessment accepting the claim of the assessee and that it cannot be construed as a case of any error apparent on the face of the record, which alone can clothe the jurisdiction on the assessing officer to invoke the provisions of section 55 and correct the assessment. Thereafter, the reassessment proceedings were taken up and by an order dated 18th November, 1975, holding that the turnover relating to sale of old assets has escaped assessment, and relying on the judgment of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, , made a reassessment order including the turnover as proposed. It may be mentioned that before this assessment order, the assessing officer seems to have issued another notice on 24th October, 1975, subsequent to the Tribunal's order dated 24th June, 1975, again stating that the turnover relating to sale of old assets has escaped assessment and the assessing officer is proposing to include that turnover and make a reassessment order u/s 16 of the Act. In this notice also, there is a reference to the notice already issued on 11th March, 1975. The assessee, having failed in his appeals to the Appellate Assistant

Commissioner and the Tribunal, has filed this revision.

2. Three grounds are raised by the learned counsel for the assessee. The first contention was that the reassessment order made on 18th

November, 1975, was beyond the period of limitation prescribed u/s 16 and that therefore it was without jurisdiction. According to the learned

counsel the noticed dated 11th March, 1975, was issued at a time when the rectification order dated 6th March, 1974, rectifying and including the

sales turnover relating to sale of old assets in the taxable turnover was in force and effective and that therefore the notice itself was invalid and had

no force. The subsequent notice dated 24th October, 1975, though issued after the Tribunal had allowed the appeal in the rectification

proceedings, it beyond the period of five years from the end of the assessment year to which the assessment relates and that, therefore, that notice

could not clothe the jurisdiction to the officer. The assessment order dated 18th November, 1975, also was beyond the period of five years. We

are unable to accept this argument for more than one reason. The order of the Tribunal allowing the appeal though dated 24th June, 1975, sets

aside the order of rectification dated 6th March, 1974, and substitutes its order in its place. In other words, though the order of the Tribunal is

dated 24th June, 1975, it is retroactive at least from the date of the rectification order dated 6th March, 1975, if not from a date earlier, namely,

the date of notice issued u/s 55, so that in law after the order of the Tribunal, there was no order rectifying the original assessment. If this was the

effect of the Tribunal's order, then the original assessment order stood throughout from the date of its assessment till 11th March, 1975, with the

infirmity that it had allowed certain turnover to escape assessment to tax. The notice dated 11th March, 1975, was, therefore, validly issued. Even

if we were to assume that the rectification order dated 6th March, 1974, was in force, we are of the opinion that the notice dated 11th March,

1975, could not be assailed as having been issued without jurisdiction. In order to invoke the provisions of section 16, it was not necessary that in

fact ultimately it should be found that there was an escapement of any turnover. If the assessing authority was of opinion that some turnover has

escaped assessment to tax, that clothes him with jurisdiction to issue a notice and call upon the assessee to submit his objections if any, to such

proposal. The notice had necessarily to mention the turnover, which in the opinion of the assessing officer, has escaped assessment. It would not preclude the assessing officer from assessing the turnover which was proposed to be included. But even those turnovers, which had not been shown in the proposal could be brought to tax, if ultimately in the reassessment proceedings it is found that the turnover which was not specifically referred to in the notice had really escaped assessment. This will clearly show that a reference to the turnover escaped in the notice issued u/s 16 is to give an opportunity to the assessee to put forward his objections with reference to that turnover and the non-mention of the turnover itself would not have vitiated the proceedings initiated u/s 16. The issuance of a notice u/s 16 is the starting point of the reassessment proceedings and is relevant only for the purpose of calculating the limitation within which the reassessment proceedings had to be initiated or complying with the principles of natural justice of giving an opportunity to the assessee to put forward his objections but does not concern with the jurisdiction of the officer to initiate reassessment proceedings u/s 16. In those circumstances, even if on the date when the notice was issued, i.e., on 11th March, 1975, it could not be taken that the turnover relating to sale of old assets as having been excluded from the taxable turnover by reason of the rectification order, the notice itself could not be held to be illegal or beyond the jurisdiction of the officer.

3. It was next contended by the learned counsel for the assessee that the period of five years prescribed u/s 16(1) to determine the escaped turnover to the best of judgment has to be calculated with reference to the date of assessment order ultimately made in the reassessment proceedings and not with reference to the notice issued u/s 16, which initiated such proceedings. This point was considered by a Division Bench of this Court, to which one of us was a party (V. Ramaswami, J.) in an unreported judgment in *Anglo French Textiles Ltd., Pondicherry v. State of Tamil Nadu* (W.P. Nos. 3939 to 3941 of 1971 dated 14th March, 1972 - Madras High Court). It was held that the word "determine" in section 16(4) was not employed with an intention to set a time-limit within which a final order in the matter of assessment should be made; but should be understood as meaning, initiating a proceeding to determine the turnover escaped to assessment to tax. In so construing, this Court relied on a

decision of the Supreme Court in *The Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons*, . That decision was sought to be

distinguished on the ground that the provision of the Travancore Sales Tax Act, which came up for consideration before the Supreme Court in that

decision did not contain any specific provision like that in section 16(4) of the Tamil Nadu Act and that, therefore, the ratio of the judgment in *The*

Sales Tax Officer and Another Vs. Sudarsanam Iyengar and Sons, was not applicable. This argument was rejected by this Court holding that

section 16(4) was introduced *ex abundanti cautela* and even without section 16(4), the time during which the proceedings for assessment or

reassessment remained stayed under orders of civil court or other competent authority would have been excluded. In fact this Court has pointed

out in the unreported judgment, that section 16(4) is an independent provision, which would be applicable to a case where there was no return at

all submitted and in that sense it was an assessment, and to a case of reassessment proceedings where there was an original assessment in which

some turnover has escaped assessment, and that it could not be read in any way restricting or limiting the scope of powers of section 16. This

judgment was followed in two other cases by another Division Bench in *State of Tamil Nadu v. Mohamed Sulaiman & Co.* [1980] 46 STC 151

and in *Lakshmanaswami Chettiar & Sons v. State of Tamil Nadu* [1980] 46 STC 327. The contention that the limitation of five years will have to

be calculated with reference to the reassessment order made on 18th November, 1975, is therefore untenable.

4. The next argument of the learned counsel for the assessee is that section 16 itself could not have been invoked in this case, as there was a

deliberate and conscious omission to include this turnover in the original assessment order. The assessee had claimed specifically that this turnover

is not liable to tax on the ground that he was not a dealer in such goods and that it is a sale of scraps and it will amount to a sale of capital assets

and that was accepted by the assessing authority and that therefore section 16 could not have been invoked. This point also is not *res integra* and

covered by authority. In the decision in *Yercaud Coffee Curing Works Ltd. v. State of Tamil Nadu* [1977] 40 STC 531, a Division Bench of this

Court to which one of us was a party (V. Ramaswami, J.) has held that it was competent for an assessing authority in a reassessment proceeding

to assess an item of turnover, which had been omitted to be taxed earlier for any reason and that it will include a power to reassess a turnover even

though in the return that turnover was included and the officer then thought that it was exempt. This decision was cited and followed by another

Division Bench of this Court in *Surya Fertilisers and Chemicals v. State of Tamil Nadu* [1977] 40 STC 538, wherein also it was held that section

16 will apply even to a turnover which was originally considered by the assessing authority, who, after applying his mind to the turnover, has held

that the turnover, for some reason or other, was exempt from tax or was not includible in the taxable turnover.

5. In the result, all the three contentions raised by the learned counsel for the assessee are not acceptable and this revision petition is liable to be

dismissed and is accordingly dismissed. The respondent will be entitled to its costs. Counsel's fee Rs. 250.

6. Petition dismissed.