

(1971) 09 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No's. 3217 to 3220 of 1969

S.H. Benson (India) Private Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 16-09-1971

Acts Referred:

Citation : (1973) 30 STC 228

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : C.S. Chandrasekhara Sastri and D. Srinivasan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—In this batch of writ petitions, the question involved is a simple one and I shall state briefly the facts. The petitioner, which claims to be an advertising agent, its work consisting of rendering service to various persons on being appointed as their advertising consultants, says that it is not a dealer within the meaning of the Madras General Sales Tax Act, 1959, or the Central Sales Tax Act, 1956. It would appear, however, that the petitioner voluntarily submitted returns for the years commencing from 1961-62 and ending with 1965-66. The petitioner was assessed on its own returns. It appears, that for the years 1961-62 and 1962-63 the petitioner filed appeals questioning the assessments both on the ground that it was not a dealer and also on the ground that the assessment orders were wrong in other particulars. But, for the years commencing from 1963-64 and ending with 1965-66, the petitioner had not even filed appeals before the appellate authority and took the assessment orders as final. Writ Petitions Nos. 3217, 3218 and 3219 of 1969 deal with the assessments under the Central Sales Tax Act for the years 1965-66, 1963-64 and 1964-65, respectively. W. P. No. 3220 of 1969 relates to the assessment order made under the Madras General Sales Tax Act for the year 1965-66. As already stated, for the latter four years, the petitioner chose not to challenge the assessments but

took them as valid, legal, regular and proper orders which could not be challenged in the higher hierarchy and which have to be obeyed by It. It is not even disputed that the tax relating to these years has been paid, and the subject-matter of each of these assessment years in so far as it concerned the petitioner was closed for all purposes. In relation to the earlier years, the Tribunal, which was called upon to decide the status of the petitioner, went into the question and the materials placed before it and found that the petitioner was not a dealer and, therefore, set aside the assessment orders for the years 1961-62 and 1962-63. Thus enlightened by the orders of the Tribunal, the petitioner filed applications u/s 55 of the Madras General Sales Tax Act and Rule 5(9) of the Central Sales Tax Rules before the appropriate authority for rectification of an alleged error apparent in the orders of assessment, which are the subject-matter of the writ petitions before me. The authority rejected the said petitions quoting the observation of this court in C.M.P. Nos. 1329 to 1337 of 1969 in unnumbered writ petitions then pending in this court. As against the order, whereby the respondent as the statutory authority failed to entertain the applications for rectification, these writs by way of mandamus are asked for.

2. The learned counsel for the petitioner would vehemently contend that even though the petitioner took the original assessment orders for the relative assessment years in question as final and conclusive and binding on it, yet so long as the applications for rectification are within time and as provided for u/s 55 of the Act, they have to be considered by the statutory authority and dealt with accordingly. Though he would state that the provocation for the filing of the applications u/s 55 is not any decision of a competent court as such, such as the High Court or the Supreme Court, yet he had to concede that these applications were filed only after the Tribunal disposed of the petitioner's appeals for the years 1961-62 and 1962-63. According to the learned counsel, the order of the Tribunal is only an accidental intervention, and what the petitioner is seeking is the performance of a public duty on the part of the respondent.

3. Though the argument is very attractively put, yet it is clear that the intelligence gained by the petitioner to approach the authorities is attributable to the order of the Tribunal and nothing else. This is so because the petitioner did not at any time raise any ground or objection as to the validity of the orders of assessment passed in the relative years in question and they have become final in the eye of law. One could have at least entertained any such objection in an application for rectification provided the petitioner did have the said objection in mind at the time when the orders of assessment were passed or at any time thereafter, by filing appeals against them and making the above as a ground of appeal. As I have already stated, the petitioner never took up this objection that it was not a dealer within the meaning of either the Madras General Sales Tax Act or the Central Sales Tax Act. On the other hand, it voluntarily submitted returns for all the years. Curiously enough, for the years under consideration it took a different stand other than that taken for the years 1961-62 and 1962-63 and would not even file appeals against the said orders and pursue. In a matter like

this, when a person is called upon to pay a tax under a taxing statute, the first impulse of his should be to resist the tax on the ground that he is not liable to pay it at all. The second thing which a person placed in the situation as the petitioner would normally do is to place such material before the assessing authority to contend that his status is such that he cannot be characterised as a dealer and, therefore, he is beyond the pale of taxation. The petitioner in the instant case did not even raise any formal protest before the assessing authority, nor did it pursue the matter in appeal before the higher hierarchy, so that it could get relief from them on the ground that it is not at all liable to tax. In such a situation, I have expressed the view in W. P. No. 4013 of 1967 *Easun Engineering Co. Ltd. v. Sales Tax Appellate Tribunal, Madras*, and Anr. [1972] 29 S.T.C. 378 as follows :

In a given case where the assessee fails to advert to a particular circumstance or detail, and if such an invitation for a decision on the facts so placed was necessary but was not undertaken by the assessee, then it is not the duty of the Appellate Tribunal to make a roving enquiry of the record and decide for itself issues which were not thought of or argued by the assessee before it.

4. No statutory functionary can ever be called upon at any point of time to decide something which it is not called upon to do by the person approaching it. It is only in circumstances where the aggrieved person raises an issue and provokes a quasi-judicial or a judicial Tribunal to decide the same, that the decision rendered by that tribunal is liable to be scrutinised by the same authority at a later stage, if it is called upon to rectify it on the ground that in the earlier decision a mistake has crept in. But, if there was no provocation and if the record is silent about any such ground having been raised at all, for reasons best known to the assessee, then such an assessee cannot properly invoke Section 55 of the Madras General Sales Tax Act, which is similar to Rule 5(9) of the Central Sales Tax Rules, which says :

An assessing authority or...may, at any time, within three years from the date of any order passed by it, rectify any error apparent on the face of the record.

5. The error that is referred to in Section 55 is an error which is apparent in the order of that authority. In the instant case, no such error appears, because the assessing authority was not called upon to decide whether the petitioner was a dealer or not. Therefore, the record would not contain any apparent error which is liable to be rectified u/s 55(1) of the Madras General Sales Tax Act. I am unable to agree that a person who is indiligent and who does not raise a ground challenging the process of assessment itself can have a right to take advantage of the provision, namely, Section 55(1), though within the time prescribed and contend to the contrary, and particularly maintain that the very assessment proceedings are erroneous because he does not satisfy the status of a dealer. That would be to keep every order of assessment in suspense for a period of three years and in no case or circumstance such orders can be treated as final orders by the revenue, notwithstanding the fact that the petitioner has not filed

an appeal or taken the matter up further before the higher hierarchy. That would be an extraordinary state of affairs, if accepted. It was this view which was maintained by Veeraswami, J., (as he then was) in C. M. P. Nos. 1329 to 1337 of 1969, the sum and substance of which has been extracted by the respondent himself, in the impugned order.

6. I have already referred to the orders of the Tribunal for the years 1961-62 and 1962-63. I am of the view that but for the orders of the Tribunal in which the question of the status of the petitioner was raised expressly and was ultimately decided in favour of the petitioner, there would have been no cause for the petitioner to file the present rectification applications at all. It cannot be said that it discovered that it was not a dealer for the first time only in the year 1968 when the petitioner submitted the applications for rectification. It is seen from the applications themselves that the basis, provocation and the reason for filing the applications for rectification is the order of the Sales Tax Appellate Tribunal for the years 1961-62 and 1962-63. It is in this view, I have stated that if the contention is accepted, every assessment order ought to be treated only as a nebulous order, unless the period of three years, provided for u/s 55(1) , expires by efflux of time. This is neither the intendment of the Act nor the purport of Section 55(1).

7. For the above reasons, these writ petitions are dismissed. No costs.