
(1968) 02 BOM CK 0008

In the Bombay High Court

Case No : Sales Tax Reference No's. 29 and 31 to 35 of 1967

Manordas Kalidas

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-02-1968

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 31, 51

Citation : (1969) 24 STC 37

Hon'ble Judges : Vimadalal, J;N.L. Abhyankar, J

Bench : Division Bench

Judgement

Abhyankar, J.—This order governs the disposal of all these six references. The references have now been made, on being directed by this Court to do so, by the Sales Tax Tribunal at the instance of the assessee-applicant. The question referred to us for decision is as follows :

"Whether the Tribunal has committed an error in law in refusing to look into the further evidence which the Deputy Commissioner had permitted the applicant to produce before him."

2. In order to understand the implications of the question and the circumstances in which it has come to be referred, a few facts are necessary to be stated. The six references arise out of different periods as follows :

- (1) 1-11-1952 to 31-3-1953
- (2) 1-4-1953 to 31-3-1954
- (3) 1-4-1954 to 31-3-1955
- (4) 1-4-1955 to 31-3-1956

Two references in respect of each of the two earlier periods are, one for general tax and another for special tax. That is why six references have been made in respect of these four periods. For the sake of convenience, however, we will refer

only to the paper book in Sales Tax Reference No. 29 of 1967. The Sales Tax Officer issued notices in Form No. 34 to the applicant, calling him for verification of books. Several further opportunities were also given to the applicant to comply with the orders of the assessment officer. Discrepancies were pointed out to the applicant at some of the stages. He was called upon to make good the discrepancies, but the applicant did not avail himself of the several opportunities given to him by the department, and, therefore, the Sales Tax Officer was compelled, as he has mentioned, to make assessments to the best of his judgment.

3. Against these assessments made by the Sales Tax Officer to the best of his judgment, the applicant filed appeals, but all those appeals came to be dismissed, because the applicant failed to pay any amount of the tax as directed by the appellate authority. Thereafter, the applicant filed revision applications before the Deputy Commissioner of Sales Tax. The ultimate order in these revision applications came to be passed by Shri H. B. Munshi, Deputy Commissioner of Sales Tax, but prior to Shri Munshi dealing with this matter, his predecessor-in-office, it appears, had allowed the applicant represented by a Sales Tax Practitioner to file accounts and other documents which, it was alleged, were examined in detail by that officer. Before that officer could finally dispose of the revision applications the matter however came to be dealt with by his successor. Before Shri Munshi it was represented on behalf of the applicant that his predecessor-in-office having allowed accounts and other documents to record and having examined some of them, the tax parts assessment orders should be modified and relief given by computing on the basis of figures found in the books of account produced before the revising authority.

4. The Deputy Commissioner of Sales Tax rejected this request of the applicant with the following observations :

"I am afraid, such a request is altogether untenable. When the applicant did not comply with the directions issued by the Sales Tax Officer and also failed to avail of the opportunities given to him from 23rd November, 1954, to 31st January, 1957, the ex parte assessment was perfectly justified in his case. He cannot now request that the assessment should be based on book figures now submitted by him before me. He has forfeited his right of being assessed on the basis of his books owing to intransigence on his part. The only request that can be considered at this stage is to examine whether the estimated assessment made by the Sales Tax Officer is fully justifiable in the light of the evidence now produced before me. I shall now proceed to deal with each of the assessments made by the Sales Tax Officer."

The Deputy Commissioner thereafter gave some relief to the applicant in the final order passed by him.

5. Against these orders, the applicant preferred revision applications u/s 31 of the Bombay Sales Tax Act, 1953. Among other grounds raised before the Sales

Tax Tribunal, it appears to have been contended by the applicant that the Deputy Commissioner had erred in not accepting the book results of the applicant and, in fact, the books of the applicant were verified almost from day to day for a period of more than six months and thereafter at some intervals for over a year, and the figures were finalised on the basis of verification of those books. The applicant was called upon to produce several declarations under the Act which he had not produced before the Sales Tax Officer and in spite of this the learned Deputy Commissioner had completely ignored this verification, and it was submitted that the Deputy Commissioner of Sales Tax had, therefore, erred in doing so.

6. By their judgment dated 20th March, 1964, the Sales Tax Tribunal came to the conclusion that the predecessor-in-office of Mr. H. B. Munshi, who was exercising powers of the Deputy Commissioner of Sales Tax, should have decided the point as to whether the summary rejection of the appeals by the Assistant Commissioner of Sales Tax was justified, and the Tribunal also observed that that officer went out of his way and gave some relief to the dealer. The Tribunal held that the ex parte assessment was fully justified, and it took the view that whatever evidence was relied upon by the assessee ought to be produced normally before the original authority, and the assessee could not be permitted, merely for his negligence or convenience, to produce further evidence before the appellate authority. If the assessee is in a position to produce evidence, he is in duty bound to produce it before the original authority, and if he is negligent in that respect, it is not proper and reasonable to allow the assessee to produce further evidence before the appellate authority. With regard to what happened before the Deputy Commissioner of Sales Tax, the Tribunal held that it was true that when the matter went up in revision before the Deputy Commissioner of Sales Tax he went out of the way and gave some relief to the dealer, but the facts and circumstances of the present case betoken that summary rejection by the Assistant Commissioner of Sales Tax was justified. The Deputy Commissioner of Sales Tax had taken a liberal view in giving some relief to the dealer even though the Assistant Commissioner of Sales Tax was justified in dismissing the appeals summarily for default in making the part-payment, and, in these circumstances, they refused to interfere with any of the orders in revision.

7. Now, the learned counsel appearing for the applicant urges in support of his contention that the Tribunal erred in law in ignoring the documents and books of account which were admitted on record before the Deputy Commissioner of Sales Tax, and in not giving relief on that basis against the order of the Deputy Commissioner of Sales Tax. It is argued that once the Deputy Commissioner of Sales Tax exercised his discretion in admitting the documents and evidence on the record, in spite of the default and failure of the applicant to produce the documents and evidence in his possession before the original assessing authority, the Sales Tax Tribunal could not have ignored that evidence and documents and should have proceeded to consider them and give relief, if it was due. In fact, it is argued that it is not within the competence of the Sales Tax Tribunal to ignore the evidence which was admitted to record by the Deputy

Commissioner of Sales Tax and refuse to give relief by not considering that evidence while adjudging the correctness of the order of the Deputy Commissioner of Sales Tax in revision in exercise of revisional powers.

8. In our opinion, this contention is not well-founded, and cannot be sustained on a proper construction of the ambit of the revisional powers of the Tribunal u/s 31 of the Bombay Sales Tax Act, 1953. That section is as follows :

"31. (1) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Collector may, upon application or of his own motion, revise any order passed under this Act or the rules thereunder by a person appointed u/s 3 to assist him, and, subject as aforesaid the Tribunal may, upon application, revise any order passed by the Collector :

Provided that no application under this sub-section shall be entertained if it is not made within a period of four months from the date of the order :

Provided further that before rejecting any application for the revision of any such order the Collector or the Tribunal as the case may be, shall record reasons for such rejection.

(2) Before any order is passed under this section which is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard.

(3) Where a person could have appealed u/s 30, and no appeal has been filed by him, no proceedings in revision under this section shall be entertained upon the application of such person."

9. Even a bare perusal of this section will show that the Legislature has not sought to place any restraints or limitations on the exercise of the revisional powers by the Tribunal. It has created a power in the Tribunal to exercise revisional jurisdiction by authorising it to revise any order passed by the Collector, which means, the Collector or other persons appointed to assist the Collector. If "any" order can be passed in revising the order of the subordinate authority, we fail to see how the exercise of that jurisdiction can be considered to be in any manner restricted by implication in adjudicating both on the merits of the orders of the subordinate authorities and the procedure followed by those authorities. It will be as much within the ambit of the jurisdiction of the revising authority to adjudge the correctness of the orders on merits, as to adjudge the procedure by which the proceedings are disposed of by the authorities. The question whether, at a late stage of the proceedings, any document or evidence in the possession of an assessee should be allowed to be admitted on record, is a matter governed by the exercise of proper judicial discretion. It is not claimed that the applicant had any right to have the documents produced at that stage to be admitted to record. The Sales Tax Tribunal has clearly indicated in its judgment that the proper time to file documents normally, especially documents in the possession and under the control of the applicant, is before the original

assessing authority. If such evidence and document is not produced before that original authority, then it is necessary that any other authority, before admitting documents, must show why it is granting indulgence to the defaulting assessee to produce documents at such a late stage. Having laid down that the proper time for production of documents is before the original assessing authority and having regard to the fact that several opportunities had been given to this applicant for explaining the discrepancies and producing the documents, the Tribunal came to the conclusion that the exercise of discretion by the Deputy Commissioner in allowing the applicant at a late stage to produce documents and evidence, was improper. If, in the opinion of the Tribunal, it was not proper for the Deputy Commissioner of Sales Tax to admit documents and evidence at the stage of revision after having failed to produce the documents in his possession before the original Court or even before the appellate authority, we fail to see what inhibition could be read into section 51 of the Act preventing the Tribunal from refusing to look into that evidence or give relief on the basis of that evidence. We are unable to accept the contention of the learned counsel for the applicant that once documents are admitted by the Deputy Commissioner, the Sales Tax Tribunal, in the exercise of its revisional powers, which revisional jurisdiction was attracted at the instance of the applicant-assessee, was powerless or without jurisdiction to adjudge on the propriety or correctness of the action of the Deputy Commissioner of Sales Tax in admitting documents or evidence at that stage. We do not see any such limitation or inhibition in the exercise of its revisional powers by the Tribunal u/s 31 of the Act.

10. It is not proper to say that, merely because the revisional jurisdiction is invoked at the instance of the assessee, the revisional authority is restricted in exercising its jurisdiction, either in dismissing the revision without interfering with the order of the subordinate authority, or in giving relief in favour of the assessee. In proper cases, orders of the subordinate authorities are open to revision, and the revisional jurisdiction is not restricted only to the two aspects contended for by the applicant. In this connection, the provision in sub-section (2) of section 31 is relevant and material to be considered. Under that sub-section, before an order is passed under the said section, which order is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard. The sub-section, therefore, postulates an application for revision being made at the instance of a person other than the assessee, and also contemplates an order adverse to the assessee. Such a party may be either department, or any other person who is adversely affected by the orders of the subordinate authorities. What sub-section (2) ensures is that no order to the prejudice of any person who is affected by the order proposed to be passed by the revisional authority should make such person suffer without being given an opportunity of being heard. Sub-section (1) of section 31 also does not warrant the contention that the power of revision can be exercised by the Tribunal only at the instance of the assessee. We, therefore, do not see any difficulty in holding that, inasmuch as revisional jurisdiction is vested without any limitation or

inhibition, the Tribunal, in a proper case, has ample jurisdiction to adjudicate not only on the merits of the order, but also on other orders that may have been passed, either as a matter of procedure or in interlocutory matters by the subordinate authorities, and if, in a given case, the Tribunal comes to the decision that any of those orders are not sustainable, then the Tribunal can could its relief in consonance with such decision. We are, therefore, unable to hold, as contended by the applicant, that, merely because documents and evidence were admitted at one stage by the Deputy Commissioner of Sales Tax, there could be no further interference with that order by the higher authorities, or that the Tribunal was bound to accept the exercise of discretion by the Deputy Commissioner of Sales Tax as binding on itself in the matter of admission of evidence and accounts at that stage at the instance of the applicant. If the Tribunal felt that the evidence could not have been properly admitted to record at that stage, it was free to ignore that evidence and proceed to adjudge the merits of the order under revision, and, in that view of the matter, the Tribunal has not committed any error in exercising that jurisdiction, The result is that we answer the question referred to as in all these applications in the negative, and hold that the Tribunal has not committed any error in law in refusing to look into the further evidence which the Deputy Commissioner had permitted the applicant to produce before him, because, in the opinion of the Tribunal, that evidence should not have been admitted in the proper exercise of discretion.

11. As the references are answered against the applicant, the applicant would be liable to pay the costs of the opposite side but only in one set. We fix the costs at Rs. 250. The fee paid by the applicant in each of the applications is forfeited to the State.

12. References answered in the negative.