
(1963) 02 AHC CK 0003
In the Allahabad High Court
Case No : S.T.R. No. 1680 of 1956

Suwa Lal Pooran Mal

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 18-02-1963

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1963) 14 STC 456

Hon'ble Judges : M.C. Desai, C.J.; K.B. Asthana, J

Bench : Division Bench

Advocate : D.D. Seth, for the Appellant; Standing Counsel, for the Respondent

Judgement

K.B. Asthana, J.—This is a reference u/s 11 of the U.P. Sales Tax Act at the instance of the assessee, M/s. Suwa Lal Pooran Mal who carry on commission agency business in Bareilly. For the year 1948-49 in respect of some forward transactions in silver in which actual deliveries were made they were assessed to sales tax on a turnover of Rs. 3,20,000 u/s 21 of the Act. That assessment order was passed by the Sales Tax Officer on 7th September, 1951. The assessee went up in appeal against the said order and the learned Judge (Appeals) remanded the case for fresh assessment. The assessee did not appear before the Sales Tax Officer and they were assessed again on a turnover of Rs. 3,20,000 by the Sales Tax Officer by his order dated 31st March, 1954. On appeal against this order the learned Judge (Appeals) allowed the appeal partly and having held that the forward transactions in which the delivery had been made amounted to Rs. 1,10,000 upheld the assessment in respect of that turnover. The assessee then filed a revision against the order of the learned Judge (Appeals). In the revision the finding of the learned Judge (Appeals) as to the turnover of Rs. 1,10,000 was not questioned but the assessee raised the pleas that the assessment could not be made u/s 21 of the Act because it was not a case of escaped assessment; (2) that fresh assessment was barred by limitation; (3) that the fresh assessment could not be made without any fresh information. The learned Judge (Revisions)

rejected the pleas raised by the assessee and upheld the order of the learned Judge (Appeals). Thereupon the assessee applied for reference to the High Court and the learned Judge (Revisions) has referred the following questions for decision by the High Court:

(1) Whether on the facts and in the circumstances of the case the applicants are not liable to assessment u/s 21 of the Act on the ground that their case is not one of "escaped assessment"?

(2) Whether in a case in which the original assessment was made within the period prescribed u/s 21 a fresh assessment is barred by time if it is made under orders of appellate court beyond the prescribed period of three years u/s 21?

(3) Whether on the facts and in the circumstances of the case the assessment u/s 21 was illegal on the ground that there was no fresh information on which the assessment u/s 21 was made?

2. As regards the first question, the learned counsel for the assessee submitted that inasmuch as in its return the assessee had disclosed the turnover of Rs. 1,10,000 on forward sales of silver delivery and the Sales Tax Officer did not assess on that turnover, it could not be said that it was a case of "escaped assessment" within the meaning of Section 21 of the Act. However, the learned counsel did not seriously press this submission of his. It is obvious that the language of Section 21 of the Act is wide enough to cover a case of this nature. u/s 21 of the Act, a Sales Tax Officer is empowered to make an assessment if for any reason the whole or any part of the turnover has escaped assessment. This implies that even if on account of an inadvertent mistake the assessing authority does not assess a dealer on a turnover or a part of it, it would be a case of "escaped assessment" within the meaning of that section. There is nothing in the language of Section 21 of the Act which limits the power of the assessing authority to assess a dealer only when the dealer conceals a turnover of sales liable to be taxed in his return. We, therefore, answer the question No. (1) in the negative and hold that on the facts and in the circumstances of the case the assessee was liable to assessment u/s 21 of the Act as its case was one of escaped assessment.

3. The answer to question No. (2) does not offer any difficulty. In view of the second proviso to Sub-section (2) of Section 21 which has been substituted by Section 15 of the U.P. Sales Tax (Amendment) Act (U.P. Act No. 19 of 1956) with retrospective effect, the limitation of the period for assessment before the expiry of four years from the end of the assessment year will not apply to an assessment or reassessment made in consequence of, or to give effect to, any finding or direction contained in an order u/s 9, 10 or 11. The proviso above referred to according to Section 15 of the Amending Act of 1956 shall be and be always deemed to have been substituted in the U.P. Sales Tax Act 15 of 1948 from its very inception. The assessment in question dated 31st March, 1954, was admittedly made at the direction of the Judge (Appeals) when remanding the

case for fresh assessment in due exercise of his powers under Clause (b) of Sub-section (3) of Section 9 of the Act. The assessment, therefore, so made u/s 21 of the Act will not be affected by the period of limitation prescribed in Sub-section (2) of Section 21.

4. It has, however, been urged by the learned counsel for the assessee that there is nothing in the Amending Act of 1956 validating assessments already made u/s 21 of the Act beyond the period prescribed in Sub-section (2) of Section 21 and inasmuch as after the substitution of Section 21 by Act 19 of 1956 which came into force in May, 1956, no fresh order of assessment was passed u/s 21, the order of assessment dated 31st March, 1954, continued to remain invalid. Reliance has been placed on the case of *Firm Bangali Mal Satish Chandra Jain v. Sales Tax Officer, Agra* [1958] 9 S.T.C. 492. We do not think that the assessee can derive any benefit from the ratio decidendi of the case cited. The decision in that case was confined to the peculiar circumstances that arose in that case and concerned the powers of the Governor to issue notifications. In the present case we are concerned with a legislative enactment which was made retrospective. As the effect of Section 15 of the Amending Act 19 of 1956 is that Section 21 as it stands substituted now will always be deemed to have been in the principal Act, any order of fresh assessment passed u/s 21 of the Act in pursuance of a direction contained in an order u/s 9 of the Act will be a good and valid order even though it was passed beyond the expiry of four years from the assessment year in question.

5. The learned Senior Standing Counsel also referred to the case of *State of U.P. v. Jaipuria Brothers* [1961] 12 S.T.C. 248 decided by a Division Bench in support of his submission that even under the law as it stood before the amendment, the assessment order dated 31st March, 1954, would be a valid order as it was passed on the direction of the appellate Court and no period of limitation was prescribed for such an assessment. The decision in the case cited seems to proceed on the basis that when the assessing authority passes an order on the basis of a direction contained in an order of remand by the appellate Court, then it passes such an order not in the exercise of its original jurisdiction but in the exercise of a jurisdiction conferred upon it by the appellate Court. We doubt the view of the learned Judges taken in this regard in the case cited. To us it appears that when in appeal the decision of a lower Court is set aside and the case is remanded by the higher Court for decision in accordance with the directions given by that Court, the lower Court is restored to its original jurisdiction and it can only pass such orders as it was originally competent to pass. A remand order containing directions cannot be said to confer upon a lower Court any new jurisdiction or special jurisdiction. However, as we are deciding this case on the basis of the second proviso to Sub-section (2) of Section 21 as substituted by the Amending Act 19 of 1956 and which is sufficient to dispose of this case, it is not necessary for us to refer this case to a larger Bench. The learned Standing Counsel also drew our attention to a Division Bench decision of this Court in *Civil Miscellaneous Writ No. 275 of 1957, Goel Trading Company, Calcutta v. Judge,*

Sales Tax, U.P., dated 16th January, 1957, and submitted that in that case also a similar view was taken as in the case of State of U.P. v. Jaipuria Brothers [1961] 12 S.T.C. 248 We find that the decision in that case had turned on the second proviso to Sub-section (2) of Section 21 of the Sales Tax Act as substituted by the Amending Act of 1956 and was not based on the reasoning in the case of State of U.P. v. Jaipuria Brothers [1961] 12 S.T.C. 248.

6. The answer to the second question, therefore, is in the negative.

7. As regards the third question, our answer is that the assessment order u/s 21 could not be illegal on the ground that there was no fresh information on which the assessment order u/s 21 was made. The learned counsel for the assessee has not been able to satisfy us that the grounds on which the learned Judge (Revisions) repelled this plea were erroneous. We think that the learned Judge (Revisions) for good reasons held that for an assessment u/s 21 the law does not require that there should be any fresh information on the basis of which an assessment can legally be made under that section.

8. We assess the cost of this reference at Rs. 100 to be paid by the assessee to the respondent.

9. We direct that copies of this judgment be sent to the Judge (Revisions) Sales Tax, and the Commissioner, Sales Tax, U.P., under the seal of the Court and the signature of the Registrar as required u/s 11(6) of the U.P. Sales Tax Act.