

(1997) 08 MAD CK 0057

In the Madras High Court

Case No : Tax Case No. 25 of 1985 (Appeal No. 2 of 1985)

Kirloskar Brothers Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 13(3), 13(4), 9, 9(2)
Tamil Nadu General Sales Tax Act, 1959 — Section 55

Citation : (1997) 08 MAD CK 0057

Hon'ble Judges : N.V. Balasubramanian, J; M.S. Janarthanam, J

Bench : Division Bench

Judgement

Janarthanam, J.—This appeal, at the instance of the assessee, is directed against the order of the Joint Commissioner II, Office of the

Commissioner of Commercial Taxes, Madras 600 005 made in suo motu revision, in his proceedings Ref. MI/1289/82 dated July 22, 1983 setting

aside the order of the Appellate Assistant Commissioner (CT), Kancheepuram in AP. CST. No. 128/81 dated February 5, 1982 and the order of

the Commercial Tax Officer, Anna Salai, II Assessment Circle, Madras, in CST No. 8290/75-76 dated August 27, 1981.

2. M/s. Kirloskar Brothers Ltd., having their office at No. 4, Pattulos Road, Madras-600 002 are registered dealers falling within the jurisdiction

of the Commercial Tax Officer, Anna Salai, II Assessment Circle, Madras.

(a) The said assessment officer passed the original order of assessment, in his proceedings on May 12, 1981. The order so passed, it appears,

was not at all agitated further by way of filing of an appeal. It appears that before ever the original order of assessment had been passed, after

complying with the requisite formalities and procedure, the assessee-dealers

appeared to have filed certain "C" forms on May 2, 1981. The "C" forms so filed were not taken into consideration by the said assessing officer. This sort of an inadvertent mistake or an apparent error, on the face of the record, was subsequently noticed by the said assessing officer and therefore it is, he issued a notice for revising the original assessment order so made.

(b) Taking advantage of the notice so issued, it appears, the assessee-dealers filed certain "E-1" and "C" forms obtained long subsequent to the passing of the original order of assessment and prayed for revision of the turnover originally assessed.

(c) The said assessing officer rejected the revision of assessment so prayed for. But, nonetheless, he revised the original assessment as relatable to the apparent error, on the face of record, in the sense of giving relief to "C" and "E-I" forms filed and available in the record, before ever the original assessment order was passed.

3. The aggrieved assessee-dealers further agitated the matter, by filing an appeal, as earlier stated, before the Appellate Assistant Commissioner

(CT), Kancheepuram, who, in turn, set aside the revision of assessment made and remanded the case back to the assessing officer for consideration of "C" and "E-I" forms filed by the assessee-dealers.

4. The Joint Commissioner II, Madras-600 005 set aside the orders of those assessing authorities, viz., the Appellate Assistant Commissioner

(CT), Kancheepuram, as well as the assessing officer-Commercial Tax Officer, Anna Salai, II Assessment Circle, Madras - 600 002, giving rise to the present action.

5. From the pith and submissions of Mr. P. H. Aravindh Pandian, learned counsel representing M/s. Subbaraya Aiyar, Padmanabhan, Ramamani

and K. J. Chandran, learned counsel appearing for the appellant and NU. K. Raviraja Pandian, learned Additional Government Pleader (Taxes)

representing the Revenue, the questions, as below, emerge for consideration :

(1) Whether by the deletion or omission of sub-rule (9) of rule 5 of the Central Sales Tax (Madras) Rules, 1957 [for short "the CST (M) Rules"]

by way of amendment in exercise of the powers conferred by sub-sections (3) and (4) of section 13 of the Central Sales Tax Act, 1956 (Act No.

74 of 1956 - for short "the CST Act") by the Governor of Tamil Nadu, the assessing officer has no power to reopen an assessment for the purpose of rectification of an error apparent on the face of the records ?

(2) Whether "E-1" and "C" forms filed long subsequent to the passing of the original order of assessment can be considered and given effect to in

reopening the assessment in a proceeding initiated for rectification of the mistake apparent on the face of the records ?

6. Point No. 1 : There is no manner of doubt whatever that sub-rule (9) of rule 5 of CST (M) Rules, 1957 had been deleted or omitted, by way of

amendment. The said deleted sub-rule read as under

5.(9) An assessing authority may, at any time within five years from the date of any order passed by him, rectify any mistake apparent from the

record :

Provided no such rectification which has the effect of enhancing the assessment shall be made unless the assessing authority has given a notice to

the dealer of the intention to do so and has allowed him a reasonable opportunity of being heard.

7. Section 55 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959 - for short "the TNGST Act") reads as under :

55. Power to rectify any error apparent on the face of the record. -

(1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of

any order passed by it, rectify any error apparent on the face on the record :

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given

notice to the dealer and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund which may be due to

the dealer.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice

of assessment or penalty and thereupon the provisions of this Act and the Rules made thereunder shall apply as if such notice had been given in the

first instance.

(3-A) The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed

in the matter has been the subject-matter of an appeal or revision.

(4) The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the

order in respect of which such order of rectification has been made"".

8. From the provisions, as extracted above, it is rather crystal clear that the provisions, as adumbrated under sub-rule (9) of rule 5 of CST (M)

Rules and section 55 of TNGST Act are in pari materia provisions relatable to rectification of mistake.

9. Sub-section (2) of section 9 of the CST Act reads as under :

9. Levy and collection of tax and penalties. - (1)

(2) Subject to the other provisions of this Act and the Rules made thereunder, 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 sub-section.

10. It is thus abundantly clear that the powers conferred under sub-section (2) of section 9 of the CST Act embrace all the powers that the assessing authority had under the sales tax laws in the State in force. By virtue of the sanguine provisions, the assessing officer is empowered to exercise the power of rectification of a mistake contemplated u/s 55 of the TNGST Act. It is perhaps for this reason that sub-rule (9) of rule 5 of the CST (M) Rules, being superfluous or redundant, inasmuch as there being analogous provision available in section 55 of the TNGST Act, the said Rule was omitted or deleted. The said omission or deletion, on the face of sub-section (2) of section 9 of the CST Act, cannot take away the power inhering in favour of the assessing officer to rectify an error apparent on the face of the record, in the exercise of the power u/s 55 of the TNGST Act, pursuant to the salient provisions adumbrated under sub-section (2) of section 9 of the CST Act. In this view of the matter, the finding of the Joint Commissioner 11, Madras-5, in his suo motu revision proceedings that the assessing officer has no power to reopen the assessment for the purpose of rectification of an error apparent on the face of the record cannot at all be sustained and the same is ordered to be accordingly set aside. This point is answered accordingly.

11. Point No. 2 : In rectification proceedings u/s 55 of the TNGST Act, there is no need or necessity at all to issue a notice for rectification of the original assessment to the assessee, where such rectification sought to be effected is not enhancing the assessment or penalty and only in the case of enhancement of assessment or penalty, notice is required to be issued to the assessee.

12. In the case on hand, the rectification sought to be made is to give relief to the assessee in respect of ""C"" and ""E-I"" forms filed by him, before ever the original order of assessment was made by the assessing officer. In such an eventuality, the revision sought to be made by the assessing officer would be to the benefit of the assessee, in the sense of reduction of the assessment and not definitely for enhancement of the assessment.

Such being the case, the notice issued by the assessing officer is superfluous and because of a notice having been issued for revision of the assessment, the assessee took advantage of the said notice and sought to lug in ""E1"" and ""C"" forms obtained long subsequent to the passing of the

original order of assessment and sought to reopen the assessment in such proceedings. We have already referred to that the assessee-dealers did not agitate the matter further by filing an appeal. Therefore, the original assessment made by the assessing officer has become final for all practical purposes. If the assessee filed an appeal against the original assessment order and during the pendency of such an appeal, if he filed ""E-1"" and ""C forms and thereby prayed for reopening the assessment, it is conceivable that there could have been a plausibility or possibility of reopening the assessment order by the appellate authority on his deriving satisfaction that there was sufficiency of cause for the belated production of such forms and such an appellate authority could give relief to the assessee by remanding the matter to the lower forum for consideration of ""E-1"" and ""C forms so filed for giving relief to him. The proceeding now in question is not an appeal but only a rectification proceeding u/s 55 of the TNGST Act. In a rectification proceeding, the officer seeking to revise the original order of assessment cannot traverse beyond to do things other than the thing, which is required to be done or given effect to on the rectification of a mistake or error found apparent on the face of the record and nothing further. In this view of the matter, the relief sought for by the assessee as relatable to ""E-I"" and ""C"" forms filed long subsequent to the original order of assessment is not at all grantable. This point is answered accordingly.

13. In view of our answer of point No. 1, the order of the Joint Commissioner II, Madras-5 as relatable to the setting aside the order of the assessing officer revising the original order of assessment giving the relief to the assessee, as respects ""C"" and ""E-I"" forms only filed before ever the assessment order was passed by him cannot at all be sustained and the same deserves to be and is accordingly set aside. The resultant position would be that the order of the assessing officer revising the original order of assessment is required to be restored.

14. In fine, the appeal is allowed to the extent indicated as above, by ordering restoration of the order of the assessing officer revising the original order of assessment by giving effect to ""C"" and ""E-I"" forms filed long before the original order of assessment, so passed. There shall, however, be no order, in the circumstances, as to costs.

15. Appeal allowed in part.