

(1968) 06 GUJ CK 0010
In the Gujarat High Court
Case No : Sales Tax Reference No. 16 of 1966

Mukundlal Hiralal	Vs	APPELLANT
The State of Gujarat		RESPONDENT

Date of Decision : 28-06-1968

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 11, 11(1), 3
Bombay Sales Tax Rules, 1952 — Rule 14, 6(1)

Citation : (1969) 24 STC 59

Hon'ble Judges : R.B. Mehta, J; B.J. Divan, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; J.M. Thakore, Advocate-General and H.V. Chhatrapati instructed by Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Divan, J.—The applicants in this reference are the original assesseees and at the instance of the assesseees, the following four questions have been referred to this Court by the Tribunal u/s 34 of the Bombay Sales Tax Act, 1953 (hereinafter referred to as the Act) :-

"(1) Whether the notice issued by the Assistant Commissioner of Sales Tax, dated 19th July, 1961, in exercise of suo motu revisional powers is valid and legal u/s 31 of the Bombay Sales Tax Act, 1953 ?

(2) Whether the proceedings initiated by the Assistant Commissioner of Sales Tax by his notice dated 19th July, 1961, are barred by limitation and therefore invalid and without jurisdiction ?

(3) Whether the Assistant Commissioner of Sales Tax is competent in law in exercise of his revisional powers to set aside the orders of the Sales Tax Office and remand the case to him giving him direction to assess the applicant de novo according to law ?

(4) Whether in view of the facts and circumstances of the case and in view of the

materials and the evidence on record, the Assistant Commissioner of Sales Tax was justified in the adoption of ratio proportion method for arriving at the turnover for the purpose of deduction u/s 11(1)(a), Bombay Sales Tax Act, 1953 (unamended) and rule 6(1) of the Bombay Sales Tax Rules, 1952 ?"

2. The facts giving rise to this reference are as follows :-

The applicants are registered dealers and at the relevant time were holding a registration certificate and a licence under the Bombay Sales Tax Act, 1953. The applicants were carrying on business of purchasing raw cotton from agriculturists as well as from licensed dealers and of selling cotton and cotton-seeds after getting raw cotton ginned. The assesseees were also doing business of reselling raw cotton, cotton bales and cotton-seeds. The applicants were assessed by the Sales Tax Officer u/s 14 of the Bombay Sales Tax Act, 1953. In the course of the proceedings before the Sales Tax Officer, the assesseees claimed deduction u/s 11(1)(a) of the Bombay Sales Tax Act, 1953 (unamended) and also under rule 6(1) of the Rules then in force in respect of certain sales. The Sales Tax Officer passed the assessment order on 29th January, 1954, for the period 1st November, 1952, to 30th September, 1953. He also passed another order on 22nd November, 1954, for the period 1st October, 1953, to 31st March, 1954. For the period 1st November, 1952, to 30th September, 1953, the Sales Tax Officer determined the gross turnover of the assesseees at Rs. 55,66,617-1-3 and allowed deduction u/s 11(1)(a) of the Act to the extent of Rs. 30,61,841-3-6 and also allowed deductions under rule 6(1) to the extent of Rs. 9,75,725-10-6.

3. On inspection of the records of the Sales Tax Officer u/s 31 of the Act read with Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960, the Assistant Commissioner of Sales Tax found that the orders of the Sales Tax Officer granting deductions u/s 11(1)(a) were erroneous and not according to law as in force at the relevant period and he further found that this error in law in granting deductions of big amounts had resulted in a substantial loss of revenue to the State. The Assistant Commissioner therefore issued a notice to the applicants in Form LT u/s 31 of the Act, and after hearing the applicants and in exercise of the revisional powers granted to him, set aside the order of the Sales Tax Officer and remanded the case back to him for assessment de novo according to law in the light of the directions mentioned in his order. He also observed in his order that the Sales Tax Officer in allowing deductions should have adopted ratio proportion basis. He also held that the assessment orders were not in accordance with section 14(1) as each assessment order covered broken periods of two assessment years. An appeal against the order of the Assistant Commissioner passed in revision was rejected by the Deputy Commissioner; and a revision application before the Sales Tax Tribunal was also dismissed. Thereafter at the instance of the assessee, the applicants herein, the above-mentioned four questions have been referred by the Tribunal to this Court.

4. The order passed by the Assistant Commissioner of Sales Tax in revision and also the show-cause notice, which he issued before he started the revisional

proceedings, being notice in Form LI, dated 19th July, 1961, make it abundantly clear that the Assistant Commissioner proposed to set aside the order of assessment passed by the Sales Tax Officer for the period 1st November, 1952, to 30th September, 1953, on the ground that the deductions granted by the Sales Tax Officer were erroneous and not according to law, and secondly, that the assessment order was not in accordance with the provisions of section 14(1) of the Act. The Assistant Commissioner came to the same conclusion also as regards the period 1st October, 1953, to 31st March, 1954. The Assistant Commissioner seems to be right in view of the provisions of section 14 of the Bombay Sales Tax Act, 1953 (unamended), that the relevant assessment periods that should have been considered by the Sales Tax Officer in the first instance were 1st November, 1952, to 31st March, 1953, and 1st April, 1953, to 31st March, 1954. To that extent it is obvious that there was an error so far as the Sales Tax Officer was concerned. Again, the Assistant Commissioner has pointed out in his order that in order to provide for deduction u/s 11(1)(a) and under rule 6(1)(i), the Sales Tax Officer had not adopted any rational basis in view of the facts and circumstances of the case. The scheme of the Act which was in force at the relevant time was that if a licensed dealer purchased goods from a licensed dealer and sold them, then there was no tax liability but if a licensed dealer purchased the goods from an unlicensed dealer, then he was required to pay tax on the resale of goods u/s 11(1) subject to clauses (a) and (b) of that sub-section. It was found by the Assistant Commissioner that the Sales Tax Officer had allowed the dealer's claim under rule 6(1) in such a manner that the goods which were purchased from unlicensed dealers, and on which the dealer would be required to pay tax, if they were sold in the Bombay State, were held to have been sold outside the State of Bombay, resulting in complete freedom from paying tax to Government on such sales. The business of the assessee was such that all the goods which he purchased, whether from licensed dealers or unlicensed dealers, were ginned and cotton was pressed and thereafter was sold either in the form of cotton or cotton-seeds. Thus, it is clear that once the goods were mixed up together, it would have been very difficult to find out as to what were the goods which the assessee had purchased from licensed dealers and from unlicensed dealers and overlooking this material fact of mixing up goods purchased from the two sources, the Sales Tax Officer had proceeded to grant deductions in such a manner that the goods which were purchased from unlicensed dealers were held to have been sold outside the State of Bombay without any material before him in that behalf. That was the conclusion to which the Assistant Commissioner came in revisional proceedings.

5. The question which now arises before us is whether under the provisions of section 31 of the Bombay Sales Tax Act, 1953 (unamended), it was open to the Assistant Commissioner to exercise these powers in revision. Mr. Kaji appearing on behalf of the assessee, contended before us that what the Assistant Commissioner was seeking to do, in the guise of exercising his powers of revision, was to reopen the assessment; and, therefore, the provisions regarding

revision u/s 31 should be read as limited by the provisions of section 15, which provided for reassessment. Section 15 of the Act at the relevant time read as follows :

"15. If in consequence of any information which has come into his possession the Collector is satisfied that any turnover in respect of sales or purchases of any goods chargeable to the tax has escaped assessment in any year or has been under-assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, the Collector may, in any case where he has reason to believe that the dealer has concealed the particulars of such sales or purchases or has knowingly furnished incorrect returns, at any time within five years, and in any other case, at any time within three years, of the end of that year, serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or any of the requirements which may be included in a notice under sub-section (3) of section 14 and may proceed to assess or reassess the amount of the tax due from such dealer and the provisions of this Act shall apply accordingly as if the notice were a notice served under that sub-section."

6. It is, therefore, clear that the powers of reassessment u/s 15 could only have been exercised by the Sales Tax Officer concerned, who was the Collector for that purpose, if there was any information before him on the basis of which the Sales Tax Officer was satisfied that any turnover in respect of sales of any goods had escaped assessment in any year or had been under-assessed or assessed at a lower rate or any deductions had been wrongly made therefrom. The power which could be exercised u/s 15, therefore, presupposes that some information was available to the Sales Tax Officer on the strength of which he could have come to the conclusion that any deductions had been wrongly made from the turnover in respect of sales of goods in any particular year. What has happened in the instant case is quite different. On a perusal of the record, the Assistant Commissioner came to the conclusion, firstly, that u/s 14, the year of assessment had been wrongly broken up and, secondly, that the deductions which were allowed by the Sales Tax Officer were not in accordance with law.

7. As to when the powers of revision can be exercised by an officer vested with such powers was dealt with by the Supreme Court in *The State of Kerala v. K. M. Cheria Abdulla and Company*. [1965] 16 S.T.C. 875. There the Supreme Court was concerned with the powers of revision vested in the revising authority under the Madras General Sales Tax Act, 1939, and the question was whether in exercise of that power the revising authority could direct further inquiry or not. After examining the provisions of the relevant section and rule 14-A of the Sales Tax Rules in question, at page 887, Shah, J, delivering the majority judgment of the Supreme Court has observed :

"The revisional power has to be exercised for ascertaining whether the order passed is illegal or improper or the proceeding recorded is irregular and it is in aid of that power that such orders may be passed as the authority may think fit. One of the enquiries in considering the legality or propriety of the orders passed

by the subordinate officer which the revising or the appellate authority may make is about the correctness of the tax levied and if after perusing the record the authority is Prima facie satisfied about illegality or impropriety of the order or about the irregularity of the proceeding, it may in passing its order direct an additional enquiry. Neither section 12 nor rule 14-A authorises the revising authority to enter generally upon enquiries which may properly be made by the assessing authorities and to reopen assessments."

8. Thus, according to this decision of the Supreme Court, if the revising authority proposes to generally enter upon the enquiries, which might properly have been made by the assessing authorities and if the revising authority proposes reassessment, then the revising authority could not have exercised any such powers; and it was held in that case that the relevant rule 14-A would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those revisional powers.

9. The same question regarding the scope of the powers of the revising authority came up again for consideration before the Supreme Court in *Swastik Oil Mills v. H. B. Munshi* [1968] 21 S.T.C. 383. In that case, the provisions of the Bombay Sales Tax Act, 1953, with which we are concerned in the instant case, came up for consideration before the Supreme Court. Bhargava, J, delivering the judgment of the Supreme Court has observed at page 395 of the report as follows :

"Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose, admit additional material. The proceedings for revision, if started suo motu, must not, of course, be based on a mere conjecture and there should be some ground for invoking the revisional powers. Once those powers are invoked, the actual interference must be based on sufficient grounds, and, if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority holding a further enquiry or directing such an enquiry to be held by some other appropriate authority."

10. In support of this principle, the decision in *K. M. Cheria Abdulla & Co's. case* [1965] 16 S.T.C. 875 was relied upon. At page 400 of the report, Bhargava, J., has further pointed out :

"In the present case, the Deputy Commissioner, when seeking to exercise his revisional powers, is clearly not encroaching upon the powers reserved to other authority. Under the Act of 1946, the first assessment is made by the Sales Tax

Office u/s 11. If information comes into his possession that any turnover in respect of sales or supplies of any goods chargeable to tax has escaped assessment in any year or has been under-assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, proceedings can be taken afresh u/s 11-A. On the face of it, if a first assessment order is made u/s 11 and any turnover escapes assessment, the appropriate provision, under which action is to be taken for assessing that turnover to tax, is section 11-A. There is, however, no provision under which the power now sought to be exercised by the Deputy Commissioner in the case before us could have been exercised by any other authority. In this case, as we have indicated earlier, the first assessment of tax was made by the Sales Tax Officer, and the turnover now in question was assessed to tax by him. Having once assessed that turnover to tax, he could not initiate a fresh proceeding in respect of it u/s 11-A. The assessment made by him was set aside in appeal by the Assistant Collector and it is this order of the Assistant Collector which is sought to be revised by the Deputy Commissioner. This is, therefore, not a case where the powers are being exercised for the purpose of assessing or reassessing an escaped turnover. The case is one where the revisional powers are sought to be exercised to correct what appears to be an incorrect order passed in appeal by the Assistant Collector, and, for such a purpose, proceedings could not possibly have been taken u/s 11-A. In exercising his revisional powers, therefore, the Deputy Commissioner is not encroaching upon the jurisdiction of any other authority specially entrusted with taking such proceeding."

11. In the instant case, it is true that the Assistant Commissioner has revised the first assessment order passed by the Sales Tax Officer but what is done in substance is to correct the illegalities, which, according to the Assistant Commissioner, were found on the record of the Sales Tax Officer. He found two such illegalities - (i) regarding the assessment year and (2) regarding the deductions which were to be allowed u/s 11(1)(a) and under rule 6(1). He was not dealing with a case of any deduction which had been wrongly made from the turnover after having come in possession of some information. If the deductions made by the Sales Tax Officer had been dealt with by the Assistant Commissioner not on the record of the Sales Tax Officer as it stood but in consequence of any further information then that itself would amount to a reassessment proceeding u/s 15 as it stood at the relevant time; but what the Assistant Commissioner has done in the present case is to correct illegalities which were found in the order of the Sales Tax Officer by the Assistant Commissioner on perusal of the record, firstly, regarding the assessment year and, secondly, regarding the legal basis or the principles on which deductions u/s 11(1) and rule 6(1) should have been allowed to the assessee. Under these circumstances, it is clear that the Assistant Commissioner was not encroaching upon the jurisdiction of the Sales Tax Officer specially entrusted with the taking of reassessment proceedings u/s 15 of the Act. Applying the principles laid down by the Supreme Court in *Swastik Oil Mills case* [1968] 21 S.T.C. 383., it is clear

that in the instant case, in substance and as a matter of procedure, what the Assistant Commissioner did was to revise the order when he came to the conclusion that the order passed by the Sales Tax Officer was not correct and was not legal, Thus the correctness, legality and the propriety of the order passed by the Sales Tax Officer were considered by the Assistant Commissioner when he started exercising his revisional powers, and he was not dealing with any reassessment contemplated by section 15. In the first place, the Assistant Commissioner was not proceeding upon any information received by him but was proceeding on what was on the record of the Sales Tax Officer; and secondly, as a revising authority, once he came to the concession that there were certain illegalities in the proceedings of the Sales Tax Officer, it was open to him as the person vested with the revisional powers to correct that error of the Sales Tax Officer. It is, therefore, clear that in suo motu proceedings, it was open to the Assistant Commissioner to issue the notice and that the notice was valid and legal under the provisions of section 31 of the Act.

12. As regards the question whether the proceedings initiated by the Assistant Commissioner by his notice, dated 19th July, 1961, were barred by limitation, the question has been dealt with by the Supreme Court in "Swastik Oil Mills" case [1968] 21 STC. 383 where it was held that so far as the question of limitation was concerned, under the provisions of section 31 no period of limitation having been prescribed for the exercise of revisional powers, no period of limitation had necessarily to be read in the provisions of section 31 of the Act.

13. It was urged before us that in the exercise of the revisional powers of the Assistant Commissioner, it was not open to him to set aside the orders of the Sales Tax Officer and to remand the case back to the Sales Tax Officer giving him direction to assess the applicant de novo according to law and that contention is covered by question No. (3) referred by the Sales Tax Tribunal to this Court. u/s 31 of the Act it was provided that 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. No Indication has been given in section 31 or the rules anywhere as to the amplitude of the powers which the revising authority can exercise u/s 31 of the Act, and, therefore, it must be held that the revising authority can pass such order as it thinks fit in order to set right the illegality of the order which is proposed to be revised. Since there is no limitation on the power of the revising authority except that he cannot trench upon the power of reassessment u/s 15, it was open to the Assistant Commissioner to pass the order that he did remanding the case back to the Sales Tax Officer for de novo assessment in the light of the facts mentioned in the order of the Assistant Commissioner.

14. It is clear that the Assistant Commissioner has not directed the Sales Tax Officer to adopt the ratio proportion mentioned for arriving at the appropriate figure for deduction purposes u/s 11(1)(a) and rule 6(1) and he has merely

referred to this method in passing as an equitable method. No directions in fact having been given by the Assistant Commissioner to the Sales Tax Officer, it is not necessary for us to express any opinion in the course of this judgment as to whether the Assistant Commissioner was justified in adopting the ratio proportion method for arriving at the correct figure of the turnover. In our opinion, therefore, question No. (4) does not arise for consideration.

15. In the result, we answer the questions referred to us as follows :-

Q. No. Answer. (1) In the affirmative. (2) In the negative. (3) In the affirmative. (4) Does not arise.

16. The assessee will pay the cost of this reference to the State of Gujarat.

17. Reference answered accordingly.