(1963) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 280 of 1962

Nathani Brothers APPELLANT

Vs

Sales Tax Commissioner RESPONDENT

Date of Decision : 22-01-1963

Acts Referred:
Central Provinces and Berar Sales Tax Act, 1947 — Section 22B

Citation : (1963) 14 STC 307

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; R.J. Bhave, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This is a reference u/s 23(3) of the C.P. and Berar Sales Tax Act, 1947 (hereinafter called the Act), and the questions which the Tribunal was directed by us on 10th August, 1962, in M.C.C. No. 99 of 1961 to refer to us for decision are :

(1) Whether, on the facts and in the circumstances of the case, the order of the Sales Tax Officer dated 6th October, 1955, could be revised u/s 22-B of the Act ?

(2) Whether, on the basis of the notice dated 12th September, 1957, proceedings u/s 22-B of the Act could be validly initiated ?

2 In proceedings for assessment of sales tax on Messrs Nathani Brothers of Raipur on their sale transactions of manganese ore during the period 10th November, 1950, to 4th November, 1953, it was found by the Sales Tax Officer, Raipur, that the dealer''s turnover was Rs. 2,16,343-2-0 but that the dealer was not liable to pay any sales tax as the manganese ore was exported outside the State after 1st April, 1951. The assessee naturally did not prefer any appeal against the order of the Sales Tax Officer. But the Sales Tax Commissioner took up the matter on his revisional side, and in the exercise of that jurisdiction u/s 22-B of the Act set aside the order of the Sales Tax Officer and remitted the case

to the officer for a fresh enquiry and assessment in accordance with law. The Sales Tax Commissioner took the vie that on the facts found the dealer was liable to pay sales tax on the sale transactions which the Sales Tax Officer had exempted from taxation. The assessee then preferred an appeal before the Board of Revenue against the order of the Sales Tax Commissioner, which was dismissed. His application u/s 23(1) of the Act was also dismissed by the Board of Revenue. Thereafter, an application u/s 23(2) of the Act was made before us by the assessee for requiring the Tribunal to state the case and refer the above questions to this Court for decision.

3. In regard to the first question, Shri Sen, learned counsel appearing for Nathani Brothers, made the submission that the Sales Tax Commissioner had no jurisdiction u/s 22-B to revise the order of the Sales Tax Officer ; that if the Sales Tax Officer had wrongly held that the sale transactions in question were not liable to tax then it was a case of escaped assessment, which could be reopened only u/ s 11-A of the Act within the prescribed period of limitation ; and that in the present case limitation u/s 11-A had expired. Learned counsel relied on a decision in Purushoitam Kalidas v. Commissioner of Sales Tax 1961 M.P.L.J. 35 where it has been held that the power of revision u/s 22-B of the Act cannot be exercised to tax a turnover which has escaped assessment.

4. In our opinion, there is no substance in the contention raised by the learned counsel. It has been held by a Division Bench of this Court in Kanhaiyalal Bahadur Singh Vs. Commissioner of Sales Tax and Another, that the expression "any information which has come into his possession" used in Section 11-A means information which has come into his possession subsequent to the making of the assessment order in question; that if on information in his possession at the time of the passing of the assessment order the Sales Tax Officer takes a certain vie of facts and figures and of the prevailing la and holds that certain transactions are not liable to tax u/s 27-A(1) (b), he cannot subsequently on the basis of the information which was already in his possession and within his knowledge act u/s 11-A; and that such a case would be a case of mere change of opinion on the same state of facts and not a case of finding as a result of ne information that the dealer had escaped assessment in some respect. In the present case also the assessment which the Sales Tax Officer made taking a certain vie of the facts or the la was sought to be revised not because of any in formation received subsequent to the assessment but because of the differing opinion which the Sales Tax Commissioner entertained about the matter. The revision was therefore clearly not one falling within the ambit of Section 11-A. If Section 11-A is not attracted to the case, then there is no impediment to the exercise of the revisional powers by the Commissioner u/s 22-B. On the basis of the decisions in the cases of Purushottam Vs. Commissioner of Sales Tax and Others, and Kanhaiyalal Bahadur Singh Vs. Commissioner of Sales Tax and Another, the first question must be answered in the affirmative.

5. The second question must also be answered in the affirmative. Section 22-B

lays down that the dealer should be given an opportunity of being heard before the making of any order by the Commissioner under that provision. This opportunity was given to the assessee.on 12th September, 1957. when the Commissioner issued a notice to the assessee, which ran as follows :

While assessing you for the period from 10th November, 1950 to 4th November, 1953 the Sales Tax Officer, Raipur, has exempted u/s 27-A of the C. P. and Berar Sales Tax Act, .1947, sales of manganese ore worth Rs. 2,00,594-6-0 though they are sales within the State. It is, therefore, proposed to enquire or have an enquiry made into these transactions and in case these are established as sales within the State liable to tax under the C.P. and Berar Sales Tax Act, 1947, to order for the levy of sales tax on such sales. You are also required to produce the ledger, cash book, relevant account books, railway receipt register, counterfoil of bills, cash memos, the copies of contracts for sales with the buyers containing terms of delivery, price, consignments etc. on the said date and also to bring such other evidence as you wish to rely upon.

This notice gave clear and sufficient indication to the assessee that the sale transactions which the Sales Tax Officer had exempted from sales tax appeared to be sales within the State and as such liable to tax under the Act, and that it was proposed to reopen the question of the nature of these transactions and to make a fresh assessment according to law. The notice thus informed the assessee of what was intended to be done and of the case he had to meet. In response to this notice the assessee appeared before the Sales Tax Commissioner and preferred his objection to the revision u/s 22-B by the Commissioner, of the Sales Tax Officer''s order of assessment. Section 22-B only spoke of an opportunity of hearing being given to the dealer and did not prescribe the contents or form of notice to be given to the dealer. Rule 58 also provided that the authority empowered to pass an order in appeal, revision, or revie should issue to a person likely to be affected adversely a notice in Form XXV. The prescribed form only required that the gist of the order proposed to be passed should be mentioned in the notice. In the present case it cannot be denied that the notice was sufficient indication of the gist of the order that was intended to be passed after fresh assessment. It was not necessary to state in the notice the precise figure of the taxable turnover of sales within the State, and indeed this could not be done before the holding and completion of any enquiry which the Sales Tax Officer was directed by the Sales Tax Commissioner to hold.

6. For these reasons our answer to both the questions is in the affirmative. The assessee shall pay the costs of this reference. Counsel''s fee is fixed at Rs. 100.