
(1991) 04 MAD CK 0017

In the Madras High Court

Case No : Tax Case (Revision) No's. 906 to 908 of 1981

S.M.K. Sons

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 16(1), 16(2), 16(4), 31

Citation : (1991) 04 MAD CK 0017

Hon'ble Judges : Raju, J;A.S. Anand, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Raju, J.—The petitioners are the assesseees and they are manufacturers and dealers in perfumes at Kumbakonam. In all the revision petitions,

the assessee is one and the same and in each one of the revisions, the claim in respect of a particular and separate assessment year is involved. The

assessment years concerned are 1973-74, 1974-75 and 1975-76. On the basis of records recovered during the inspection of the place of

business of the assessee by the Intelligence Wing on 28th July, 1978 and finding certain wilful suppression of the sales turnover, the assessing

authority initiated proceedings u/s 16(1) of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as "the Act" in respect of three

assessment years in question. The turnover that was proposed to be brought to tax and the penalty sought to be levied for the assessment years in

question are as hereunder :

1973-74 1974-75 1975-76

Rs. Rs. Rs.

Escaped turnover 90,555 93,500 96,915

Tax 3,169 3,740 3,877

Additional tax 158 187 194

Penalty u/s 16(2) of

the Act 4,753 5,610 5,815

After giving due opportunity, by orders dated 15th December, 1979, the proposals were confirmed and assessments made on that basis.

2. The petitioners filed three appeals before the first appellate authority objecting to the assessment on the escaped turnover in question. While

considering the appeals, the appellate authority found that the assessing authority, at the time of assessing the escaped turnover, did not properly

analyse the accounts, that huge undisclosed purchases and their impact on the actual extent of their business activities were omitted to be

considered and consequently it required a further detailed probe and proper working out of the quantum of turnover actually suppressed by the

petitioners. On that view, while setting aside the order of the assessing authority dated 15th December, 1979, the appellate authority directed the

assessing authority as follows :

The revising authority is directed to find out the sources of purchases out of which damaged goods to an extent of more than in the regular

accounts. He is also directed to make further investigation to find out to what extent the turnover is suppressed by the appellants, by proper

enquiry. With the materials available with the revising authority, he can investigate this and can come to a proper conclusion.

In fine, all the assessments are remanded.

Aggrieved, the petitioners filed appeals before the Tribunal and by a common order dated 28th March, 1981, the Tribunal confirmed the orders of

the appellate authority and rejected the appeals. The Tribunal also felt that having regard to the suppression of large quantities of scented sticks

purchased by the petitioners in the course of their business, a proper and thorough verification of the accounts and enquiry would only reveal the

correct position and the actual turnover that had really escaped assessment. The order of the Tribunal is challenged in the above tax revision cases.

3. Mr. C. Natarajan, learned counsel appearing on behalf of the petitioners, contended that the order of remand by the first appellate authority and

its confirmation by the Tribunal was contrary to law, inasmuch as the limitation for reassessment u/s 16 of the Act was barred and no such direction

could have been issued by the appellate authority under the pretext of passing an order of remand. It was also contended that once the very

material relied upon by the department did not show any suppression of turnover otherwise taxable, the order of remand was beyond the

jurisdiction of the appellate authority and such remand for collateral purposes cannot be sustained in law. It was also contended that where the

appellate authority could not itself enhance the assessment and where the revision or reassessment of the escaped assessment itself would be

impermissible for the assessing authority on account of the period of limitation stipulated in section 16(1) of the Act, it would not be within the

jurisdiction of the appellate authority to confer the assessing authority with such powers and consequently the order of the Tribunal confirming that

of the appellate authority calls for interference in the above revisions.

4. The learned Government Advocate vehemently contested the claim of the petitioners and submitted that it was well within the powers of the

appellate authority to issue such directions as the appellate authority thinks fit while ordering remand of the case and that no exception could be

taken to the course adopted by the appellate authority and the Tribunal in this case.

5. On behalf of the petitioners, it was submitted that the power to assess the escaped turnover vests with the assessing authority subject to certain

conditions and the appellate authority exercising powers u/s 31 of the Act can neither do it itself nor can it direct the assessing authority to do

something which the appellate authority or the assessing authority cannot themselves do. In other words, it was also submitted that the order of

remand can only have the case or proceedings restored to the file of the assessing authority to the stage at which it was prior to the passing of the

order and that being the position it would not be possible for empowering the assessing authority to recommence the whole proceedings afresh in

respect of turnover or aspect which was not the subject-matter of earlier preassessment notice which culminated in an order which ultimately came

to be set aside by the appellate authority. The directions issued by the appellate authority, according to the petitioners, cannot at all be issued so as

to bring to assessment any turnover which could not be otherwise dealt with u/s 16 of the Act by the assessing authority having regard to the inbuilt

bar of limitation contained therein. In support of the said submissions, the decisions reported in [1982] 51 STC 265 (Andhra Steel Corporation

Ltd. v. Commercial Tax Officer) of the Andhra Pradesh High Court, [1986] 61 STC 287 [Auto Pins (India) (Regd.) v. Sales Tax Officer] of the

Madhya Pradesh High Court, Mohd. Ahsan Wani Vs. Commissioner of Income Tax, of Jammu and Kashmir High Court and [1970] 26 STC 176

[Velayutha Raja v. Board of Revenue (C.T.)] of this Court were relied upon before us.

6. In Andhra Steel Corporation Ltd. v. Commercial Tax Officer [1982] 51 STC 265, it was held by a Division Bench of the Andhra Pradesh High

Court that that part of the notice issued therein to the assessee proposing to tax a particular item of turnover which was wrongly exempted earlier

was beyond the period of limitation stipulated in section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957 and the same was without

jurisdiction and cannot be sustained. This view has been taken on the ground that prior to the passing of the order, it has to be preceded by a

notice to the dealer in respect of that particular item of turnover within the period of limitation specified in section 14(4) of the said Act. The court

proceeded on the peculiar scheme underlying section 14(4) of the Andhra Pradesh General Sales Tax Act. In Auto Pins (India) (Regd.) v. Sales

Tax Officer [1986] 61 STC 287, a Division Bench of the Madhya Pradesh High Court held that the jurisdiction of a revisional authority was

confined, on the provisions of the enactment under their consideration, to the legality and propriety of the order passed by the appellate and/or the

assessing authority and the revisional power cannot be exercised so as to overcome the period of limitation fixed for bringing into assessment

escaped turnover. It was further held that a revising authority had no power to remand the case to the assessing authority directing him to proceed

afresh with the assessment proceedings after taking into consideration matters which had escaped notice earlier. It could be seen that in that case

the court was concerned mainly on the scope of the direction issued in that particular case and context of the revisional power exercised and not as a matter of general principle of invariable applicability.

7. In Mohd. Ahsan Wani Vs. Commissioner of Income Tax, the Jammu and Kashmir High Court was considering a case in the light of the scope

of the appellate authority's power u/s 251 of the Income Tax Act, 1961, and in the context of the scheme underlying those provisions came to the

conclusion that the said appellate authority exercising power u/s 251 of the Income Tax Act, 1961, though was legally competent to set aside the

order of assessment and direct the Income Tax Officer to make a fresh assessment with regard to income from sources which had been

considered by him earlier, he was not competent to direct the Income Tax Officer to make assessment in respect of income from other sources

which were not considered by the Income Tax Officer nor on the basis of material which had not been considered by the Income Tax Officer.

Reference was also made to the decisions reported in Commissioner of Income Tax, Calcutta Vs. Rai Bahadur Hardutroy Motilal Chamarla, and

The Commissioner of Income Tax Vs. Shapoorji Pallonji Mistry, arising under the Income Tax Act, 1961, which were also considered by the

Jammu and Kashmir High Court in the decision referred to supra. It could be seen from those decisions that the issue turned on totally a different

aspect and not in the manner it is now before us the extent to which directions can be given in cases remitted to the authority below. The following

observations of the Apex Court in The Commissioner of Income Tax Vs. Shapoorji Pallonji Mistry, make the position thus clear :

The assessee contends that the powers of the Appellate Assistant Commissioner extend to matters considered by the Income Tax Officer, and if a

new source is to be considered, then the power of remand should be exercised. By the exercise of the power to assess fresh sources of income,

the assessee is deprived of a finding by two Tribunals and one right of appeal.

Applying the said ratio, the Jammu and Kashmir High Court decided the matter before it. Consequently, in our view, those decisions are of no

assistance to us in deciding the question as it is now raised before us.

8. Likewise, the decision in A. Velayutha Raja, Raja Engineering Co., Madurai Vs. Board of Revenue (CT), Madras, seems to have been

rendered in the context of the exercise of suo motu powers of revision alone of the Board of Revenue and that too without reference to an earlier

decision of a co-ordinate Bench of this Court to which one of the learned Judges (Ramaprasada Rao, J.) was also a party and to which a

reference will be made hereinafter. The view expressed in the said decision that the provision as to the period of limitation within which escaped

turnover can be brought to tax as provided in section 16(1) of the Act equally applies when such an order is sought to be passed by the Board in

exercise of its powers u/s 34 of the Act, in our view, needs to be confined to the peculiar facts and circumstances of the case and not as an

invariable proposition of law of general application for the simple reason that such a construction would be diametrically opposed to the scheme of

the provisions of the Act, the distinct and separate nature, character and scope of powers of the various authorities as well as their object. It is one

thing to state that a particular power is vested only with a particular authority specified under the Act with certain limitations but another thing to

read into the exercise of a statutory power conferred upon the competent authority limitations from outside and de hors the very provisions

themselves. So long as the scope of a particular power conferred upon a specified authority under a particular provision of the Act permits that

authority to do a particular thing, limitations aliunde cannot be imported on such exercise of its powers. Adopting such a course would amount to

the courts themselves legislating and not confining themselves to their accredited task of interpreting and laying down the law. As a matter of fact, in

our view, even the decisions relied upon in the said judgment do not warrant such an extreme proposition of law.

9. In *T. V. Sundaram Iyengar & Sons (P.) Ltd. v. State of Madras* [1970] 25 STC 160, a Division Bench of this Court had an occasion to

consider directly a question relating to the scope and extent of the powers of the appellate authority u/s 31(3)(a)(i) of the Act. The Division Bench,

while dealing with the said aspect, held as follows :

The second ground of the assessee turns on the scope and effect of the word "enhance" in clause (a)(i) of sub-section (3) of section 31 of the

Madras General Sales Tax Act, 1959. That section confers appellate powers on the Appellate Assistant Commissioner, Commercial Taxes, and

defines their scope. Any person objecting to an order passed u/s 12 by the assessing authority is, by sub-section (1) of section 31, given a right

within a specified period to appeal against that order, to the Appellate Assistant Commissioner. Sub-section (3) of section 31 says that in disposing

of an appeal, the Appellate Assistant Commissioner may, after giving the appellant a reasonable opportunity of being heard,

"(a) in the case of an order of assessment -

(i) confirm, reduce, enhance or annul the assessment or the penalty or both."

A further appeal to the Tribunal from the order of the Appellate Assistant Commissioner which is objected to by a person is provided for by

section 36. Sub-section (3)(a)(i) of that section uses phraseology similar to section 31(3)(a)(i). Sections 32 to 35 give to the Deputy Commissioner

and the Board of Revenue powers of revision which may be exercised by them suo motu and on application, and certain special powers. The

special powers under sections 32 and 34 cannot be exercised by the Deputy Commissioner or the Board of Revenue, if the time for appeal against

an order u/s 12 has not expired or such order has been made the subject of appeal to the Appellate Assistant Commissioner, the Appellate

Tribunal or of revision in the High Court u/s 38. An appeal to the High Court is provided by section 37 from an order of the Board of Revenue u/s

34 which is objected to. In the light of these provisions, it is contended for the assessee in this Court that as its appeals to the Appellate Assistant

Commissioner were confined to that part of the order of the assessing authority in relation to certain amounts collected by way of tax u/s 8-B(2) of

the Madras General Sales Tax Act, 1939, and in one of the appeals, a further question as to the character of the transaction, which had been

brought to tax, was alone raised, the Appellate Assistant Commissioner in dealing with those appeals has no power to travel beyond their scope,

reopen the assessment order relating to bus-body-building contracts which was not objected to by the assessee in the appeals and thus enhance

the assessment by taking the view that they are not works contracts but sales of goods. It is not disputed that unlike under the Madras General

Sales Tax Act, 1939, the appellate powers of the Appellate Assistant Commissioner as well as the Tribunal under the Madras General Sales Tax

Act, 1959, include the power to enhance the assessment in disposing of an

appeal. But it is urged that the power of enhancing in appeals can only be exercised within the limits of the assessment which is the subject-matter of the assessment that is objected to by the assessee in his appeals. In our opinion, there is no justification for this narrow view of the scope of the power to enhance the assessment in disposing of an appeal. If this view is to prevail, the content of the power will be reduced to almost nothing. It is difficult to conceive of cases of enhancement of assessment confined to the limits of that part of the order which is objected to and appealed against by the assessee. The words "enhance the assessment" in section 31(3)(a)(i) should, as it appears to us, be given their full scope. Section 31(1) does not speak of an assessment but of an order which is objected to. The word "assessment" means the full process of assessment and covers the entire assessment, not merely that part of it which is objected to by the assessee in his appeal. There is indication in sub-section (3)(a) itself to that effect, for clause (ii) to sub-section (3)(a) speaks of the power of the appellate authority to set aside the assessment and direct the assessing authority to make a fresh assessment; and that cannot possibly mean a part of the assessment that had been objected to by the assessee in the appeal. Likewise, the word "enhance" should receive its full meaning and in relation to the assessment, the scope of the power to enhance should extend to the entire assessment. This view appears to receive support from sections 32(2)(a) and (b) and 34(2)(a) and (b). The special powers of the Deputy Commissioner and the Board of Revenue, as is evident from those two provisions, cannot be exercised if the time for appeal against the order u/s 12 has not expired or such order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court. If the intention of the Legislature is to confine the power of enhancing the assessment in disposing of appeals to only that part of the order u/s 12 that is objected to by the assessee, the limitation to the special powers of the Deputy Commissioner and the Board of Revenue under sections 32 and 34 would have been differently worded in sub-section (2) of each of those sections. The language of sections 32(2)(a) and (b) and 34(2)(a) and (b) is consistent with the view that the power of enhancing the assessment u/s 31 extends to the entire range of assessment. Though the Income Tax Act, 1922, adopts a different

scheme, and decisions thereunder may not always be apposite to the construction of other fiscal enactments like the Madras General Sales Tax

Act, 1959, yet it appears that the phraseology of sub-section (3)(a)(i) of section 31 of the Madras General Sales Tax Act, 1959, has been

reproduced word for word from sub-section (3)(a) of section 31 of the Income Tax Act, 1922. Sections 32(2)(a) and (b) and 34(2)(a) and (b) of

the Madras General Sales Tax Act, 1959, substantially follow the pattern of clauses (a) and (b) to the proviso to section 33-A of the Income Tax

Act, 1922.

10. The Division Bench further elaborately considered the inherent differences in the scheme underlying the provisions of the Income Tax Act, and

the Tamil Nadu General Sales Tax Act and came to the following conclusion :

We are, therefore, of the view, as we have already indicated, that the Appellate Assistant Commissioner was competent, in disposing of the

appeals filed by the assessee, to take a view different from that of the assessing authority on the nature of the bus-body-building contracts which

was not objected to by the assessee in his appeal, and bring them to tax as sales of goods and thus enhance the assessment.

There remains the last ground of the assessee relating to limitation. On this question we think the Tribunal took the correct view. The Appellate

Assistant Commissioner in enhancing the assessment did not act u/s 16 as a case of escaped assessment but he was using his powers u/s 31(3)(a)

(i) of the Act. On that view, the enhancement is not open to attack as out of time.

11. A Division Bench of this Court in a decision reported in *Natarajan v. Deputy Commercial Tax Officer* [1981] 48 STC 193, while considering

the scope of powers u/s 16(1)(a) of the Act, came to the conclusion that the expression ""determine to the best of its judgment"" in section 16(1)(a)

of the Act contemplates merely the giving of a notice under the section and not the passing of a final order of assessment. In *Sales Tax Officer v.*

Sudarsanam Iyengar & Sons [1970] 25 STC 252 while considering a similar question in the context of rule 33 of the Travancore-Cochin General

Sales Tax Rules, 1950, the Apex Court opined thus :

We find it difficult to accept that in the context of sales tax legislation the use of the words "proceed to assess" and "determine" would lead to

different consequences or results. In this connection, the words which follow the

word "determine" in rule 33 must be accorded their due

signification. The words "assess the tax payable" cannot be ignored and it is clearly meant that the assessment has to be made within the period

prescribed. Assessment is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it. It cannot and does

not mean a final order of assessment alone unless there is something in the context of a particular provision which compels such a meaning being

attributed to it. In our judgment despite the phraseology employed in rule 33 the principle which has been laid in other cases relating to analogous

provisions in sales tax statute must be followed as otherwise the purpose of a provision like rule 33 can be completely defeated by taking certain

collateral proceedings and obtaining a stay order as was done in the present case or by unduly delaying assessment proceedings beyond a period

of three years.

In *Jeewanlal (1929) Ltd. v. State of Tamil Nadu* [1982] 49 STC 58, a Division Bench of this Court also adverted to this aspect and came to the

conclusion that the issuance of a notice u/s 16 of the Act was the starting point of the proceedings for bringing to assessment the escaped turnover

and was relevant only for the purpose of calculating the limitation within which such proceedings had to be initiated and that the word "determine

in section 16(4) of the Act was not employed with an intention to set a time-limit within which a final order in the matter of assessment of the

escaped turnover should be made. It was further held that the said word should really be understood as meaning initiating a proceeding to

determine the turnover which had escaped assessment to tax.

12. It is also necessary for us to consider as to whether there is or there is not any distinction between suo motu exercise of power u/s 16(1) of the

Act in respect of an escaped turnover and assessment to be remade pursuant to a direction of the appellate authority. In our view, there is a vital

distinction. In *Sales Tax Officer v. Pathrose* [1979] 44 STC 223, a Division Bench of the Kerala High Court had an occasion to consider the issue

under the provisions of the Kerala General Sales Tax Act and it expressed the view that when once the assessment proceedings have been

completed and carried up in appeal to the appellate authority and remanded back to the Sales Tax Officer for fresh assessment, the resultant

proceedings are only a continuation of those originally started proceedings and not a recommencement of fresh proceedings. In *State of Tamil Nadu v. Mohamed Sulaiman & Co.* [1980] 46 STC 151, the assessee filed an appeal against an order passed by the assessing authority on the ground that the order was not preceded by a pre-assessment notice and, therefore, it was invalid. The appellate authority, however, exercised his power of enhancement and brought the turnover in question to tax and raised a demand. The Tribunal, on further appeal filed by the assessee against the order of enhancement, held that the assessment order was non est in law and, therefore, the appellate authority had no power of enhancement and consequently the Tribunal cancelled the order of the appellate authority. Against the said order of the Tribunal, the Revenue filed a revision before this Court. While dismissing the revision, this Court observed that the assessment proceedings should be taken to be pending before the assessing authority who had the liberty to continue the proceeding from the stage from which it was found to be illegal. Acting on the said observations, the assessing authority issued a fresh pre-assessment notice and after over-ruling the various objections, made the assessment. The matter was again challenged before the appellate authority. When the appeal was dismissed, a further appeal was taken before the Tribunal in which it was observed by the Tribunal that the observations of the High Court did not preclude consideration of the question of limitation, that the time-limit for assessment for the year 1954-55 was available only till 31st March, 1960 and that the High Court could not by implication have directed the Revenue to make the assessment several years later without any regard to the statutory limit. The Tribunal, therefore, held the assessment to have been barred by limitation. On a revision made thereupon before this Court, it was held that so long as the proceedings were pending within the statutory period, there could be no bar to the completion of the assessment subsequent thereto and that the Tribunal had a duty to act upon the judgment of this Court and it went wrong in taking upon itself the task of scrutinising the correctness or otherwise of the order of the High Court.

13. On a careful consideration of the matter before us in the light of the various pronouncements discussed above, we are of the opinion that the

order of the Tribunal does not call for our interference. As could be seen from the order of the appellate authority as well as that of the Tribunal in

the present case, what was directed to be done by the assessing authority is not to subject any particular turnover to assessment. Not satisfied with

the manner of consideration as well as the disposal adopted by the assessing authority which initiated proceedings u/s 16 of the Act well within the

period of limitation, the appellate authority considered it to be necessary to set aside the order of the assessing authority and remit the matter for

consideration afresh in the light of and in accordance with the directions contained in the order passed on appeal. The power of the appellate

authority under the scheme of the provisions contained in section 31 of the Act has been rightly construed to be wider and inclusive of not merely

to confirm, reduce, or annul but also to enhance the assessment or the penalty. To achieve such a purpose, it was well within its powers as the

appellate authority to pass such other orders as he may think fit and such a provision, in our view, constitutes conferment of sufficient jurisdiction

on the said appellate authority to order a remand to the authority below and when such directions are issued by the appellate authority by virtue of

its subordination in the official hierarchy, the authority below has no other option but to obey. Consequently, we consider the objection raised by

the assessee at this stage to be not only unjustified but also unwarranted and misconceived. In the present case, the proceedings u/s 16 of the Act

came to be initiated on the basis of a surprise inspection and unearthing of certain secret accounts maintained and if there had been no proper

analysis and consideration of the materials disclosed and reflected in those accounts by the assessing authority exercising the initial jurisdiction,

we do not find it to be in any manner improper for the appellate authority to set aside the matter and direct the assessing authority to redo the

process once again. We are further of the view that while so acting consequent upon such a direction of the appellate authority, what the assessing

authority really does is only ""to reassess"" and continue with the already commenced proceedings within limitation and not ""to recommence the

assessment"". The moment the appellate authority sets aside the order passed by the assessing authority, in law it amounts to the restoration of the

assessment proceedings u/s 16 of the Act in its entirety on the file of the assessing authority with liberty to such authority to reassess the escaped

turnover as reflected in the secret accounts unearthed and it is not open to the assessee to contend that such reassessment proceedings should be

confined to any one particular item of turnover or aspect only which came to be considered or assessed on an earlier occasion. We do not find

anything either in any provisions of the Act or the scheme underlying section 16 read with section 31 of the Act to countenance the plea of the

petitioners before us to import such limitations on the exercise of powers by the appellate authority as well as the assessing authority.

14. For what all has been stated above, we see no merit in the contentions on behalf of the petitioners in the above revisions. The orders of the

appellate authority and that of the Tribunal do not call for any interference at our hands and the revisions consequently fail and shall stand dismissed

but in the circumstances, there will be no order as to costs.

15. Petitions dismissed.