

(1984) 12 CAL CK 0008
In the Calcutta High Court
Case No : F.M.A. No. 191 of 1975

State of West Bengal and Others

APPELLANT

Vs

Paper Products Ltd.

RESPONDENT

Date of Decision : 13-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 89 CWN 1039 : (1986) 61 STC 42

Hon'ble Judges : S.C. Sen, J;G.N. Ray, J

Bench : Division Bench

Advocate : Panchanan Pal and S.N. Dutta, for the Appellant;

Final Decision : Allowed

Judgement

G.N. Ray, J.—This appeal arises out of the judgment passed in Civil Rule No. 5064(W) of 1969. The said civil rule arises out of an application under Article 226 of the Constitution of India made by the respondent in the present appeal, namely, the Paper Products Ltd., a company incorporated under the Companies Act. The said respondent, Paper Products Ltd., challenged the assessment order dated 3rd June, 1965, passed by the Commercial Tax Officer, Sealdah Charge, in assessment case No. 1 of 1963-64 for the fourth quarter ended on 31st July, 1962, and also the order dated 31st October, 1967, passed by the Assistant Commissioner, Commercial Taxes, Dharamtala Circle, in revision case No. 15 of 1967-68.

2. The case of the petitioner in the said writ petition is, inter alia, that the petitioner-company which is a public limited company registered under the Companies Act is a dealer registered under the Bengal Finance (Sales Tax) Act, 1941, having a registration certificate No. SL 2592A. The said company deals in paper containers which are sold mainly to bulk consumers majority of whom are registered dealers under the said Bengal Finance (Sales Tax) Act. The petitioner contends that for the assessment year 1st August, 1961, to 31st July, 1962, the petitioner's sale figures were as follows :

Gross turnover ... Rs. 4,07,167.37 (including sales tax realised ... Rs. 4,094.60)
Taxable turnover ... Rs. 1,00,990.00 Tax payable ... Rs. 5,049 50 Tax paid ... Rs. 5,125.25

3. The petitioner-company has also contended that for the previous years the assessments were made on the basis of bills prepared by the Calcutta office supported by the balance sheet and profit and loss of the company. For the assessment year 1961-62, 6th April, 1965, was fixed for hearing the assessment case and like previous years the company produced the bills prepared by the Calcutta office and the profit and loss account and balance sheet showing a gross sale as Rs. 4,02,067.67. It is the case of the petitioner-company that the representative of the petitioner-company had explained before the Commercial Tax Officer that the discrepancy between the return figures and profit and loss figure was due to the inclusion of taxes realised by the Calcutta office amounting to Rs. 5,094.60. As the Commercial Tax Officer had intended to examine all the books of account of the company which had been kept and maintained at the petitioner-company's New Delhi office, the hearing was adjourned to 3rd June, 1965. As the petitioner's accountant was indisposed, the petitioner by its letter dated 3rd June, 1965, prayed for adjournment of the date of hearing. But such prayer was not allowed and respondent No. 2 made an ex parte assessment to the best of his judgment on the said date, viz., 3rd June, 1965. The Commercial Tax Officer had come to the finding that the gross turnover for the assessment year in question was Rs. 6,40,000 and not Rs. 4,07,167.37 as alleged by the petitioner-company and the taxable turnover was assessed by him at Rs. 3,70,431.10 in place of admitted taxable turnover at Rs. 1,00,990. Accordingly, the Commercial Tax Officer held that tax payable was Rs. 18,521.25. The said assessment order has been annexed to the writ petition being annexure B. The petitioner-company has contended in the writ petition that the company did not receive any intimation of the said assessment order and the additional demand until 20th December, 1966, when a certificate under the Public Demands Recovery Act was served on the petitioner-company. As the time for preferring an appeal against the said ex parte assessment order had expired in the meantime the petitioner-company submitted a petition on 19th May, 1967, before the Assistant Commissioner of Commercial Taxes praying for calling for the records and revise the said assessment order on his own motion. Respondent No. 1, however, did not initiate any suo motu proceeding but asked the petitioner-company to show cause as to why such petition for revising the assessment order should not be rejected as time-barred. The petitioner-company has contended in the writ petition that due to remodelling and reorganisation of the petitioner's office the said letter issued by respondent No. 1 was misplaced and did not come to the notice of the petitioner's principal officer until 21st July, 1969. The petitioner-company has stated that however the petitioner-company has paid in full the additional demand of Rs. 13,416.30 in terms of the said ex parte order of assessment, but it has been contended by the petitioner that the refusal on the part of the Assistant Commissioner, Commercial Taxes, to revise

the said ex parts order was improper and had resulted in gross failure of justice to the petitioner-company. The petitioner-company has also ...contended that the application made by the petitioner-company before the Assistant Commissioner of Commercial Taxes was not properly appreciated and although the said application was made for initiating a suo motu proceeding by the Assistant Commissioner to revise the ex parte assessment order, the said Assistant Commissioner of Commercial Taxes treated the said application as a revisional application made by the petitioner-company and he rejected the said application on the footing that the same was time-barred.

4. It appears that at the hearing of the said Civil Rule No. 5064(W) of 1969, the petitioner-company contended that the application made by the petitioner-company before the Assistant Commissioner of Commercial Taxes was only a request made to him for exercising his power of revision suo motu and the time for such Suo motu revision was four years from the date of the assessment. As admittedly 4 years had not expired from the date of the assessment order, respondent No. 1 erred in holding that the said application was time-barred. It was contended before the learned Judge that the Assistant Commissioner of Commercial Taxes proceeded on an erroneous view that the said application of the petitioner has been made u/s 20(3) of the Bengal Finance (Sales Tax) Act, read with Rule 80(2) of the Rules framed thereunder and as such the period within which a revisional application was to be presented had expired. In the affidavit-in-opposition filed on behalf of the Assistant Commissioner of Commercial Taxes and the Commercial Tax Officer, it was contended that for exercising revisional power u/s 20(3) of the Act, the period of limitation was 60 days from the date of the order because in such cases Rule 80(2) was attracted. It was also contended by the said respondents that under the second proviso to Section 20(3) of the Act, an application of revision would not lie in respect of any assessment if an appeal would lie u/s 20(1) of the Act against such assessment order. It was contended by the respondents that as the petitioner-company had not availed of the right of appeal as provided u/s 29(1) of the Act, the company was not entitled to make any application for revision in any event. It was also contended that Rule 80(5) would apply only when the Commissioner would exercise power of revision on his own motion and not in a case when a dealer could make an application for revision.

5. The learned Judge after analysing the provisions of Sections 20(1), 20(3), rules 71, 80(2) and 80(5) has come to the finding that there are two broad categories of cases where revisional power can be exercised. When a dealer makes an application for revision, the revising authority on such application, may exercise its power of revision. The revising authority may also exercise such powers on his own motion or suo motu. The word "suo motu" only means "on his own motion" as opposed to "on an application by a party". The essence of revisional jurisdiction lies in the duty of the superior Tribunal or Officer entrusted with such jurisdiction to see that the subordinate Tribunals or Officers keep themselves within the bounds prescribed by law and that the order passed is not

illegal or improper or that the proceeding recorded is not irregular. This jurisdiction is one of superintendence and correction in appropriate cases. Hence the revising authority is vested with power of revision suo motu in order to examine the correctness, legality and propriety of the order. Once such power is invoked, the jurisdiction exercised by way of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The learned Judge in this connection referred to the decision made in the cases of East Asiatic Company (India) Ltd. Vs. The State of Madras, and The State of Andhra Pradesh Vs. J. Papaiah Ch. Simhachalam Company, . The learned Judge did not accept the contentions on behalf of the respondents, viz., the Assistant Commissioner of Commercial Taxes and the Commercial Tax Officer, that a party aggrieved cannot move the appropriate authority for exercise of the revisional power suo motu. It has been held by the learned Judge that such contention is inconsistent with the principle and purpose for which such plenary power of suo motu revision is entrusted with the revising authorities. If the revising authority finds that the case is a fit one for exercising revisional jurisdiction, the revisional power can be exercised and it is open to the assessee and also to the revenue to bring to the notice of the revising authority of any error made by the subordinate authorities. The learned Judge was of the view that the assessee by making the said application had only drawn the attention of the revising authority to the error committed by the assessing authority and requested such authority to exercise suo motu powers of revision for ends of justice. In such circumstances, the revising authority had jurisdiction to initiate suo motu power of revision and the revising authority was not correct in proceeding on the footing that the said application was a revisional application made by an aggrieved party beyond the period of limitation and as such was to be summarily rejected being time-barred. In that view of the matter, the order passed by the revisional authority was quashed by the learned Judge and opportunity was given to the Assistant Commissioner of Commercial Taxes to consider the said prayer in accordance with law.

6. Being aggrieved by the said decision of the learned Judge, the respondents in the said writ petition, viz., the Assistant Commissioner, Commercial Taxes, the Commercial Tax Officer, Sealdah Charge, and the State of West Bengal through the Secretary, Finance Department, have preferred the instant appeal.

7. Mr. Pal, the learned counsel appearing on behalf of the appellants, has contended before us that power of revision has been given to the revisional authority under the Bengal Finance (Sales Tax) Act and the Rules framed thereunder to revise the order of assessment both at the instance of an aggrieved party and also by the revising authority itself on its own motion. It has been contended that such power of revision cannot be exercised as an inherent power of the revising authority and the power and jurisdiction of the revising authority are controlled by the provisions of the Act and the Rules framed thereunder. Although essentially such power of revision has been given to ensure that the subordinate authority does not pass improper or unjust order but even

for correction of improper and unjust order, passed by the subordinate authority, the power of revision must be exercised by the revisional authority strictly in accordance with the provisions of the Act and the Rules framed thereunder. From the scheme of the Act, it is quite evident that an aggrieved party cannot ask for revision of any order passed by the subordinate authority but the aggrieved party can challenge the propriety of such incorrect order in an appeal provided for in the Act and the Rules. But the revisional authority can exercise its power of revision suo motu even if there is a provision of appeal but the aggrieved party had not preferred any appeal. It has been contended by Mr. Pal that if on the basis of an application the revisional jurisdiction of an authority is set in motion it cannot be said that such revisional power has been set in motion suo motu by the revising authority. Exercise of power at the instance of an aggrieved party runs counter to the exercise of suo motu power of revision. The learned counsel has, therefore, contended that the learned trial Judge has gone wrong in proceeding on the footing that suo motu power can be initiated at the instance of an aggrieved party and the period of limitation for making an application for revision will not be applicable if the aggrieved party by an application requests the revisional authority to exercise its suo motu powers. In our view, the said contention of the learned counsel for the appellants is quite justified.

8. It has already been indicated that revisional power for correcting illegal or improper order passed by the subordinate authority can be exercised by the revisional authority either at the instance of an aggrieved party or by the revisional authority on its own accord. Such power at the instance of the aggrieved party cannot be exercised if the impugned order is appealable. The reason is quite obvious. The aggrieved party can effectively challenge the propriety and/ or legality of the impugned order before the appellate authority and as such exercise of revisional jurisdiction at the instance of the aggrieved party is uncalled, for when the aggrieved party can get remedy before the appellate authority. It appears to us that the power of suo motu revision has been provided for to ensure that an improper or illegal order passed by a subordinate authority is corrected when the party in whose favour such improper order is passed does not challenge such order, and the revisional authority, for ends of justice feels, that although the aggrieved party has not challenged such order, the same requires a revision. Precisely, for the said reason, it has been provided for in the Rules that exercise of suo motu power of revision cannot be exercised until the period for preferring an appeal against the order in question by an aggrieved party has expired. In our view, it will not be correct to contend that although an assessee cannot make an application for revision because there is a provision of appeal from the impugned order and/or the period of limitation for making revisional application has expired, the aggrieved party can still set the revisional power in motion by simply drawing the attention of the revisional authority about illegality and impropriety of the impugned order. If the initiation of revisional proceeding is made at the instance of a party, it cannot be held that such initiation has been made suo motu by the revisional authority. In our view,

exercise of power at the instance of a party runs counter to the exercise of such power on its own motion by an authority. In the aforesaid circumstances, this appeal is allowed and the judgment passed by the learned trial Judge is set aside. There will be, however, no order as to costs.

Suhas Chandra Sen, J.

9. I agree.