

(1995) 01 MAD CK 0081

In the Madras High Court

Case No : Tax Case No. 769 of 1983 (Revision No. 269 of 1983)

State of Tamil Nadu

APPELLANT

Vs

P. Hajee Mohd. Saliah and Co.

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 32, 55

Citation : (1995) 01 MAD CK 0081

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—This revision is directed against the order passed by the Sales Tax Appellate Tribunal, in T.A. No. 190 of 1982 dated December 18, 1982. The department is the petitioner herein. The assessee is a dealer in hides and skins and reported a total and taxable turnover of Rs. 5,99,930 and Rs. 5,99,930. The assessing officer in his order dated February 6, 1976, determined the total and taxable turnover at Rs. 21,27,176 and Rs. 17,38,555 respectively for the assessment year 1974-75 under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"). Subsequently, on October 12, 1978, the assessing officer rectified the original assessment order. In the meanwhile, on December 5, 1981, the Deputy Commissioner (C.T.), Vellore, exercising his power u/s 32 of the Act considered that the order passed by the assessing officer on February 6, 1976, is erroneous and prejudicial to the interest of the Revenue and accordingly, the Deputy Commissioner, revised the order passed by the assessing officer. As against that order, the assessee filed an appeal before the Appellate Tribunal. The Tribunal considered that the order passed by the Deputy Commissioner dated December 5, 1981 by revising the order of the assessing officer dated February 6, 1976, is beyond the period of limitation of five years and, therefore, the Tribunal set aside the order passed by the Deputy Commissioner dated December 5, 1981.

2. Learned Additional Government Pleader (Taxes) submitted before us that what

was revised by the Deputy Commissioner by exercising his power u/s 32 of the Act was only the order passed by the assessing officer dated October 12, 1978 in substance and not the order dated February 6, 1976. In order to support this submission, learned Additional Government Pleader (Taxes) took us through the order passed by the Deputy Commissioner dated December 5, 1981. Therefore, according to learned Additional Government Pleader, even though in the order dated December 5, 1981, the Deputy Commissioner has stated that he is revising the order of the assessing officer dated February 6, 1976, virtually, the order revised by the Deputy Commissioner was that which was passed on October 12, 1978. In such a case, according to the Additional Government Pleader (Taxes), the Deputy Commissioner has got jurisdiction to interfere with the order passed by the assessing officer dated October 12, 1978. In such an event, it was submitted that the Tribunal was not correct in setting aside the order passed by the Deputy Commissioner dated December 5, 1981.

3. On the other hand, the learned counsel appearing for the assessee, while supporting the order passed by the Tribunal, submitted that the Deputy Commissioner revised the order of the assessing officer dated February 6, 1976 and not revised the order passed by the assessing officer dated October 12, 1978. Learned counsel relying upon various decisions contended that once if the assessing officer rectified the earlier order, the original order passed by the assessing officer alone will be in existence and the rectified order will form part of the original order.

4. Learned counsel further submitted that what was done by the assessing officer was only rectifying a mistake occurred in the earlier original order passed by him and, therefore, it is the original assessment order dated February 6, 1976, which is existence for all practical purposes. In such an event, the order of the Deputy Commissioner dated December 5, 1981 revising the order of the assessing officer dated February 6, 1976, is hit by the period of limitation. It was therefore submitted that the Tribunal was correct in setting aside the order passed by the Deputy Commissioner dated December 5, 1981.

5. We have heard the rival submissions. The fact remains that the assessing officer passed the original assessment order dated February 6, 1976. On October 12, 1978, the assessing officer, rectified the order passed on February 6, 1976. On December 5, 1981, the Deputy Commissioner exercising his jurisdiction u/s 32 of the Act, revised the order passed by the assessing officer. In his revised order, the Deputy Commissioner was stated that what was revised by him was the order of the assessing officer dated February 6, 1976. If the Deputy Commissioner revised the order of the assessing officer dated February 6, 1976, then the order passed by the Deputy Commissioner cannot stand because it is beyond the period of limitation of five years. On the other hand, if the Deputy Commissioner revised the order of the assessing officer dated October 12, 1978 then it is within the period of limitation. No doubt, in the order passed by the Deputy Commissioner dated December 5, 1981, it is stated that what was

revised by him was the order of the assessing officer dated February 6, 1976.

6. According to the learned Additional Government Pleader (Taxes), even though in the order passed by the Deputy Commissioner dated October 5, 1981, it was stated that what was rectified by him was the order passed by the assessing officer dated October 6, 1976, virtually the order dated October 12, 1978, alone was rectified. But when we go through the order of the Deputy Commissioner it would go to show that what was revised by him was not the order dated February 6, 1976, but the order dated October 12, 1978. In the order passed by the Deputy Commissioner it is stated that the assessing officer failed to note that the assessee had purchased hides and skins and sold wattle extract. The last local purchase of raw hides comes to Rs. 3,88,621 which is to be taxed at 3 per cent. The first sale of tanned hides amounts to Rs. 7,69,649 which is to be taxed at 1 1/2 per cent.

7. But in the order of the Tribunal it is stated that the rectification order was passed on the following aspect :

"It is seen from the order dated October 12, 1978 that actually the assessing officer found that the taxable turnover was assessed earlier at a higher figure and has therefore gave proportionate deduction, to the extent of Rs. 1,20,720 being the sale value of 7,532 1/2 pieces which was assessed at raw stage during 1973-74 at Rs. 24 per piece. Thus we find that there was an original assessment order dated February 6, 1976 which was rectified and reduced by an order dated October 12, 1978."

Therefore the Tribunal came to the conclusion that what was revised by the Deputy Commissioner was only the order dated February 6, 1976 and not the order dated October 12, 1978. According to the learned Additional Government Pleader (Taxes), it is on this aspect, the Tribunal committed the mistake in understanding which of the order passed by the assessing officer was rectified by the Deputy Commissioner. According to the Additional Government Pleader (Taxes) that duly in the order dated October 12, 1978 exemption to the extent of Rs. 3,88,621 on the turnover of local purchase of raw hides and skins was made. The learned Additional Government Pleader (Taxes) pointed out that the revision order passed by the assessing officer on October 12, 1978 is not an order of the rectification of error passed u/s 55 of the Act but a revision granting exemption to the extent of Rs. 3,88,621 on the turnover of local purchase of raw hides and skins, which is the subject-matter of the revision made u/s 32 of the Act by the Commissioner. Therefore, the original order passed by the assessing officer on October 12, 1978 is to be taken into account while arriving the time-limit for revision of assessment u/s 32 of the Act. The date of order was mentioned wrongly in the deputy Commissioner's order as February 6, 1976 instead of October 12, 1978. Therefore, revision order dated December 5, 1981 is within the period of limitation and the Tribunal was not correct in setting aside the order dated December 5, 1981.

8. Under such circumstances, we set aside the order passed by the Tribunal and remit back the same to the file of the Tribunal with a direction to dispose of the appeal on the basis of the correct facts appearing in this case in accordance with law. The Tribunal is also directed to give proper opportunity to the assessee to put forward his case.

9. In the result, the revision is allowed and the matter is remitted back to the Tribunal to dispose of the appeal in accordance with law. There will be no order as to costs.