

(1994) 11 MAD CK 0088

In the Madras High Court

Case No : Tax Case No. 19 of 1987 (Revision No. 18 of 1987)

State of Tamil Nadu

APPELLANT

Vs

National Fastners (P) Ltd.

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Citation : (1994) 11 MAD CK 0088

Hon'ble Judges : P. Shanmugam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Smt. Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; C. Venkataraman, V. Srikant, S. Sivanandam and T.V. Lakshmanan, for the Respondent

Judgement

Thanikkachalam, J.—The State is the petitioner. Tvl. National Fastners (P) Ltd. is the assessee. The assessment for the assessment year 1978-79 was completed by the Deputy Commercial Tax Officer on April 13, 1982. As against the said order, the assessee preferred an appeal before the Appellate Assistant Commissioner (AAC). The AAC, after hearing learned counsel appearing for the assessee and the department, ultimately held that "in view of the decision of the High Court of Madras in the case of Chellaram Garments (P) Ltd. [1979] 44 STC 239 and in the interest of justice, I feel that this is a fit case for remanding back the disputed turnover of Rs. 4,28,332.24 to the assessing officer for fresh disposal and to extend the concessional rate of tax if the defects have been found rectified and other forms are in order. He has also brought to my notice that the assessing officer has wrongly compiled the figures while fixing the final assessment orders by adding Rs. 5,000 assessable at 4 per cent. I am remitting this portion also to the assessing officer for fresh consideration and to rectify the error, if any, as pointed out by the appellants". Thereafter, the assessing officer passed a consequential order in pursuance of the directions given by the AAC in his order dated May 7, 1983.

2. According to the assessing officer the AAC in his proceedings remanded the

case on the following points :

- (i) to consider the rectification of defects in 7 "C" forms by filing the rectified duplicate copy of "C" forms.
- (ii) to consider the wrong classification of Rs. 5,000 under 10 per cent category in annexure A.

According to the assessing officer 7 Nos. of duplicate C forms have been examined and found that the defects pointed out earlier were rectified. The "C" forms covered a taxable turnover of Rs. 4,29,963. This will now be taxed at 4 per cent instead of 10 per cent already assessed. According to the assessing officer, there was a totalling error in annexure A thereby a turnover of Rs. 5,000 was assessed to tax at 10 per cent in excess. This will now be deducted from 10 per cent category and added to 4 per cent. Further, the assessing officer rectified the mistake and the turnover of Rs. 12,589.50 was taxed at 10 per cent. Accordingly, the consequential order was passed revising the assessment for the assessment year 1978-79 as under :

13%	10%	4%	Turnover already assessed	5,17,961	58,802	21,29,782	Add and deduct as detailed under paras 3, 4 and 5.	(-)	4,29,963	(-)	5,000	(+)	4,29,963	(-)	12,590	(+)	12,590	(+)	5,000	-----	Taxable turnover determined	75,408	66,392	25,64,745
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Aggrieved by the consequential order passed by the assessing officer dated July 31, 1984, the assessee preferred an appeal before the AAC. On appeal, the AAC held that the assessing officer completed his assessment proceedings only in accordance with the directions given in the appellate order in CST 182/82 dated May 7, 1983. The AAC pointed out that there is no dispute whatsoever in regard to the order issued by the assessing officer that it was not in accordance with the directions in the appellate order. The AAC also held that so long as there is no error in that regard the appellant cannot have any grievance. According to the AAC the appellants have chosen to file an appeal disputing the turnover already originally assessed in the original assessment. The AAC further pointed out that in the instant case, it is not a revision u/s 16, but it is a proceeding made by the assessing officer with reference to the directions given by the appellate authority. Accordingly the appeal filed by the assessee was dismissed.

3. As against the said order, the assessee went to appeal before the Appellate Tribunal. The Tribunal on perusing the records came to the conclusion that the AAC in his order dated May 7, 1983, remanded the appeal to the assessing officer not for any specific turnover. Accordingly the Tribunal held, "we remand the disputed turnover alone to the AAC. We also direct the assessee to reconcile the disputed turnover as found in column 8(c) of appeal petition with that found in the grounds that was urged before us". Thus, the turnover in dispute before the Tribunal was remanded to the AAC. It is against this order, the State is in revision before this Court.

4. Learned Additional Government Pleader (Taxes) submitted that the Tribunal

has failed to note that the AAC while remanding the case on the earlier occasion, remanded the matter on two specific items, viz., to the extent of Rs. 4,28,332.24 and a wrong addition of Rs. 5,000 to the turnover taxable at 4 per cent. It was submitted that the earlier assessment order has become final and it is not open to the assessing authority to go beyond the scope of the appellate order, when passing the order afresh consequent to the remand order. Learned Additional Government Pleader (Taxes) further submitted that the Tribunal ought to have followed the principles laid down in *Kaliki Veera Reddy and Co. Vs. State of Andhra Pradesh*, , *The State of Tamil Nadu Vs. Siemens Engineering and Manufacturing Company of India Limited*, . The Tribunal erred in directing the AAC to go into the merits of the disputes not raised in the appeal against the original assessment raised when the assessing officer has actually complied with the terms of the remand order of the AAC. As against the said order, no appeal can be preferred by the assessee to the AAC since the assessee is not aggrieved. According to the learned Additional Government Pleader (Taxes) the Tribunal failed to appreciate the scope of the remand order of the AAC.

5. On the other hand, learned counsel appearing for the assessee submitted as under :

When the assessment order is set aside and remanded in whole or in part, the assessment proceedings are restored or revived back for the consideration of the assessing authority and fresh assessment in its entirety has to be passed by the assessing authority in the light of the provisions empowering the assessing authority only subject to the direction of the appellate authority. In ILR (1965) Mad. 397 in the case of *Senniyappa Mudaliar v. Government of Madras*, this Court held that the remand order is interlocutory and even if the appeal is not filed against the remand order it is open to the respondents to submit an appeal against the consequent proceeding resulting after remand. The contention of the Revenue on the analogy of original assessment proceeding and reassessment proceeding u/s 16 of the Act may have no relevance since the question for consideration, in the context of the present tax case is regarding the scope and ambit of the powers of the assessing authority on remand by the appellate authority. The order dated July 31, 1984 passed by the assessing authority after remand by the AAC does not represent reassessment u/s 16, but only represent original assessment as per order dated April 13, 1982, now continued after remand by order dated May 7, 1983 but still continuation of first assessment u/s 12 of the Act as per the principles stated in *Commissioner of Income Tax Vs. Seth Manicklal Fomra* (by L.Rs.), The decision of the Madras High Court in [1982] 51 STC 381 (*State of Tamil Nadu v. Arulmurugan and Company*) has been upheld by the Supreme Court in [1994] 94 STC 410 (*State of Andhra Pradesh v. Hyderabad Asbestos Cement Production Ltd.*) The said decision is relevant to the facts in issue. It was therefore submitted that the Appellate Tribunal was correct in remanding the matter to the AAC for fresh disposal.

6. We have heard the rival submissions.

7. The fact remains that the assessee was originally assessed by the assessing officer for the assessment year 1978-79 on a taxable turnover of Rs. 27,06,545 and assessed the turnover at the following rates :

On Rs. 21,29,782 at 4 per cent on Rs. 58,802 at 10 per cent and on Rs. 5,15,961 at 13 per cent. Total Rs. 27,06,545.

On appeal, the AAC remanded the case on the following points :

(1) to consider the rectification of the defects in 7 "C" forms by filing the rectified duplicate copies of "C" forms; and

(2) to consider the wrong classification of Rs. 5,000 under 10 per cent category in annexure A.

8. After remand, while the assessing officer examining the 7 Nos. "C" forms found that the defects pointed out earlier were rectified. The "C" forms covered a taxable turnover of Rs. 4,29,963. This was taxed at 4 per cent instead of 10 per cent already assessed. The assessing officer also found that there was a totalling error in annexure A and thereby a turnover of Rs. 5,000 was assessed to tax at 10 per cent in excess. This was deducted from 10 per cent category and added to 4 per cent. Besides that the assessee pointed out before the assessing officer that a turnover of Rs. 12,589.50 under the annexure B were wrongly assessed at 13 per cent instead of 10 per cent as the goods sold were other than auto parts. This was accepted by the assessing officer. This was also rectified and thus the turnover of Rs. 12,589.50 was taxed at 10 per cent.

9. As against this order, the assessee went in appeal before the AAC. In the second round before the first appellate authority, the assessee disputed the following turnovers :

1. Rs. 29,360 at 10 per cent.
2. Rs. 75,408 taxed at 13 per cent instead of 4 per cent.
3. Rs. 66,392 taxed at 10 per cent instead of 4 per cent.

While remanding the case on earlier occasion, the AAC in his order dated May 7, 1983, stated that it was for the purpose of rectifying the mistake occurred with regard to two specific items, viz., Rs. 4,28,332.24 and Rs. 5,000 taxable at 4 per cent. The order passed by the AAC on May 7, 1983 would clearly go to show that only two items were remanded for correcting the mistake. On remand, the assessing authority corrected the mistakes pointed out by the AAC. The assessing officer passed the order in pursuance of the remand made by the AAC on July 31, 1984. Thus the assessing authority complied with the order passed by the AAC dated May 7, 1983. Therefore, it cannot be said that the assessee was aggrieved over the order passed by the assessing authority on July 31, 1984 since the rectification required by the assessee on two of the abovesaid items were carried out. Even then the assessee filed an appeal against the consequential order passed by the assessing officer dated July 31, 1984. In the

said appeal the assessee claimed relief on two items, viz., Rs. 75,408 and Rs. 66,392. According to the assessee these two items should be taxed at 4 per cent and not at 13 per cent and 10 per cent respectively. The assessee also disputed the turnover of Rs. 29,360 at 10 per cent. All these disputes were not raised earlier before the assessing officer when the first assessment was made or during the time when the first appeal was pending before the AAC for the first time. These disputes were not even raised before the assessing officer when the consequential order was passed on July 31, 1984, but these disputes were raised only when the assess filed the appeal before the AAC for the second time. When the assessee was not aggrieved over the consequential order passed by the assessing authority on July 31, 1984, he cannot file an appeal against that order before the AAC. Therefore, the first appeal filed for the second time on the consequential order passed by the assessing authority is not maintainable. In the appeal, which is not maintainable, the assessee cannot raise disputes for the first time which were not raised earlier in any of the proceedings. Therefore, the assessee filed the first appeal for the second time disputing the turnover originally assessed in the original assessment. Therefore, the AAC in his order dated October 29, 1984 held that the appellants have no case at all and the appeal does not merit any consideration. However, the Tribunal, on second appeal, remanded the disputed turnover to the AAC. The Tribunal directed the assessee to reconcile the disputed turnover as found in column 8(c) of appeal petition with that found in the grounds urged before the Tribunal.

10. According to learned counsel appearing for the assessee when the assessment order is set aside and remanded in whole or in part the assessment proceedings are restored or revived for consideration by the assessing authority and fresh assessment in its entirety has to be passed by the assessing officer in the light of the provision empowering the assessing authority, but only subject to the direction of the appellate authority. Reliance was placed on the following decisions, viz., *Senniyappa Mudaliar v. Government of Madras* ILR (1965) 2 Mad. 397, *Commissioner of Income Tax Vs. Seth Manicklal Fomra* (by L.Rs.), and *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, . It remains to be seen that in each case we have to see whether the first appellate authority has set aside the entire assessment and remitted back the matter for the purpose of fresh disposal or whether certain items in the assessment were set aside and remitted back for fresh disposal only with regard to those items. As pointed out earlier, we have seen that in the present case, the AAC in his order dated May 7, 1983, did not set aside the assessment in its entirety. He remitted back only two issues for the purpose of reconsideration. According to the learned counsel for the assessee after the remand the assessment made by the assessing officer could be considered as continuation of first or original assessment u/s 16 of the Act. But it remains to be seen that while passing the consequential order in pursuance of the remand order of the appellate authority the assessing officer cannot go beyond the directions given by the appellate authority. According to learned counsel for the assessee, if a portion of the assessment is set aside and

remanded in part, the assessment shall be restored or revived on the file of the assessing authority, who has to consider the matter afresh in the light and ambit of the powers available to the assessing authority u/s 12 of the Act. But this submission is against the principle laid down in ILR (1965) 2 Mad. 397 (Senniyappa Mudaliar v. Government of Madras) Commissioner of Income Tax Vs. Seth Manicklal Fomra (by L.Rs.), and Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, . Therefore, when the first appellate authority for the first time remitted back the assessment only on two aspects it cannot be said that the entire assessment was set aside and remitted back for fresh assessment. When the assessment was completed in accordance with the appellate order only on particular points, it is not open to the assessee to agitate any other point, before the assessing officer which were not remanded. When the assessee is not aggrieved by the consequential order, the assessee cannot file an appeal against such an order and agitate grounds which were not taken in the prior proceedings. Thus, for the foregoing reasons, the order passed by the Tribunal is set aside and the order passed by the AAC dated October 29, 1984, stands restored. In that view of the matter, the revision filed by the State stands allowed. No costs.

11. Petition allowed.