(1967) 09 SC CK 0007

In the Supreme Court Of India

Case No : C.A. No. 534 of 1966

Madhya Pradesh Industries APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 28-09-1967

Acts Referred:

Constitution Of India, 1950 — Article 14, 286
Central Provinces And Berar Sales Tax Act, 1947 — Section 10(3), 11(2), 11A, 11A(3), 11(4), 11(5), 27A

Citation : (1968) JLJ 1019

Hon'ble Judges : K.N. Wanchoo, C.J;V. Ramaswami, J;R.S. Bachawat, J;K.S. Hedge, J;G.K. Mitter, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

K.S. Hedge, J.—In this appeal by special leave against the decision of the High Court of Judicature at Bombay (Nagpur Bench) in Special Civil Application No. 5 of 1961, the only question pressed for decision at the hearing was whether the provisions of Sub-section (3) of Section 11A of the C.P. and Berar Sales Tax Act, 1947 (for brevity's sake to the hereinafter referred to as the Act) contravene Article 14 of the Constitution in so far as they affect proceedings under Sub-section (2) of Section 11 of the Act.

2. The Appellant was a registered dealer under the Act during the period material for our present purpose. During the period in question it carried on the business of minning and selling manganese ore from its mines in the States of Maharashtra and Madhya Pradesh. In respect of the period from 1st January 1953, to 31st December 1953 the Appellant filed quarterly returns as required by law showing nil taxable turnovers since according to it all the sales effected by it during that period were exempted from payment of sales tax in view of Article 286 of the Constitution and Section 27A of the Act. The returns for the first and the last quarters of that year were submitted within the prescribed period but those for the second and third qaurters were submitted beyond the said period.

On 2nd December, 1957, the Assistant Commissioner of Sales Tax issued notices to the Appellant u/s 11(2) calling upon it to produce evidence in support of its returns in respect of the first and last quarters of 1953. On the same day he issued notices to the Appellant u/s 10(3) in respect of the second and third quarters of that year. The Appellant objected to the validity of those notices. It contended that those notices were barred by time. The Assistant Commissioner of Sales Tax kept the proceedings pending. This he did possibly because of the decision of the Bombay High Court in Bisesar House v. State of Bombay, ILR 1959 Bom. 620 which lent support to the contention of the Appellant. That decision laid down that the period of limitation prescribed u/s 11-A is to be imported in Section 11(2) and therefore a notice u/s 11 (2) cannot be issued after the expiry of three years from the end of the relevant period for which the assessment is to be made. Evidently to overcome the effect of that decision the Bombay Legislature enacted Bombay Act 22 of 1959 which came into force on 18th April, 1959. Among other provisions that Act incorporated one more Sub-section to Section 11-A, i. e., Sub-section (3), which reads:

(a) Nothing in Sub-sections (1) and (2)-

(i) shall apply to any proceeding (including any notice issued u/s 11 or 22A or 22B and (ii) not withstanding any judgment, decree or order of a Court or Tribunal, shall be deemed over to have been applicable to such proceeding or notice.

(b) The validity of any such proceeding or notice shall not be called in question merely on the ground that such proceeding or notice was inconsistent with the provisions of Sub-sections (1) and (2).

3. It was contended on behalf of the Appellant that the newly introduced Section 11-A (3) brought about a discrimination between those dealers who submit their returns within the time prescribed and those who do not do so. According to the Appellant, the differentiation made between those two classes is without any just basis and the classification made has no reasonable nexus with the object of the Act. It was said there is no substantial difference between those two classes; both Section 11(2) as well as Section 11-A deal with escaped turnovers; both classes of cases have common characteristics and properties; therefore there is no just basis to fix a period of limitation in one case and deny that benefit to the other. It was further said that the differentiation made between the two classes of dealers is invidious and irrational; in fact, the persons who have wilfully committed abreach of the law are treated more favourably than those who are more law-abiding. Taking support from the reasoning adopted by the Full Bench of the Bombay High Court in Bissesar House Vs. State of Bombay and Others, , and ignoring the fact that the said decision had been overruled by this Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, it was vehemently urged that as the field covered by Section 11(2) is also covered by Section 11-A, it was open to the assessing authorities to deal with some of the dealers u/s 11(2) and the others u/s 11-A, and thus deprive the former of

the benefit of the limitation provided in Section 11-A. Attempt was made to bring the case of the Appellant within the rule laid down by this Court in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another,

4. The above contentions had been unsuccessfully advanced before the Full Bench of the Bombay High Court in the aforementioned C. A. No. 5 of 1961. On the strength of the decision of this Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, the full Bench repelled those contentions. It held that the impugned Sub-section did not contravene the equality clause. After the decision of the Full Bench when the case went back to the Division Bench, yet another attempt was made on behalf of the Appellant to re-canvass those very contentions. Quite naturally, the Division Bench did not entertain those contentions. It merely went into the contentions not considered by the Full Bench. On the basis of those contentions it partly allowed the writ petition by its order dated 7th October, 1964. It quashed the notices relating to the second and the third quarters of the year 1953. It dismissed the writ petition in so far as it challenged the validity of the notices relating to the first and the last quarters.

5. this Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, specifically overruled the decision of the Bombay High Court in Bissesar House Vs. State of Bombay and Others, Therein this Court held that while Section 11(2) deals with pending proceedings, Section 11-A concerns itself with matters which are not pending. this Court further ruled that in the case of pending proceedings the Act has not prescribed any period of limitation. That decision proceeds on the basis that Section 11(2) and Section 11-A cover different fields and that they do not overlap. In our judgment, the decision of this Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, either directly or by implication answers every one of the contentions advanced on behalf of the Appellant. In view of that decision it is no more open to the Appellant to contend that Sections 11(2) and 11-A cover the same field to any extent nor is it open to it to contend that classification made is unreasonable having regard to the object sought to be achieved. In view of the ratio of that decision it is unnecessary for us to examine afresh the various provisions of the Act to show that the classification with which we are concerned in this case is intelligible, rational and well-conceived.

6. The principal question that falls for decision is whether the turnovers with which we are concerned in this case can be said to have escaped assessment. It is now well settled that an income cannot be considered as having escaped assessment if there are pending at the time proceedings for the assessment of the Assessee's income, which have not yet terminated in final assessment thereof. The said rule which had been evolved in the matter of assessing income tax has been applied by this Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, to an assessment under the Act. The said case has also laid down that a notice u/s 11(2) does not initiate any proceeding

but is merely a step in a pending proceeding. From those conclusions it follows that a case which comes within the scope of Section 11(2) can never fall within the ambit of Section 11-A.

7. It is common knowledge that generally speaking law prescribes limitation for initiating proceedings, but very rarely it prescribes a period within which a pending proceeding should be disposed of. That is but natural. Hence, we see no substance in the contention that the law has made any discrimination between those whose cases come within Section 11(2) and those whose cases are governed by Section 11-A.

8. In the result this appeal fails and the same is dismissed with costs.

Bachawat, J.

9. We agree that the appeal should be dismissed with costs. There is no limitation for the issue of a notice u/s 11(2). This follows from a plain reading of Section 11(2) independently of Section 11-A (3). Neither Section 11(2) nor Section 11-A(3) is violative of Article 14. A notice u/s 11(2) is issued in a pending proceeding, whereas a notice u/s 11-A (1) initiates a new proceeding. There is a reasonable basis for classification and differential treatment of the notices Under Sections 11(2) and 11A(I) for the purposes of limitation. Even Section 11(4) is not violative of Article 14. For the reasons given in our judgment in Anandji Haridas and Company (P.) Ltd., v. S.P. Kushare, Sales Tax Officer, Nagpur, and Ors. 1968 JLJ 486 : 1968 RN 281 : (1968)21 STC 326, there is a reasonable basis for the differential treatment of the notices u/s 11(4) and the notices Under Sections 11(5) and 11-A(1).

