

(2001) 04 GUJ CK 0052

In the Gujarat High Court

Case No : Special Civil Application No. 521 of 2001

RPG Life Sciences Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 27(5), 62, 67

Citation : (2001) 21 GLH 331 : (2001) 124 STC 157

Hon'ble Judges : D.A. Mehta, J;B.C. Patel, J

Bench : Division Bench

Advocate : K.H. Kaji and Manish K. Kaji, for the Appellant; K.T. Dave, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.C. Patel, J.—By filing this special civil application, the petitioner has challenged issuance of notice December 20, 2000, annexure B to the petition, conveying the petitioner that the Commissioner is seeking to exercise revisional jurisdiction.

2. Short facts briefly required to be narrated are as under : The petitioner is engaged in manufacture of pesticides since 1997 at Panoli, District-Bharuch. An application for eligibility certificate was given to the Industries Commissioner as required by the Sales Tax Incentive Scheme (1995-2000). The said application was granted on February 23, 1998 for sales tax incentive. Ad hoc eligibility certificate for Rs. 717 lacs was issued on April 23, 1999. Thereafter, Additional Industries Commissioner issued final eligibility certificate for Rs. 2,300.28 lacs on April 29, 2000.

3. In between the petitioner made an application on May 10, 1998 to the Commissioner for determination of disputed questions as provided by Section 62 of the Gujarat Sales Tax Act, 1969 (hereinafter to be referred to as "the Act"). u/s 27 of the Act, for carrying out the purpose of the Act, the State Government appointed an officer who is known as Commissioner of Sales Tax. To assist him in

execution of his functions, the State Government is authorised to appoint Special Commissioners of Sales Tax, Additional Commissioners of Sales Tax, Deputy Commissioners of Sales Tax, Assistant Commissioners of Sales Tax, officers and other officers and persons. So far as the jurisdiction is concerned, u/s 27(3) of the Act, the Commissioner shall have jurisdiction over the whole of the State of Gujarat. The Commissioner is a person exercising all the powers and is performing all the duties conferred or imposed on him by or under the Act. So far as the present case is concerned, Sub-section (5) of Section 27 being relevant is reproduced hereunder :

"27(5) : A Deputy Commissioner shall have and exercise in the area within his jurisdiction all the powers, and shall perform all the duties conferred or imposed on the Commissioner, by or under this Act ; but the Commissioner may, by order published in the Official Gazette, direct that any Deputy Commissioner, or all Deputy Commissioners generally, shall not exercise such powers or perform such duties as are specified in the order, and thereupon such Deputy Commissioner or, as the case may be, all Deputy Commissioners, shall cease to exercise those powers and perform those duties. The Commissioner may in like manner revoke any such direction and thereupon the powers or duties exercisable or performable by such Deputy Commissioner, or as the case may be, all Deputy Commissioners before such direction was issued, shall be restored to him or them."

4. In the instant case, the Commissioner delegated powers to the Deputy Commissioner (Legal) and therefore the application which was made u/s 62 of the Act was required to be dealt with by the Deputy Commissioner (Legal). It is specifically averred in the petition that the Deputy Commissioner forwards a note containing his proposed decision to the Commissioner for his approval and after receiving such approval, the Deputy Commissioner (Legal) would pass appropriate order in consonance with the approval given by the Commissioner. In the instant case, similar procedure was followed and after receiving an approval, order was made on July 18, 1998 deciding the disputed questions which were referred to in the application, copy of which is annexed at annexure A. Deputy Commissioner (Legal) while answering the questions has considered the matter in detail which has got the approval of the Commissioner. Mr. Kaji, learned counsel appearing for the petitioner-assessee has raised a question that once the Commissioner who has approved the order which has been made by the Deputy Commissioner (Legal), he cannot exercise revisional jurisdiction. As against this, learned Assistant Government Pleader, Mr. K.T. Dave, submitted that in view of the hierarchy, each officer is exercising powers independently and therefore, it would be open for the higher officer to exercise powers of revisional jurisdiction. In the instant case, according to him, it is open for the Commissioner to exercise revisional jurisdiction. We are not deciding the petition on merits, but only on the question whether in the facts and circumstances of the case, the Commissioner had jurisdiction u/s 67 of the Act once the delegatee has exercised powers. Section 67 of the Act reads as under :

"67. Revision : [R. 63 to 68 : forms 47, 48, 49]--

(1) Subject to the provisions of Section 66 and to any rules which may be made in this behalf,--

(a) the Commissioner on his own motion within three years or on application made to him within one year from the date of any order passed by any officer appointed u/s 27 to assist him, may call for and examine the record of any such order and pass such order thereon, as he thinks just and proper within twelve months, from the date of service of notice for revision ;

(b) the Tribunal, on application made to it against an order of the Commissioner [not being an order passed under Sub-section (2) of Section 65 in second appeal or under Clause (a) in revision on an application] within four months from the date of the communication of the order may call for and examine the record of any such order, and pass such order thereon as it thinks just and proper.

(2) Where an appeal lies u/s 66 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application :

Provided that the proceedings in revision may be entertained upon an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring an appeal against the order in respect of which an application for revision is made.

(3) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.

(4) Where the Commissioner or the Tribunal rejects any application for revision under this section, the Commissioner or, as the case may be, the Tribunal shall record the reasons for such rejection."

The contention raised by Mr. Kaji, learned counsel, for the petitioner, is that the Commissioner has delegated powers which he had, and, once delegatee has exercised powers, he has exercised power of a Commissioner. The order which a delegatee has passed is in effect an order made by the Commissioner himself. When an officer exercises power as Commissioner, the question is whether Commissioner can exercise power to revise the same order ? It is not possible to agree with the contentions raised by the learned Assistant Government Pleader that under the Act there is hierarchy and further proceeding is permissible in view of the scheme of the Act. It may be that considering Section 27 of the Act, Deputy Commissioner or the Assistant Commissioner may be subordinate to the Commissioner but so far as the powers are concerned, they inhere in the Commissioner and they can be exercised qua the orders of the officers who are appointed by the Commissioner u/s 27 of the Act. Powers are either exercised by the Commissioner himself or the Deputy Commissioner or the Assistant Commissioner as the case may be. In the instant case, had the order not been approved by the Commissioner, the matter would have been different. Once the

Commissioner himself has approved the order, he himself cannot exercise revisional jurisdiction. When the order is made with approval, it is his own order though appears to have been made by the Deputy Commissioner.

5. Learned counsel Mr. Kaji, appearing for the petitioner invited our attention to a decision of the apex Court in the case of AIR 1997 3123 (SC) . In paras 7 and 8 of the said judgment, the apex Court have pointed out as under :

"7. A mere look at this section shows that Custodian-General can call for any record of proceeding in which any Custodian has passed an order and that exercise has to be undertaken for the purpose of satisfying the Custodian-General about the legality or propriety of such an order sought to be revised. It is axiomatic that when the impugned order of the Custodian was already approved by the Custodian-General's delegate, the very same delegating authority, namely, the Custodian-General could not undertake the exercise of being satisfied whether such an approved order of his delegate was legal or proper as that would amount to an exercise of review power which does not flow from the four corners of Section 27 of the Act.

8. Under these circumstances, the revision application moved before the Custodian-General was clearly incompetent. It was rightly held not maintainable by the Custodian-General and consequently, it is not possible to agree with the view which appealed to the High Court in the impugned judgment that the Custodian-General could still revise such an order. On the scheme of the Act, such a conclusion is clearly unsustainable."

The present case on our hand is almost similar to the above case decided by the apex Court. In view of these peculiar facts and circumstances of the case, it is required to be stated that in that case before the apex Court order of Custodian was approved by the Custodian-General's delegate. The court pointed out that the Custodian-General was right in holding that before him proceedings were not maintainable. Once authority has approved the order, it would not be appropriate for the authority approving the order to exercise powers of revision. In this view of the matter, the petition is required to be allowed on this particular ground only. The petition is allowed. Rule is made absolute accordingly with no order as to costs.