(2010) 03 GUJ CK 0072

In the Gujarat High Court

Case No : Tax Appeal No. 2323 of 2009.

Shyamal Pharma APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 27, 27(6), 30AA, 30AA(2), 40(1)

Citation : (2010) 2 GLH 620 : (2010) 31 VST 525

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Tanvish U. Bhatt, for Wadia Ghandy and Co, for the Appellant; Maithili Mehta, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—Heard Mr. Tanvish U. Bhatt, learned advocate for the appellant and Ms. Maithili Mehta, learned Assistant Government Pleader for the respondents.

2. Admit.

3. The following substantial question of law arises for determination:

Whether the Gujarat Sales Tax Tribunal was justified in holding that the Sales Tax Officer is presumed to have necessary jurisdiction to make orders under Sub-section (2)(a) of Section 30AA of the Gujarat Sales Tax Act, 1969 in absence of any order having been placed on record to show that the powers of the Commissioner of Sales Tax had actually been delegated to the Sales Tax Officer u/s 30AA of the said Act ?

4. In the light of the limited controversy involved in the present appeal, with the consent of the learned advocates for the parties, the matter is taken up for final hearing today. The learned Assistant Government Pleader is directed to waive notice of admission.

5. Since basic facts are not in dispute, it is not necessary to set out the facts in detail. The appellant herein was a registered dealer holding a valid registration under the provisions of the Gujarat Sales Tax Act, 1961 (the Act) and the Central Sales Tax Act, 1956. The concerned Sales Tax Officer issued notice to the appellant directing him to the pay tax for the period July, 2002 to November, 2002. As the appellant failed to pay the tax, the Sales Tax Officer issued show-cause notice u/s 30AA of the Act and vide order dated March 25, 2003, cancelled the registration of the appellant under both the Acts with effect from July 1, 2000. The appellant carried the matter in appeal before the Assistant Commissioner of Sales Tax who, vide order dated October 14, 2003, dismissed the appeal. The appellant carried the matter in second appeal before the Gujarat Sales Tax Tribunal. Before the Tribunal, the appellant raised a contention regarding lack of jurisdiction on the part of the Sales Tax Officer to exercise powers u/s 30AA of the Act. The Tribunal, vide the impugned judgment dated September 28, 2004, dismissed the appeal.

6. The appellant thereafter filed a miscellaneous application seeking review of the order dated September 28, 2004, inter alia, indicating that the aspect of non-existence of jurisdiction of Sales Tax Officer is not dealt with by the Tribunal. The Tribunal vide order dated January 30, 2006 dismissed the application. Subsequently, the appellant moved a rectification application before the Gujarat Value Added Tax Tribunal which came to be dismissed as not maintainable.

7. Mr. Tanvish U. Bhatt, learned advocate for the appellant, submitted that the powers u/s 30AA of the Act are vested in the Commissioner of Sales Tax. The Sales Tax Officer could have exercised powers u/s 30AA only if such powers had been delegated to him u/s 27(6) of the Act. It was submitted that in absence of any such delegation of powers in favour of the Sales Tax Officer, the order cancelling registration was without jurisdiction and as such the Tribunal had erred in dismissing the appeal preferred by the appellant. It was submitted that the presumption drawn by the Tribunal that official acts are deemed to have been done properly is misconceived in absence of any such power being vested in the Sales Tax Officer.

8. On the other hand, Ms. Maithili Mehta, learned Assistant Government Pleader, has supported the order of the Tribunal. However, on facts, the learned Assistant Government Pleader has stated, on instructions, that subsequent to the order dated July 8, 1994 delegating the power of the Commissioner u/s 30AA of the Act to Assistant Commissioners of Sales Tax, no other order has been made under Sub-section (6) of Section 27 of the Act delegating the powers of the Commissioner to any other authority u/s 30AA of the Act.

9. In the present case, the entire controversy lies in a very narrow compass. The only issue which arises for consideration is as to whether the concerned Sales Tax Officer had necessary jurisdiction to pass the order u/s 30AA of the Act cancelling the registration of the appellant.

10. Section 30AA of the Act deals with cancellation of certificate of registration in certain circumstances. Section 30AA, insofar as is relevant for the purpose of the present appeal reads thus:

(2)(a) Where a dealer does not furnish declaration or return for three or more consecutive periods in contravention of Sub-section (1) of Section 40, the Commissioner shall serve on such dealer in the prescribed manner a notice requiring him on or before the date specified therein to furnish or cause to be furnished declarations or returns for the periods specified therein.

(b) Where a dealer fails to furnish declarations or returns as required by the notice served upon him under Clause (a), before the expiry of the date specified therein, the Commissioner shall, without prejudice to any penalty leviable on such dealer under this Act, cancel the certificate of registration of such dealer:

Provided that notwithstanding the cancellation of a certificate of registration under this Sub-section, the liability of the dealer shall continue in respect of any tax, penalty or interest for any period prior to the date of the order of the Commissioner cancelling the certificate of registration.

11 On a plain reading of the aforesaid provision, it is apparent that the powers u/s 30AA are vested in the Commissioner, Sales Tax. Section 27 of the Act makes provision for "sales tax authorities". Sub-section (6) of Section 27 provides that Deputy Commissioners, Assistant Commissioners, Sales Tax Officers and other officers shall within their jurisdiction exercise such of the powers and perform such of the duties of the Commissioner under the Act, as the Commissioner may, subject to such conditions and restrictions as the State Government may by general or special order impose, by order in writing delegate to them either generally or as respects any particular matter or class of matters. In exercise of powers under Sub-section (6) of Section 27 of the Act, the Commissioner of Sales Tax, Gujarat State, Ahmedabad, vide order dated July 8, 1994 (annexure E to the appeal), has delegated to all Assistant Commissioners of Sales Tax, the powers and duties of the Commissioner u/s 30AA of the Gujarat Sales Tax Act. A perusal of the said order makes it clear that powers u/s 30AA have been delegated by the Commissioner of Sales Tax to all Assistant Commissioners of Sales Tax alone.

12. As can be seen from the impugned order of the Tribunal, insofar as the question of jurisdiction is concerned, the Tribunal was of the view that the issue regarding jurisdiction had not been raised in the first appeal and was raised for the first time in the second appeal before the Tribunal. According to the Tribunal, in view of the provisions of Sub-section (6) of Section 27, it was permissible for the Commissioner of Sales Tax to delegate powers under the Act to Assistant Commissioner of Sales Tax, to Sales Tax Officers and other officers. That the appellant has not been in a position to produce any special or general order showing that the Commissioner of Sales Tax has delegated such powers to Assistant Commissioners of Sales Tax or that there is no delegation of such

powers to the Sales Tax Officer. The Tribunal held that in the circumstances, in absence of any special or general order passed by the Commissioner of Sales Tax delegating powers u/s 30AA having been placed on record, when the Sales Tax Officer had passed the order u/s 30AA, it was required to be presumed that he had the necessary jurisdiction, as official acts must be deemed to have been regularly performed.

13. Insofar as raising the issue of jurisdiction for the first time before the Tribunal is concerned, it is well-settled that the issue regarding jurisdiction being a basic issue can be raised at any point of time. Once there is a statutory provision specifying the mode and manner of delegating a power, and the authorities, to whom such delegation is permissible, no presumption can be made of a valid delegation. Similarly, the onus was wrongly cast on the assessee by the Tribunal. Besides, considering the statement made by the learned Assistant Government Pleader that after the aforesaid order dated July 8, 1994, no other order delegating the powers of the Commissioner u/s 30AA of the Act has been made, it is apparent that the Commissioner of Sales Tax has not delegated his powers u/s 30AA of the Act to the Sales Tax Officer. As a necessary corollary it follows that in absence of any delegation of powers as contemplated under the Act, the Sales Tax Officer had no jurisdiction to make any order u/s 30AA of the Act. In the circumstances, the order dated March 25, 2003 made by the concerned Sales Tax Officer, cancelling the registration of the appellant under both the Acts is clearly beyond his jurisdiction and as such cannot be sustained.

14. In the aforesaid factual matrix, the question is answered in the negative, that is, the Tribunal was not justified in holding that the Sales Tax Officer is presumed to have necessary jurisdiction to make orders under Sub-section (2)(a) of Section 30AA of the Gujarat Sales Tax Act, 1969 (the Act) in absence of any order having been placed on record to show that the powers of the Commissioner of Sales Tax had actually been delegated to the Sales Tax Officer u/s 30AA of the Gujarat Sales Tax Act, 1969. The Impugned orders passed by the Tribunal as well as the lower appellate authority and the Sales Tax Officer are hereby quashed and set aside. The appeal is accordingly allowed, with no order as to costs.