

(1977) 10 MAD CK 0029
In the Madras High Court
Case No : Writ Petition No. 932 of 1972

Sha Bhoormull Buboothmull Jain	Vs	APPELLANT
Joint Commercial Tax Officer, Sowcarpet Division I		RESPONDENT

Date of Decision : 28-10-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 16

Citation : (1978) 41 STC 400

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : K.C. Rajappa, for the Appellant; M.V.B. Baskaran, for Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—In this writ petition, the petitioner prays for a writ of prohibition prohibiting the respondent from taking any further proceedings in pursuance of a notice dated 30th March, 1972, proposing to revise the assessment under the Tamil Nadu General Sales Tax Act for the year 1966-67.

2. The petitioner is an assessee on the file of the respondent and for the year 1966-67 he had been originally assessed at a taxable turnover of Rs. 98,453.04 by an order of assessment dated 12th January, 1968. Subsequently, the petitioner was served on 3rd April, 1972, with a notice dated 30th March, 1972, proposing to revise that assessment on the ground that certain alleged transactions of sale had been omitted to be taxed. The petitioner by a requisition dated 17th April, 1972, asked for extension of time for filing reply to the said notice dated 30th March, 1972. Since the petitioner apprehended that the assessing authority may finalise the revised assessment without waiting for its objections, it approached this court seeking a writ of prohibition.

3. According to the petitioner the proposed revision of assessment will be barred by time as Section 16 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter

referred to as the Act), provides for a period of 5 years for revision of assessments and the service of notice on the petitioner on 3rd April, 1972, proposing to revise the assessment for the year 1966-67 was beyond the said period of 5 years. In this case, the question is how far the petitioner's objection is tenable.

4. The assessment in question is with reference to the year 1966-67 and a revision of the assessment can be made before 31st March, 1972. In this case, the notice issued proposing revision is dated 30th March, 1972, though it was served on the petitioner on 3rd April, 1972. According to the petitioner, the date of service of notice on the petitioner is the relevant date for determining the question of limitation while, according to the respondent, the relevant date is the date of issue of the notice by the assessing authority, who proposed to revise the assessment. Section 16 of the Act is in these terms :

16. Assessment of escaped turnover.-(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of Sub-section (2), at any time within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

5. According to the above section, the assessing authority can determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable on such turnover within a period of 5 years from the expiry of the year to which the tax relates. Similar question arising under the Travancore-Cochin General Sales Tax Rules, 1950, came up for consideration before the Supreme Court in *Sales Tax Officer v. Sudarsanam Iyengar & Sons* [1970] 25 S.T.C. 252. In that case, it was contended by the assessee that the actual revision of assessment has to be made before the period allowed for making a revision of assessment. Rejecting that contention, the Supreme Court pointed out that it is enough if proceedings for assessment of turnover which has escaped assessment to tax are initiated within the time prescribed, that it is not necessary that the final order of assessment should be made within that period and that the word "assessment" is a comprehensive word denoting the entirety of proceedings which are taken with regard to it. The said decision was followed by a Division Bench of this Court in *Anglo French Textiles Limited, Pondicherry v. State of Tamil Nadu* (W. P. Nos. 3939 to 3941 of 1971), wherein it was held that no question of limitation could arise in respect of the assessment year 1963-64, where the pre-assessment notice had been issued within the period of five years. In *Additional Assistant Commissioner of Sales Tax v. Firm Jagmohandas Vijay Kumar* [1970] 25 S.T.C. 74, the Supreme Court considered the scope of the provisions of Section 10 of the Madhya Bharat Sales Tax Act, 1950, under which the assessing authority was empowered to assess the escaped turnover within a

period of three years next succeeding that to which the tax related. The Supreme Court observed in that case that the period of limitation contemplated by Section 10 of the Act will not be a bar to revise the assessment if proceedings for assessment had been initiated in accordance with Section 8(1)(a) or (b) of the Madhya Bharat Sales Tax Act, 1950 and that it is not necessary that the proceedings for assessment should come to a close within the period referred to in Section 10. Sections 8 and 10 of the Madhya Bharat Sales Tax Act correspond to the provisions of Sections 12 and 16 of the Tamil Nadu General Sales Tax Act, 1959. Therefore, the observations of the Supreme Court will squarely apply to a revision of assessment u/s 16 of the Tamil Nadu Act.

6. The question therefore is whether in this case the proceedings for revision of assessment had been initiated within 31st March, 1972, when the 5 years period came to an end. In this case, the notice of assessment proposing revision has been issued by the respondent on 30th March, 1972, though it was served on the petitioner only on 3rd April, 1972. Once the notice has been issued by the respondent, there is initiation of reassessment proceedings and the initiation does not depend on the date when the assessee is served with the notice. I am not in a position to agree with the learned counsel for the petitioner that the date of service should be taken as the date of initiation of reassessment proceedings and not the date of issue of the notice by the assessing authority. In this case, notice has been issued on 30th March, 1972. The proceedings for reassessment should be taken to have been initiated on 30th March, 1972, which is within the period contemplated by Section 16 of the Tamil Nadu General Sales Tax Act, 1959. Therefore, the proposed reassessment cannot be said to be barred by limitation. If the reassessment proceedings are not barred by time, then the petitioner has to agitate all the factual questions before the assessing authority. Since no assessment has yet been made, it is open to the petitioner to put forward its objections to the assessing authority before he passes a final order in the reassessment proceedings.

7. Since the petitioner has not yet filed its objections, the assessing authority will consider the objections, if any, filed by the petitioner within four weeks from the date of the receipt of records and proceed to make a final order of assessment. Subject to this direction, this writ petition is dismissed. There will be no order as to costs.