

(1972) 01 PAT CK 0009
In the Patna High Court
Case No : Tax Case No. 55 of 1966.

Shree Ganesh Stores of Deoghar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-01-1972

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 18(6), 25(3)

Citation : (1972) 29 STC 726

Hon'ble Judges : Shiveshwar Prasad Sinha, J;Shambu Prasad Singh, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; S.K. Jha, G.P., for the Respondent

Judgement

Shiveshwar Prasad Sinha, J.—This court called for a statement of the case u/s 25(3) of the Bihar Sales Tax Act, 1947 (hereinafter referred to as "the Act") on the undermentioned question :

Whether the order of the Commissioner of Commercial Taxes, Bihar, dated 9th December, 1957, holding that the limitation envisaged in the proviso to Section 18(6) of the Bihar Sales Tax Act, 1947, has no application to the facts of the present case, is correct in law and has been rightly affirmed by the Tribunal.

2. The facts relevant to the issue are that the petitioner, a registered dealer carrying on business of retail sale of cloth in Deoghar, was assessed under the Act to pay sales tax for the second to fourth quarters of 1947-48 and first to fourth quarters for 1948-49 by assessment orders dated the 11th October, 1949. The gross turnover for each quarter was enhanced on certain grounds which is not necessary to be mentioned here. The Assistant Commissioner of Sales Tax, Bihar, to whom appeals were preferred against those assessments allowed the assessee's contention in part in so far as it concerned the assessment of the turnover. The order passed by the Assistant Commissioner was taken up in revision before the Commissioner of Bhagalpur Division, who, by his order dated the 13th November, 1950, while upholding the order of the Assistant

Commissioner in other respects, held that the period from the 5th February, 1948, up to the 30th November, 1948, should be treated as the decontrolled period and the rest should be treated as the controlled period. With this direction, he remanded the cases to the lower court. In pursuance of the said order of the Commissioner of Sales Tax, the Superintendent of Sales Tax, Santhal Pargana, reframed the assessment by an order dated the 28th November, 1952. It is not necessary to mention the turnover or the tax which was assessed by the Superintendent of Sales Tax after the remand. Now this order of assessment was challenged in appeal before the Assistant Commissioner of Sales Tax, Bhagalpur, on the ground that it was time-barred. This plea was raised on the ground that the period of limitation for passing an order of assessment, in terms of the proviso to Sub-section (6) of Section 13 of the Act was only two years. Since the impugned order of the Superintendent of Commercial Taxes had been passed beyond two years, from the order of the Commissioner, it was time-barred. The Assistant Commissioner held that the impugned order of the Superintendent of Commercial Taxes had not been passed beyond two years of the order of the Commissioner and consequently, he dismissed the appeal. The dealer then moved the Deputy Commissioner of Sales Tax, Bihar, who by his order dated the 25th January, 1954, observed that if the Commissioner's order was really dated the 13th November, 1950, the second revised assessment order dated the 28th November, 1952, would cease to have any force in the eyes of law. The Commissioner of Sales Tax then suo motu revised the said order dated the 25th January, 1954, of the Deputy Commissioner of Sales Tax, Bihar. He held that the question of limitation as provided in the proviso to Section 13(6) of the Act did not apply to the case in question. The Commissioner observed :

In carrying out the directions of the superior tribunal the inferior tribunal does not initiate any proceeding as such, but merely carries out the directions of the superior tribunal. Thus in cancelling an order of assessment as contrary to law, a superior tribunal does not cancel the original initiation of the proceeding but merely the final order. After remand, the original proceedings are completed avoiding the previous error and in accordance with law as interpreted by the superior tribunal. In the instant case returns were filed and on the basis of the same the proceedings started. The assessment to be made after remand did not require the filing of a fresh return or the calling for another return. Thus, the order of the Divisional Commissioner directing merely the assessment on fresh calculation, has been done in this case, was not a direction to initiate a fresh proceeding for assessment. As such, the limitation envisaged in the proviso to Section 13(6) has no application to remand assessment.

The dealer then moved the Board of Revenue, which set aside the aforesaid order of the Commissioner and remanded the case to him by its resolution dated the 12th April, 1959. The Commissioner of Sales Tax then came up in reference before this court which was numbered as M.J.C. No. 491 of 1960. This court by its order dated the 17th August, 1963, passed in the said M.J.C. No. 491 of 1960 reversed the order of the Board as a result of which the matter had to be heard

by the Board of Revenue on merits of the case. By this time, however, the Sales Tax Tribunal had come into being and the matter was then heard by the said Tribunal which upheld the order of the Commissioner on merits against which the present reference is now before this court.

3. Mr. Kamanugrah Prasad, appearing on behalf of the dealer, submitted that in terms of the proviso to Section 13(6) of the Act, the reassessment made on the 28th November, 1952, was barred. According to Mr. Prasad, even for the purposes of reassessment, the proceedings had to be initiated as required under the said provision of the Act and such initiation under the terms of the said provision has to be within two years from the date of the disposal of the appeal, revision, review or reference directing fresh assessment. Referring to the facts of the instant case, he submitted that admittedly the impugned assessment having been passed on the 28th November, 1952, was beyond two years from the date of the Commissioner's orders, calling upon the Sales Tax Officer to make a fresh assessment. It was, therefore, submitted that the assessment ought to be held as time-barred.

4. Mr. Shushil Kumar Jha appearing on behalf of the State countered the arguments made on behalf of the dealer by submitting that no question of initiation of a proceeding arises where it was a question of making an assessment under the directions of the superior authority. The initiation, it was submitted, had already been made when the dealer filed its return, and that such initiation continued until the final assessment was made. It was, therefore, submitted that the question of limitation under the terms of the proviso of Sub-section (6) of Section 13 of the Act did not arise.

5. In my opinion, the argument made on behalf of the State is well-founded and must be accepted. The proviso to Section 13(6) of the Act reads as under:

Provided that no proceeding for assessment of the tax due from a dealer in respect of any period shall be initiated later than four years from the expiry of such period or later than two years from the date of disposal of the appeal, revision, review or reference directing fresh assessment.

For understanding the proper connotation of the term "initiation" I have got the authority of the Supreme Court in the case of Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, wherein their Lordships while dealing with the meaning of the term "initiate" observed :

In the case where a return has been made, but the Commissioner has not accepted it, and has issued a notice for enquiry, the assessment proceedings will certainly be pending till the final assessment is made.

In other words, their Lordships held that a proceeding will be deemed to have been initiated when either the return is voluntarily filed by the dealer, or the Commissioner not being satisfied with the return has issued a notice to the dealer in order to make the assessment. Now in the instant case, admittedly the

dealer had filed the return in respect of the quarters following upon which the assessments were made and that, therefore, the proceedings for assessment got initiated at the very same time when the returns had been filed by the dealer. There can, therefore, be no question of a second initiation when on the same return an assessment had been reframed on the basis of certain directions given by the superior authority of the sales tax department.

6. There is yet another aspect of the matter.

Section 24 of the Act lays down the procedure with regard to appeal, revision and review. Sub-section (3) reads as under:

(3) Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under Sub-section (1), may-

(a) confirm, reduce, enhance or annul the assessment or penalty, if any, or both, or

(b) set aside the assessment or penalty, if any, or both and direct the assessing authority to pass a fresh order after such further inquiry as may be directed, or

(c) in case of an appeal against an order u/s 14B, pass such order as it may think fit."

Obviously in terms of this section, the; appellate authority may dispose of an appeal in two ways, either it may annul the assessment or it may set aside the assessment after giving directions as to the manner in which it was to be framed. Where the assessment is annulled, it can be said that the same may have to be made de novo in which case notwithstanding the return filed by the dealer, the Superintendent of Sales Tax may have to issue notice in order to reframe the assessment. Such an assessment will be a fresh assessment and in that case the Sales Tax Officer may have to take all the proceedings which are required for framing a fresh assessment. Where, however, the assessment has been set aside with a direction to make it in a particular manner, the Sales Tax Officer is left with no volition of his own regarding the assessment, but he has to follow the direction as given by the superior authority. In such a case, there is no question of initiation of any proceeding for making the assessment. The assessment is already made and it is only the corrections which the assessing officer has now to make as per direction given by the superior authority. Thus in either view of the matter where an assessment has been made on the basis of the returns filed by a dealer, and if such assessment is set aside for being made afresh, in my opinion, the period of limitation as laid down under the proviso to Section 13(6) of the Act will have no application.

7. In the result, the question referred for our opinion is answered in the affirmative. The assessee to pay costs and hearing fee Rs. 150 only.

Shambu Prasad Singh, J.

I agree. On the facts of the case there can be no doubt that the Commissioner by

his order dated the 13th November, 1950, did not direct any fresh assessment, nor there could be any initiation of a proceeding subsequent thereto. In the circumstances, the question referred to us has to be answered in the affirmative.