
(1957) 11 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 228 of 1956

Kapur Brothers

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 18-11-1957

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 15, 26, 5(2)
Bengal Finance (Sales Tax) Rules, 1941 — Rule 74
Constitution of India, 1950 — Article 226

Citation : AIR 1958 Cal 125 : 62 CWN 123 : (1959) 1 ILR (Cal) 106 : (1958) 9 STC 121

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application by Messrs. Kapur Brothers, a partnership firm, with a prayer for a writ of, or in the nature of certiorari to quash the order of assessment of sales tax for the year 1361 B.S. The rule was issued as early as the 18th December 1956, with provisions for interim stay of the order for realisation of the tax upon the applicant furnishing security. No "security, however, was furnished. The application is made under Article 226 of the Constitution.

2. The order of assessment is dated the 26th October 1956. The notice of demand u/s 11(3) of the Bengal Finance Sales Tax Act was given on the 3rd November 1956. At this stage the applicant made a petition dated the 29th November 1956, for a certified copy of the order of assessment with a view to file an appeal u/s 20 of the Act. It is now said that the statutory provision for appeal which the applicant wanted to avail is both illegal and ultra vires. Between the demand on the 3rd November 1956, and till the petition of the 29th November 1956, asking to be excused from paying or depositing the sum of Rs. 29,458-11-6 as the additional tax, no step was taken by the applicant within any reasonable time either by answering the demand of the 3rd November 1956, or

by coming to this Court. The Commercial Tax Officer informed the applicant that realisation could not be stayed unless directed by the Assistant Commissioner under E. 80-B of the Act. Six days thereafter, the applicant moved this Court on the 18th December 1956, and obtained the rule. The rule gave an interim stay upon the applicant furnishing security, but the applicant did not furnish security and, therefore, did not avail of the interim order staying the realisation of tax granted by the rule. In the meantime the time to file an appeal u/s 20 of the Act expired on the 3rd January 1957, while the Rule was pending.

3. The order of assessment is challenged in para. 20 of the petition. The grounds are stated in its sub-paras, (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j).

4. Learned counsel's contention on behalf of the applicant is three-fold. He says, first, that there is no statutory authority for an appeal being heard by the Assistant Commissioner. His second point is that on the merits the assessing authority made a mistake in not allowing the exemptions claimed by him. His third point is that the assessment of sales tax on the amount realised by a registered dealer from a transaction outside Bengal on account of inter-State sale was illegal. I shall deal with these objections seriatim.

5. The first objection is covered by grounds (a), (b), (c), (d), (e) and (f) of para. 20 of the petition. In substance, the point is that in view of Section 3 of the Act, Commercial Tax Officers and Assistant Commissioners are persons appointed only to assist the Commissioner in carrying out the purposes of the Act. Section 15 of the Act is said to permit Commercial Tax Officers and Assistant Commissioners to exercise only such powers as could be delegated to them by the Commissioner, so that the acts of the delegates should be deemed to be the acts of the Commissioner for the purposes of the Act. It is then contended that reading Sections 3, 4 and 15 of the Act, the order of assessment made by the Commercial Tax Officer should be deemed to be an order of assessment by the Commissioner himself. On that assumption it is then argued that an appeal against an order deemed to have been passed by the Commissioner himself cannot be preferred to the Commissioner or to any officer subordinate to the Commissioner. Finally it is said that the provision of the Bengal Sales Tax Rules for appeal is against the spirit of the Act and as such it is ultra vires. It is not said that such Rule is against the letter of the Act.

6. I am satisfied that this objection is without merit. Section 3 of the Bengal Finance Sales Tax Act defines the "taxing authorities" who are to carry out the purposes of the Act. They are a Commissioner to be appointed by the State Government and such other persons to assist him. It is also provided in Sub-section (2) of Section 3 that persons so appointed shall exercise such powers as may be conferred by or under the Act and perform such duties as may be required under such Act. Section 3-A goes on to make provisions for additional Commissioners and for their powers. Section 15 of the Act deals with the power of delegation which enables the Commissioner by order in writing to delegate any of his powers under the Act subject to such restrictions and conditions as may be

prescribed. "Prescribed" in this Act means "prescribed by Rules made under the Act". This provision is followed by Section 20 of the Act dealing with appeal, revision and review. Section 20 provides that any dealer may in the prescribed manner appeal to the prescribed authority against any assessment within 60 days or such further period as may be allowed by the Commissioner for cause shown to his satisfaction from the receipt of a notice issued u/s 11(3) in respect thereof, provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax as the appellant may admit to be due from him has been paid. The appellate authority under this section can set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be ordered or the appellate authority can confirm, reduce, enhance or annul the assessment. Amplest and most complete remedy is given u/s 20 of the Act to any aggrieved dealer.

7. This provision is followed by Section 21 of the Act providing for statement of a case to the High Court. Section 21-A gives power to the Commissioner or any person appointed to assist him the powers vested in a Court under the CPC while trying a suit for taking evidence and examining persons and for production of documents.

8. There is an indemnity provision u/s 24 of the Act affording protection against suits and proceedings. But this being a constitutional writ, such an indemnity cannot avail against the Constitution. Finally, u/s 26, the State Government is empowered to make rules for carrying out the purposes of the Act. Sub-section (2) of Section 26(ii) has expressly provided that rules may be made for the manner in which, and the authority to which, appeals against assessment may be preferred u/s 20. Under the Act, rules have been made and by R. 74 the provision is made in the following terms:--

"An appeal against an order of assessment passed by a Commercial Tax Officer shall lie to the Assistant Commissioner and an appeal against an order of assessment passed by an Assistant Commissioner shall lie to the Commissioner. An appeal against an order of assessment passed by the Commissioner shall lie to the Board of Revenue."

9. Now interpreting and applying this scheme of the Act and its statutory provisions on this point, it is quite clear that the Commissioner can delegate some of his powers for the purposes of this Act to the Commercial Tax Officers and Assistant Commissioner and that delegation does not make an appeal to Assistant Commissioner or Commissioner either ultra vires or beyond the statute. The point of the appellant that the order of the Commercial Tax Officer is really an order of the Commissioner himself is also without substance on the same ground. For the purpose of division of work and for purposes of the administration of the Act, the Commercial Tax Officers are like the Courts of the first instance and therefrom appeal is given to the Assistant Commissioner and finally from the Assistant Commissioner to the Commissioner. This internal division for the administration of the Act and for the better functioning of its

different purposes is not, in my opinion, beyond the letter or spirit of the statutory provisions. It is permissible for a delegation of powers to be so framed, as in this case under Rule 74 read with Section 15 of the Act, that an appeal shall lie from the decision of the delegate to the delegator. In such a case of delegation it cannot be said that the appellate authority and the authority appealed against are the same.

10. Were the order of the Commercial Tax Officer to be regarded as the order of the Commissioner himself, a view which I consider untenable, even then the appeal, in that view, would be to the Board of Revenue. I am, therefore, satisfied that the statutory provision and the rules for appeal and the division of work under the Act between the Commissioner, the Assistant Commissioner and the Commercial Tax Officer with the Board of Revenue working as a final Court of appeal are intra vires the statute. I therefore hold that Rule 74 is valid under the statute.

11. It was then argued that the existence of an alternative remedy by way of an appeal u/s 20 of the Act is no bar to the applicant seeking relief under Article 226 of the Constitution. This argument has been such an over-worked branch of Indian Constitutional Jurisprudence that I hesitate to add to its weight by adding a further decision of my own. Many judicial voices have spoken on this subject, some taking the view that alternative remedy is a bar, and others taking the view that it is not a bar, while the better opinion is said to be that it all depends upon the circumstances of each case. I shall proceed on the assumption without deciding the point that an alternative remedy under the statute is not always a conclusive bar to relief sought under the Constitution. But even then I find that no relief should be granted to the petitioner in this case. I shall state my reasons briefly.

12. To state the reasons on this point is to enter the arena of facts and merits. On the merits the grievance of the petitioner is (i) that the taxing authorities acted illegally and arbitrarily in disallowing the claim for exemption u/s 5(2)(a)(ii) of the Act, and (ii) that the assessment of sales tax on the amount realised by registered dealer from the transaction outside Bengal on account of inter-State sale was illegal because it is contended in para. 16 of the petition that the order of assessment is supposed to include in the taxable turnover Rs. 9,453-6-0 consisting of two sums of Rs. 4,363-6-6 and Rs. 5,089-15-6 as sales tax from unregistered dealers in Bengal and outside Bengal respectively.

13. The facts do not support this contention. The assessment order shows no such division in respect of the sum of Rs. 9,453-6-0. In fact the assessment order shows the examination of the gross turnover and notices the fact that the returns submitted did not at all include this sum of realised sales tax of Rs. 9,453-6-0. The finding of fact on the books of account disclosed clearly shows outside sales wherever existed were expressly shown whereas there was no indication in such books and the return that any part of Rs. 9,453-6-0 was in respect of transaction outside Bengal.

14. The relevant statutory provisions which cover this point of exemption are to be found in Section 5(2) (a) (ii) and (v) of the Act. The Act provides that the tax payable by a dealer under this Act shall be levied at the rate of one quarter of an anna in the rupee on his taxable turnover. The expression "taxable turnover" is said to mean that part of a dealer's gross turnover during any period which remains after deducting sales to a registered dealer and sales of goods which are shown to the satisfaction of the Commissioner to have been despatched by or on behalf of the dealer to an address outside Bengal. The Taxing Officer says that the petitioner claimed deduction for sales to registered dealers amounting to Rs. 9,35,610-6-0. The order of assessment stated that declaration certificates were produced in proof of the claim under the proviso to Section 5(2)(a)(ii) of the Act. The Assessing Officer has also said that he has examined the claim. He has disallowed the claim for Rs. 6,48,648. He gives his reasons. He says that the dealers whose names he mentions showed transactions abnormally large having regard to the other transactions of the applicant with registered dealers. His second reason was that all these transactions, although so large, were made in cash only which appeared to be against normal trade practice. His third reason is that many of these dealers are what he calls the "left dealers" and not "living dealers", by which I gather the authority wants to say that the dealers who had ceased to do business are called "left" and who continue to do business are called living". It is also said in the assessment order that the signatures are different and that the persons signing these declaration forms in some cases do not even give the status of the persons signing them. The Commercial Tax Officer came to the conclusion that -

"The only judicious conclusion that can be arrived at from a reading of all the above facts is that the dealer purchased these declaration forms in order to cover up taxable sales and then to evade payment of due taxes. These transactions were not made in normal and bona fide manner so that they should, in all fairness, be subject to taxes. In the previous assessment a sum of Rs. 28,400 was disallowed for similar consideration."

15. I am here asked on behalf of the appellant that this Court dealing with the writ of certiorari should now call fresh evidence, call witnesses and then decide whether all these transactions are genuine or not. I am unwilling, to convert Constitutional Writ proceedings into trial actions specially when the Act provides ample remedy to the aggrieved dealer at least to get all the examination of facts on the records through the machinery of the Act. The appeals which he could have availed of either to the Assistant Commissioner or to the Commissioner or thereafter to the Board of Revenue could have made this enquiry into facts which the appellant now wishes me under a constitutional writ to do. In my judgment a constitutional writ should proceed on facts already on record and not initiate proceedings to bring in new fresh facts. In a proceeding under Article 226 of the Constitution the Court can and should certainly examine and scrutinise the recorded facts and see if the impugned decision is justified by any substantial evidence. It can set aside the decision not supported by any evidence. But that is

very far from saying that the writ proceeding must itself become an institution for recording new facts for the first time.

16. Without going into the long history of what is or is not a speaking order and the decisions of the Supreme Court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, ; *T.C. Basappa Vs. T. Nagappa and Another*, and *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , summarised in the decision of the Court of Appeal in *Pankaj Kumar Ganguly and Others Vs. Bank of India and Others*, , it is quite plain that record, of facts found by an administrative agency such as the Sales Tax Authorities with special and express provisions made for finding of facts and investigation and enquiry should not be lightly interfered with by constitutional writs. It has been held repeatedly that these proceedings in certiorari or prohibition under constitutional writs in their nature are not appellate or fact-finding but only supervisory. Rightly or wrongly, the Taxing Officer has given his reasons why he has rejected the declarations on the basis of which the petitioner claimed exemptions. I do not find his reasons either unnatural or prima facie bad. Speaking for myself I find the reasons cogent, satisfactory and convincing. I am not prepared to interfere with his findings of facts on the records of the present case.

17. I, therefore, dismiss this application and discharge the rule. There will be no order as to costs.