

(1960) 08 AP CK 0001

In the Andhra Pradesh High Court

Case No : Special Appeal No. 1 of 1960

Rohtas Industries Ltd.

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-08-1960

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1961) 12 STC 693

Hon'ble Judges : P. Chandra Reddy, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : K. Ranganadhachari, for the Appellant; M.S. Ramachandra Rao, The Second Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This appeal is filed u/s 23 of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter to be referred as the Act) against the order passed by the Board of Revenue suo motu u/s 20(1) of the Act relating to the assessments for the years 1953-54 and 1954-55.

2. The appellants, carrying on business in paper, sulphuric acid, etc., under the name and style of Messrs Rohtas Industries, Ltd., with their head office at Dalmianagar, Bihar State, effected sales to their customers in the erstwhile Hyderabad State during 1953-54 and 1954-55 for consumption.

3. The Sales Tax Officer (Central Circle), Hyderabad, assessed the appellants to tax on a turnover of Rs. 18,73,172-5-9 for the year 1953-54 and Rs. 13,48,881-3-6 for the year 1954-55, notwithstanding that they partook the character of inter-State trade within the meaning of Article 286 of the Constitution.

4. Appeals were carried by the appellants against these assessments to the Deputy Commissioner of Commercial Taxes. During the pendency of the appeals, the Supreme Court rendered its decision in Bengal Immunity Co. Ltd. v. The

State of Bihar (1955) 2 M.L.J. 168 . It was inter alia decided there that Article 286 of the Constitution enacted two prohibitions and that

until Parliament by law made in exercise of the powers vested in it under Clause (2) of Article 286 provided otherwise, no State could impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases took place in the course of inter-State trade or commerce.

5. This pronouncement reversed the view of that Court expressed earlier in the State of Bombay v. The United Motors (1953) 1 M.L.J. 743 .

6. Following this decision, the Deputy Commissioner allowed the appeals and set aside the assessments made by the Sales Tax Officer.

7. To get over the difficulty created by the Supreme Court's ruling in the Bengal Immunity case (1955) 2 M.L.J. 168 the Sales Tax Laws Validation Ordinance, 1956 (Ordinance III of 1956) was promulgated by the President validating all the assessments in respect of sales between 1st April, 1951, and 6th September, 1955. This Ordinance was replaced by the Sales Tax Laws Validation Act (VII of 1956). Section 2 of that Act recites :

Notwithstanding any judgment, decree or order of any Court, no law of a State imposing, or authorising the imposition of a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law.

8. The constitutionality of this enactment was challenged in Sundara-ramier & Co. v. State of Andhra Pradesh (1958) 1 M.L.J. 179 before the Supreme Court and its validity was upheld by that Court. It was ruled by the Supreme Court that this statute was passed with a view to declare the law as interpreted in the United Motors case [1953] 4 S.T.C. 133. as the law governing sales up to the date of judgment of the Bengal Immunity case [1955] 6 S.T.C. 446 as falling within the Explanation to Article 286(1)(a) and to give effect to the law as laid down in the Bengal Immunity case [1955] 6 S.T.C. 446 to subsequent sales.

9. Later on, a Bench of this Court to which one of us was a party decided in State of Andhra Pradesh v. Dunlop Rubber Co. (1960) 1 A. W.R. 145, that the Supreme Court's ruling in Sundararamier & Co. v. State of Andhra Pradesh (1958) 1 M.L.J. 179 which interpreted the scope of Section 22 of the Madras General Sales Tax Act, applied with full vigour to Section 2(k) of the Hyderabad General Sales Tax Act despite the fact that this section does not contain an explanation similar to the one u/s 22 of the Madras General Sales Tax Act, in the view that Section 2(k) has the same connotation as Section 22.

10. Having regard to the Sales Tax Laws Validation Act (VII of 1956), the Supreme Court ruling in *Sundararamier & Co. v. State of Andhra Pradesh* (1958) 1 M.L.J.179 and the decision of this Court in *State of Andhra Pradesh v. Dunlop Rubber Co.* (1960) 1 An. W.R. 145 the Board of Revenue felt that the appellants were liable to be taxed in respect of their sales in the erstwhile Hyderabad State for the period up to 6th September, 1955, and that the order of the Deputy Commissioner setting aside the assessments required revision. Therefore, exercising the powers vested in it u/s 20 of the Andhra Pradesh General Sales Tax Act, 1957, suo motu, the Board issued a notice to the appellants proposing to set aside the order of the Deputy Commissioner referred to above and restore the assessments made by the Sales Tax Officer, Hyderabad, limiting, however, the demand of the tax to the amount actually collected by the dealers by way of tax. The dealers were also required to file their objections, if any, to the proposal within seven days of the receipt of that notice, failing which it would be considered that they had no objections to file and orders passed as proposed.

11. Instead of filing their objections, the appellants asked for two months' time. This request was not granted and the assessments for the years 1953-54 and 1954-55 as made by the Sales Tax Officer were restored. But, as proposed in the notice, the demand of tax was restricted to the amount actually collected by the dealers towards the sales tax. It is this order that is assailed before us.

12. The principal contention urged by Shri Ranganadhachari, counsel for the appellants, is that there is no scope for the exercise of revisional jurisdiction in this case by the Board of Revenue, since no exception could be taken to the order of the Deputy Commissioner of Commercial Taxes.

13. To consider the validity of this argument, it is necessary to look at the terms of Section 20, in so far as they are relevant for this enquiry.

20(1). The Board of Revenue may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including Sub-section (2) of this section, for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceeding and may pass such order in reference thereto as it thinks fit.

14. The argument formulated by Sri Ranganadhachari on the basis of the language of this section is this. The order of the Deputy Commissioner was based on the law as it then prevailed. The revisional authority could judge the correctness or otherwise of the order sought to be revised only with reference to the law as it stood when the order in question was passed and not in the light of events that transpired subsequently. It was not competent for the Board to revise the order of the subordinate authority on the basis of information subsequently obtained, which information includes "knowledge even about state of law or a decision on a point of law." This argument of the learned counsel is founded on the observations made by a Bench of this Court to which one of us

was a party in *Manepalli Venkatanarayana v. State of Andhra Pradesh* [1959] 10 S.T.C: 254 and the ruling of the Supreme Court in *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*,

15. The first of the above cited cases is relied upon for the proposition that the power conferred by Section 20 of the Andhra Pradesh General Sales Tax Act is not of such wide amplitude as to enable the revising authority to correct assessments based on information subsequently gathered. On the strength of the remarks contained therein, it is urged by Sri Ranganadhachari that as the Board of Revenue relied upon the Sales Tax Laws Validation Act (VII of 1956), which was passed subsequent to the order of the Deputy Commissioner, and the rulings of the Supreme Court and of this Court, which were rendered subsequent to that order, the order of the Board of Revenue has to be quashed as being opposed to the principle laid down in the two cases cited by him.

16. *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, is pressed into service to substantiate the proposition that the word "information" used in Section 34 of the Indian Income Tax Act is not confined to factual information but includes information as to the true and correct state of law and will also cover information as to the relevant judicial decisions.

17. In our opinion, neither of the two cases has any bearing on the problem to be solved by us. In the first of the two cases cited above, i.e. *Manepalli Venkatanarayana v. State of Andhra Pradesh* [1959] 10 S.T.C. 254 the point that presented itself for determination was whether it was competent for the Deputy Commissioner of Commercial Taxes to revise orders on the basis of data gathered subsequent to the assessments made by the Department. This Court answered it in the negative in the view that the revising authority should confine itself to the material already on record and that that section (section 20) did not enable the officer concerned to travel beyond the record. The word "information" was used in the sense of material and that this is so appears from sentences following it. Therefore, this decision has no bearing on the present enquiry. Similarly, the pronouncement of the Supreme Court relied on by the learned counsel does not render him any assistance, as it is called in assistance to show that the expression "information" is of wide amplitude.

18. It follows that Section 20 could be properly invoked in this case.

19. The same point is presented by Sri Ranganadhachari in another form, namely, that as the order of the Deputy Commissioner was correct, judged in the light of the law as declared by the Supreme Court in the *Bengal Immunity Co. v. State of Bihar* [1955] 6 S.T.C. 466 it could not attract Section 20 of the Act because that order could not be characterised as being either illegal, improper or irregular. The learned counsel maintains that in order to justify an action u/s 20, the legality, propriety or regularity of the proceedings or orders have to be considered with reference to the law as existed at the relevant time and not with reference to what happened subsequently.

20. We do not think that we can accede to this proposition. It should be remembered that an appeal is only the continuation of the original proceeding and the powers of the appellate tribunal are co-extensive with those of the original tribunal. If during the pendency of the proceedings before an assessing authority, there was a change of law, it would certainly have been open to that authority to make the assessment in consonance with the changed law. That being the position, it must be competent for the appellate authority to exercise the same powers as those of the assessing authority, namely, to take note of the change of law.

21. It was faintly argued by the learned counsel for the appellants that if the appellate court has powers similar to those of the original court and could take note of events which happened subsequent to the decree appealed against, it is by virtue of Order 41, Rule 33, Civil Procedure Code, by reason of which the powers of the appellate court are co-extensive with those of the original court, and in the absence of such provision in this Act, there is no scope for invoking such a doctrine here.

22. We do not think that we can assent to this theory. It is true that Order 41, Rule 33, Civil Procedure Code, has specifically conferred such powers upon an appellate court, but de hors this provision, an appellate court is possessed of as wide powers as those of the original court, having regard to the nature of the jurisdiction of the appellate court. This is inherent in the very nature of jurisdiction vested in an appellate authority. Even under the CPC of 1882, which did not contain a provision similar to Order 41, Rule 33, it was laid down by a Bench of the Madras High Court that when an appeal was preferred from a decree of the court of first instance the suit should be deemed to continue in the court of appeal and reheard either fully or in part (*Vide Kristnama Chariar v. Mangammal* (1902) ILR 26 Mad. 91

23. In *Kanakayya v. Janardhana* (1910) ILR 36 Mad. 439 a Full Bench of the Madras High Court took note of the provisions of the Madras Estates Land Act (I of 1908) which was enacted pending the appeal which conferred occupancy rights on all tenants who were in possession on the date when the Act came into force.

24. In our judgment, the powers possessed by an appellate tribunal are similar to those given by Order 41, Rule 33, they being implicit in the very character of the jurisdiction conferred upon it.

25. The revisional jurisdiction could be equated to the appellate jurisdiction in this behalf, the only difference between the two being that in the former the exercise of the jurisdiction is circumscribed by the statute conferring such jurisdiction. The extent of such power is regulated by the statute and that is the only difference that exists between appellate jurisdiction and revisional jurisdiction.

26. Dealing with the point whether the power of revision exercised by the High

Court was part of its appellate jurisdiction, Subramania Ayyar, J., in Chappan v. Moidin Kutti (1899) ILR 22 Mad. 68 observed as follows :

Again, the power to review or revise may be confined to points of law or may extend to matters of fact also. Clearly legislative provisions as to such matters only lay down some of the limitations under which the jurisdiction is allowed to be exercised. Nor are the conditions prescribed by Section 622 for the exercise of the power of revision conferred by it, different in essence from the kind of limitations just above referred to and more commonly imposed by Legislatures on the exercise of appellate functions. But none of such limitations, however much it may circumscribe the exercise of the power, touches, as already remarked, the intrinsic quality of the power itself. Now, as Section 622 in question gives in terms to this Court the power to revise decisions of courts subordinate to it, it follows that the essential criterion of appellate jurisdiction, enunciated in the above quotation, is present in the case of proceedings held by this Court under that section and that the power exercised in such proceedings is therefore a part of the court's appellate jurisdiction.

27. The nature of the revisional jurisdiction and the difference between that and the appellate jurisdiction were discussed by a Full Bench of the same Court in Chidambara Nadar v. Rama Nadar (1937) ILR 1937 Mad. 616 It was laid down by the Full Bench that the remedy by way of revision did not differ from the right of appeal, the only difference between the two being with regard to the mode in which the power was exercised. It is thus clearly established upon authority that revisional jurisdiction has the same characteristics as appellate jurisdiction except for the fact that the former has to be exercised within certain limits imposed by the statute.

28. A similar question was discussed exhaustively by the Madras High Court in the State of Madras v. Asher Textiles [1959] 10 S.T.C. 584. There it was held by the Division Bench that the powers of an appellate court were coextensive with those of the original court, such power being inherent in the very nature of appellate jurisdiction and that this applied to revisional jurisdiction, subject to such conditions as laid down by the statute. The view taken by us accords with the doctrine of this ruling.

29. On this discussion, it follows that it was quite competent for the Board of Revenue to have recourse to Section 20 of the Act.

30. This takes us to the point whether the appellant was afforded a reasonable opportunity to file objections to the notice issued by the Board of Revenue. As appears from the above narration, the appellant was given a week's time for filing the objections. Instead of doing so, he asked for two months' time. This request was rejected obviously for the reason that if he was given the time asked for, the proceedings would have been barred by limitation. That apart, we cannot say that it was quite unreasonable on the part of the authorities concerned to require the appellant to file objections within a week. In our opinion, the time

was quite sufficient. Apart from that, even now the appellant is unable to say what objections he could raise to put Section 20 into operation, except the one he urged in the shape of the argument stated above. We, therefore, cannot accept the argument that he was denied a reasonable opportunity to show cause against the action proposed to be taken by the Board of Revenue.

31. In the result, the appeal is dismissed with costs. Advocate's fee Rs. 100.