
(1957) 04 CAL CK 0025
In the Calcutta High Court
Case No : Civil Revn. No. 174 of 1955

Nagendra Nath Shah

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-04-1957

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 16, 20, 20(1), 20(3)
Bengal Finance (Sales Tax) Rules, 1941 — Rule 76, 77, 78, 79, 80
Constitution of India, 1950 — Article 226

Citation : AIR 1957 Cal 463 : 61 CWN 831 : (1957) 8 STC 641

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Panchanan Pal and Pabitra Kumar Basu, for the Appellant; J. Majumdar and P.K. Banerjee, Opposite party (Nos. 1 to 4), for the Respondent

Judgement

Sinha, J.—The facts in this case are briefly as follows: The petitioner carries on business under the name and style of Messrs. N. N. Shah, and the firm as such is a registered dealer as contemplated under the Bengal Finance (Sales Tax) Act 1941 (hereinafter called the "Act"). The registered address at which the business was being carried on was No. 4, Baithakkhana, 2nd Lane, Calcutta. On or about 31-8-1949 there was an assessment of sales tax of the said business for the period of four quarters ending on the last day of Chaitra 1354 B. S. The assessment was made by Sri K. B. Roy, the then Commercial Tax Officer, Sealdah Charge, The taxable turnover was computed at Rs. 1,61,713-0-0. After the assessment was made, it was detected by the Assistant Commissioner, by making cross-reference to other dealers with whom the petitioner had dealings, that there was a suppression of certain purchases and sales and that the books and documents kept were not true. On or about 7-12-1949 the Assistant Commissioner, Central Section, issued a notice in Form IX stating that there was an escape of assessment and that the petitioner was under assessed and it was proposed to enhance his taxable turnover to Rs. 4,28,559/-. The petitioner contested the enhancement and after hearing him, on 28-12-1949 an order of

assessment was made enhancing the taxable turnover to Rs. 4,28,559/-. Against this order the petitioner made an application in revision to the, Commissioner u/s 20(3) of the said Act. That provision, as it stood then, enabled an application for revision to be made against any order passed under the Act or the Rules, by a person appointed, u/s 3 to assist the Commissioner. There was a controversy as to whether this provision enabled a revision to be made against an assessment order. There were several decisions of the Board of Revenue to the effect that it did. but it was generally argued that it did not. In or about 6-11-1950 the Bengal Finance (Sales Tax) (West Bengal Amendment) Act XLVIII of 1950 came into operation. By this amendment inter alia, Section 20(3) was amended. So far as Sub-section (3) of Section 20 is concerned instead of the words "order passed", the words "assessment made or order passed" were substituted. It was further provided that no application for revision should lie to the Commissioner in respect of any assessment, if an appeal lay under Sub-section (1) to the Commissioner in respect of such assessment.

2. It was thus made clear that a revision would lie under certain circumstances against an assessment order. The matter having come up before the Commissioner, he passed an order on 26-10-1954 and inter alia held that on 28-12-1949 the amendment not having come into operation yet, the Assistant Commissioner had not the power to revise an assessment. He accordingly set aside the order and directed the Assistant Commissioner, Calcutta Circle, to proceed to take up the matter of revision. He further stated that if the Assistant Commissioner so desired, the petitioner should be given an opportunity of being heard. The Assistant Commissioner, Calcutta North Circle, appears to have decided to give the petitioner every possible opportunity of being heard. To start with, he issued a fresh notice in Form IX, and on the returnable date nobody appeared. Then on 18-8-1954 a letter was received from the petitioner stating that all his own books etc. had been, by an order of the High Court, sent down to the Alipore Court, and would be received back in a week. Adjournment was asked for. On 31-8-1954 the matter was adjourned till 15-9-1954 and a memorandum to this effect was sent, to be served on the petitioner. As I have mentioned above, the registered address of the petitioner has always been 4 Baithakkhana, 2nd Lane, and the notices were all directed to that address. Not only the correct address is to be registered under the Act but u/s 16 of the Act, if any dealer changes his place of business or opens a new place of business or discontinues his business, he must at once inform the prescribed authority. But at no time was any such change intimated. It is true that in the letters that were sent by the petitioner, the address was given as 5 Baithakkhana, 2nd Lane, but it appears that notices served at No. 4 Baithakkhana, 2nd Lane continued to be duly received by the petitioner. In any event, the authorities had no duty to serve notices at any place other than the registered place of business. This memorandum adjourning the matter till 15-9-1954 was sought to be served but came back with the endorsement "left". On 1-9-1954 it was served again by affixation. The petitioner in this instance received the memorandum, because on

13-9-1954 he answered it by a letter asking for further time. Thereupon the date of hearing was fixed on 25-9-1954. A memorandum to this effect had again to be served by affixation. It was stated in the notice that if the dealer failed to turn up on the appointed date, the order would be passed ex parte, On 25-9-1954 no one turned up. It is now stated that the petitioner did not receive this notice. I shall return to this subject presently. An order was however passed fixing the taxable turnover at Rs. 4,28,556/-. Intimation of this was given on the 3rd November, 1954 followed by a notice of assessment in Form VII. On 12-11-1954 the petitioner wrote a letter asking for a review. Under the Act, either there is an appeal or revision but in either case the mode in which it could be effected has been prescribed. (See Rules 76 to 80). Naturally, the authorities did not take any notice of the letter which asked for review but which was not in the prescribed form. On 17-1-1955 this Rule was issued which, in short, challenges the revision of turnover as stated above.

3. The respondents have taken a preliminary point that this application does not lie because there is an alternative remedy under the Act and therefore the petitioner not having pursued the alternative remedy, cannot make a direct approach to this Court under Article 226 of the Constitution. Section 20 (1) lays down the provision for appeal. There is an appeal against an assessment order, and there is a period of limitation, namely, 60 days from the receipt of notice issued under Sub-section 3 of Section 11. Section 20(3) is the provision for revision. I have already mentioned how this provision originally dealt only, with orders, and now includes an assessment. If the petitioner had a right, either to appeal or to make an application for revision, then clearly he could not come to this Court directly. Mr. Pal on behalf of the petitioner has advanced several arguments to meet this point. He first of all says that neither an appeal, nor a revision lay against an order of revision of assessment. He says that Section 20(1) deals with an assessment and therefore cannot include a revision of assessment. Also he says that Section 20 (3) means the same thing and talks about assessment and not revision of assessment. I am unable to accept this contention. Revision of assessment must clearly be the same as, assessment. In other words, the original assessment, if revised, vanishes and is replaced by a new assessment that is to say, the revised assessment. I therefore fail to see why it should be distinguished from an assessment. In my opinion, it would be absurd to grant an appeal against an assessment, but not against a revised assessment. In any event, even if there is not an appeal, there is certainly a revision. It is either an assessment or an order, and I do not see why Section 20(3) should not apply. It is significant that the petitioner himself at one stage made an application u/s 20(3) in revision to the Commissioner. So far as the letter of review is concerned, even Mr. Pal has not said that any effect should be given to that. It is not in the prescribed form and no notice can be taken of it. The next point in answer advanced by Mr. Pal is that this is a question of absence of jurisdiction, and also one of want of natural justice, and therefore a direct application for the high prerogative Writ would lie. With regard to the first point,

namely, that of jurisdiction, the point is argued thus: As stated above, Section 20(3) was amended in or about 6-11-1950. Assuming that before this it was not possible to make an application for revision of an assessment order, it is argued that even after the amendment there can be no revision of an assessment relating to a period prior to the amendment. That, according to the "learned Advocate, would make the amendment retrospective and this cannot be permitted. In my opinion, there is no substance in this argument. The amendment conferred power to revise "an assessment made"". Therefore it includes an assessment, made for any period, which includes a prior period. There is no limitation in this respect. The intention of the Legislature has been made clear by the fact that this sub-section is subject to Rules as may be prescribed and Rules have been prescribed, namely. Rule 80(5), whereby the period during which such a revision can be made effective has been prescribed. It has been provided that any assessment made or order passed under the Act before the commencement of the Amendment Act, may be revised at any time within four years from the commencement of the Amendment Act. In my opinion, there is no question of the Amendment Act being retrospective. It enables a revision of assessment, and that can be made for a period, which also has been laid down, and which is not necessarily prospective. The next point is the point relating to a violation of the rules of natural justice. From a perusal of the dates as I have given above, there is, in my opinion, no violation of the rules of natural justice. The authorities have no duty cast upon them to send notices to any address other than the registered address. In fact, in law there is no duty to send any notices of adjournment at all. These proceedings are either judicial or quasi-judicial proceedings." There is no legal liability on behalf of the authorities to carry on any correspondence, or to inform the assessee of adjournments, by issuing notices and then serving them. The initial notice being served, it is the duty of the assessee to be present at the hearing before the authority at the time specified for hearing, and to note if any orders of adjournments are made. It is entirely out of grace that notices are served upon the assessee intimating to them the fact of adjournments. Also there is no rule by which the Sales Tax authorities can be compelled to carry on correspondence. It is the duty of the assessee and/or their representatives to be present, and to make themselves aware of orders passed. This principle has been clearly enunciated in a decision of the Privy Council AIR 1937 133 (Privy Council) . In other words the petitioner had no legal right to be served with notices intimating to him about the several adjournments, and even assuming that he failed to get certain notices, that cannot be the subject of a high prerogative Writ.

4. Mr. Majumdar has argued that the whole endeavour of the petitioner was to take the matter beyond the four years" limitation and the petitioner nearly succeeded, since the matter would have been barred sometime in early November 1954. I do not think that this argument is entirely without any foundation. In any event, it is quite clear that even if there be any substance in the points put forward by the petitioner, he and/or his representatives, have

been far from being diligent and if there has been an ex parte order, it is entirely due to the fault of the petitioner and not the fault of the authorities, who have tried their best to hear the matter in the presence of the petitioner.

5. These are the several points argued in this case which have all failed and the application must therefore be dismissed. The Rule is discharged. All interim orders are vacated. I make no order as to costs.