(1996) 01 MAD CK 0041

In the Madras High Court

Case No : Tax Case Revision No''s. 170 to 172 of 1986 (Revision No''s. 80 to 82 of 1986)

State of Tamil Nadu APPELLANT

Vs

Samco Metals and Alloys (Private) Ltd. RESPONDENT

Date of Decision : 02-01-1996

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12A, 14, 15, 16

Citation : (1996) 01 MAD CK 0041

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner in all these revisions. The assessment years involved in these revisions are 1979-80,

1980-81 and 1981-82.

2. The assessee-respondent in all these assessment years under consideration, preferred petitions before the Deputy Commissioner of Commercial

Taxes for revision of the assessment orders made for the assessment years 1979-80, 1980-81 and 1981-82, since according to the assessee, the

assessment orders passed by the assessing officer are erroneous and prejudicial to the interest of the revenue. The Deputy Commissioner rejected

the petitions filed by the assessee stating that in view of the amendment brought out to section 32 of the Tamil Nadu General Sales Tax Act by the

amending Act 22 of 1982, which came into effect from November 1, 1982, the Deputy Commissioner cannot act upon the petitions filed by the

assessee for invoking his revisional powers. Accordingly, all the petitions filed by the assessee were rejected.

3. Aggrieved, the assessee filed appeals before the Appellate Tribunal. The

Appellate Tribunal was of the view that since no opportunity was given

to the assessee to represent his case, the order passed by the Deputy Commissioner is in violation of section 32(3) of the Tamil Nadu General

Sales Tax Act (hereinafter referred to as ""the Act""). Accordingly the Appellate Tribunal set aside the order passed by the Deputy Commissioner in

all the assessment years under consideration and remanded back all the cases to the Deputy Commissioner with a direction to dispose of all those

petitions on merits in accordance with law. As against the said orders passed by the Tribunal, the department is in revisions before this Court in all

the assessment years under consideration.

4. The learned Additional Government Pleader (Taxes) submits as under : Section 32 of the Act was amended by the amending Act 22 of 1982,

which came into effect on November 1, 1982. According to the said amendment, the assessee cannot file a petition before the Deputy

Commissioner for invoking his revisional jurisdiction. According to the amended provision, the Deputy Commissioner can invoke his revisional

jurisdiction, only if he comes to the conclusion that the assessment order passed by the assessing officer is erroneous and prejudicial to the interest

of the revenue and not otherwise. Therefore, according to the learned Additional Government Pleader (Taxes), by filing petitions before the

Deputy Commissioner the assessee cannot compel the Deputy Commissioner to invoke his revisional jurisdiction. It was further submitted that all

the petitions were filed on November 2, 1984, after the amending Act 22 of 1982, which came into effect on November 1, 1982. Therefore, after

November 1, 1982, the Deputy Commissioner has got no jurisdiction to entertain any petition filed by the assessee requesting him to invoke his

revisional jurisdiction. In order to support this line of argument, the learned Additional Government Pleader (Taxes) relied upon, several decisions,

which we will consider at a late stage. On the other hand, the learned counsel appearing for the assessee while supporting the order passed by the

Tribunal contended that even though the amending Act came into effect from November 1, 1982, for the earlier years the law as it stood on the

first day of the financial year alone should be followed. It was further submitted that the Deputy Commissioner had disposed of all these petitions

without giving an opportunity of being heard to the assessee. Therefore, according to the learned counsel, the order passed by the Tribunal in

remitting back all these petitions for fresh disposal is in order. Hence no interference is called for.

5. We heard the rival submissions.

6. The assessment were completed by the assessing officer for the assessment years 1979-80, 1980-81 and 1981-82. The assessee is aggrieved

with the assessment made by the assessing officer for these assessment years, hence he filed petitions before the Deputy Commissioner on January

2, 1984, u/s 32 of the Act requesting the Deputy Commissioner to invoke his revisional powers to render justice. But in view of the amendment

brought about to section 32 of the Act by the amending Act 22 of 1982 with effect from November 1, 1982, the Deputy Commissioner refused to

interfere with the assessment orders passed by the assessing officer. According to the Deputy Commissioner, the assessee has no authority to file

petitions requesting the Deputy Commissioner to invoke his revisional jurisdiction, after the abovesaid amendment. Accordingly, the petitions filed

by the assessee were dismissed. The Tribunal took the view that no opportunity was given to the assessee for representing their case before the

Deputy Commissioner. Hence, the Tribunal held that the common order passed by the Deputy Commissioner is in violation of section 32(3) of the

Act. Accordingly, all the petitions were remanded to the Deputy Commissioner for fresh disposal.

7. It remains to be seen that prior to the amendment to section 32 of the Act brought about by the amending Act 22 of 1982, the assessee can

request the Deputy Commissioner to invoke his revisional jurisdiction. But after the abovesaid amendment, the Deputy Commissioner alone has got

power to invoke the revisional jurisdiction only if he comes to the conclusion that the assessment order made by the assessing officer is erroneous

and prejudicial to the interest of the revenue and not otherwise. Admittedly these petitions were filed by the assessee on January 2, 1984, i.e., after

the amendment came into effect from November 1, 1982.

8. In the Tamil Nadu General Sales Tax Act of 1959 the word ""assessment year"" is not defined. The Sales tax is leviable for the period from first

April of a year to the end of 31st March of that particular year, i.e., the taxing period is each financial year ending with 31st March in each year.

The concept of financial year relevant to the assessment year as under the Income Tax Act, 1961 is unknown to the Sales Tax Act. Therefore, the

submission that the law as it stood on the first April of the assessment year alone is applicable to the particular assessment year is not known to the

Sales Tax Act. In the present case, the amending Act 22 of 1982, which came into effect from November 1, 1982 curtails the power of the

assessee to move the Deputy Commissioner for exercising his revisional jurisdiction. After the amendment, the Deputy Commissioner alone can

exercise his revisional jurisdiction, if he finds that the assessment order made by the assessing officer is erroneous and prejudicial to the interest of

the revenue. The amendment brought about by Act 22 of 1982 is only prospective in nature and it is not retrospective. Therefore, after the coming

into force of the amending Act 22 of 1982, the Deputy Commissioner would not have any jurisdiction to entertain the petition filed by the assessee

for invoking his revisional jurisdiction.

9. Section 32(1) of the amending Act reads as follows :

The Deputy Commissioner may, of his own motion, call for and examine an order passed or proceeding recorded by the appropriate authority u/s

4-A, section 12, section 12-A, section 14, section 15, or sub-section (1) and (2) of section 16 and if such order or proceeding recorded is

prejudicial to the interests of revenue, may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may

initiate proceeding to revise, modify or set aside such order or proceeding and may pass such order thereon as he thinks fit.

This provision came into force with effect from November 1, 1982, as per G.O. Ms. No. 1164, Commercial Taxes and Religious Endowments

Department dated October 15, 1982. Because of this provision, the assessee can no longer with effect from November 1, 1982 invoke the

revisional jurisdiction of the Deputy Commissioner to revise or modify the assessment. The Deputy Commissioner can revise the assessment after

November 1, 1982 only if he comes to the conclusion that the assessment made by the assessing officer is erroneous and prejudicial to the

interests of the revenue. The assessee cannot say that the assessment made by the assessing officer is erroneous and prejudicial to the interest of

the revenue. Therefore, the assessee cannot approach the Deputy Commissioner to invoke his revisional jurisdiction u/s 32(1) of the Act.

Therefore, the Tribunal, in the present case, was not correct in remitting back the application filed by the assessee for fresh disposal on the ground

that opportunity was not given to the assessee as contemplated u/s 32(3) of the Act.

10. In the result, the orders passed by the Tribunal in the applications filed by the assessee for the assessment years 1979-80, 1980-81 and 1981-

82 are set aside and the orders passed by the Deputy Commissioner in the applications filed by the assessee are restored and the revisions are

allowed. No costs.

11. Petitions allowed.

