(1958) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Rev. Appeal No. 4/XXXIII-7/57

Rathod Brothers APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 28-02-1958

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

Citation : (1958) MPLJ 558

Hon'ble Judges : R.D. Shukla, Member

Bench : Single Bench

Advocate : P.D. Gupta, for the Appellant; Shiv Dayal, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Shukla, Member

Proceedings u/s 22-B of the C.P. and Berar Sales-Tax Act (hereinafter called Act) were started against the Appellant Assessee by the Sales-Tax Commissioner to revise the original assessment made on 8-5-54 by the Sales-Tax Officer. A notice in Form XXV as prescribed under Rule 58 framed under the Act was, therefore, issued on 30-12-55. The revised assessment was challenged before the Revenue Board, inter alia, on the ground that the said notice was not according to law. This contention was upheld by my learned predecessor and he allowed the appeal without unnecessarily going into the other grounds of the appeal. The relevant portion of Board''s, order dated 29-11-56 reads as follows:

4...The notice issued to him, therefore, must contain some indication of the grounds on which action is proposed to be taken. Since no such grounds were given in the notice, it is an irregularity which might have caused him serious prejudice. Subsequent opportunity for inspection of the record is not sufficient to remove the initial irregularity in issuing a notice which did not contain the essential elements of the notice required by law.

I accept the appeal and remand the proceedings both for 1951-52 and 1952-53 to the Sales-Tax Commissioner for taking action afresh for complying with the requirements of the law in accordance with the observations made above.

In compliance of Board''s order, the Sales-Tax. Commissioner served on 13-4-57 a fresh notice on the Appellant and revised the assessment. This revised order of the Sales-Tax Commissioner has now been challenged on a number of grounds. The main point argued before me, however, is that the fresh notice dated 13-4-57, having been issued after the limit of two years prescribed u/s 22-B (2) was time-barred and the Sales-Tax Commissioner had, therefore, no jurisdiction to pass the impugned order after the expiry of the prescribed period.

On behalf of the Sales-Tax Commissioner it was argued by the learned Deputy Government Advocate that the proceedings started in pursuance of notice dated 13-4-57 were not fresh proceedings. They were started in consequence of the remand order of the Board and as such the proceedings started under the earlier notice dated 30-12-55 should be deemed to have continued. He was unable to cite any authority in support of his contention.

For the commencement of proceedings u/s 22-B ibid, the issue of a notice in the prescribed form is a mandatory provision vide Rule 58. Similarly, the restriction or the revisional powers of the Sales-Tax Commissioner u/s 22-B is imperative as the negative language used in Sub-section (2) would show:

(2) No order shall be made under Sub-section (1) after the expiry of two years from the date of the order sought to be revised.

Thus it is clear that under no circumstances revisional powers can be exercised by the Sales-Tax Commissioner after the prescribed time-limit.

It can hardly be doubted that the earlier notice dated 30-12-55 was held by the Board as not in accordance with law. The said notice did not suffer merely from a irregularity which did not adversely affect the Appellant. As the underlined portion of the Board''s order would show, the earlier notice was held to have caused "serious prejudice" to the Appellant, with the result that the entire proceedings u/s 22-B vitiated and a fresh start had to be made. In this view, it would be seen that the earlier notice, not being in accordance with law, was no notice under the Act. It was a legal nullity and cannot be taken into consideration in computing the limitation.

It, therefore, follows that the later notice dated 13-4-57 was the first real and effective notice u/s 22-B so far as the Appellant is concerned. The earlier notice being no notice under the law, the Appellant is not affected by it. It is no defence to say that the later notice being an outcome of the Board''s order it had necessarily to be delayed. The Sales-Tax Commissioner is bound to give and the Assessee is entitled to receive a notice u/s 22-B only within the four corners of law. If the notice is not in accordance with law, the consequences flowing from this illegality will have to be borne by the party who is saddled with the responsibility of issuing the notice, irrespective of the fact that the illegality of the notice was detected at the appellate stage.

I cannot also subscribe to the view that the later notice should be deemed to be a part of the proceedings that remained continued on account of the remand order of the Board. Having held the order of the Sales-Tax Commissioner illegal, the Board had allowed Appellant''s appeal with the direction for "taking action afresh for complying with the requirements of law". The fresh action contemplated had necessarily to be taken in accordance with law. The Board cannot confer upon itself the legislative function so as to amend the statutory provisions regarding limitation. If the time to initiate fresh proceedings u/s 22-B had expired when the later notice dated 13-4-57 was issued, the Sales-Tax authorities have only to thank themselves; they cannot take shelter behind the Board''s order so as to justify extension of time limit against the Assessee.

For reasons stated above, the proceedings now started against the Appellant under the notice dated 13-4-57 and the impugned order dated 8-5-57 are not in accordance with law and the order of the Sales-Tax Commissioner must be held as without jurisdiction.

In view of the above it is not necessary to consider other grounds of appeal.

The order of the Sales-Tax Commissioner dated 8-5-57 is quashed.

Appeal allowed accordingly.