(1973) 07 GUJ CK 0007

In the Gujarat High Court

Case No : Sales Tax Reference No. 13 of 1971

The State of Gujarat APPELLANT

Vs

Chelabhai Bhanabhai Prajapati RESPONDENT

Date of Decision : 04-07-1973

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 57
Central Sales Tax Act, 1956 — Section 15

Citation : (1974) 33 STC 147

Hon'ble Judges : B.K. Mehta, J;A.D. Desai, J

Bench : Division Bench

Advocate : G.N. Desai, Govt. Pleader, instructed by Bhaishanker Kanga and Girdharlal, Govt. Solicitors, for the Appellant; S.L. Mody, for the Respondent

Judgement

Mehta, J.—The opponent herein is a dealer carrying on business of manufacturing bricks for sale. The opponent was not registered under the Bombay Sales Tax Act, 1963 (sic). Assessment proceedings were started against the opponent in 1964. The opponent was assessed for the period from 11th April, 1958, to 31st December, 1959, and 1st January, 1960, to 4th May, 1961, as an unregistered dealer. He was also assessed for the subsequent periods from 5th May, 1961, to 31st March, 1963, and 1st April, 1963, to 24th October, 1965, as a registered dealer. It appears that the assessment order for the period form 1st January, 1960, to 4th May, 1961, was passed by the Sales Tax Officer on 30th September, 1964, holding that the opponent was liable from 1st January, 1960. The opponent went in appeal before the Assistant Commissioner of Sales Tax who fixed his liability from 1st April, 1960. The Assistant Commissioner passed his order on 27th August, 1965. In view of this order of the Assistant Commissioner of Sales Tax, the Sales Tax Officer passed a fresh assessment order for the period from 1st April, 1960, to 4th May, 1960, on 15th January, 1966. In the meantime, on 27th July, 1965, the Sales Tax Officer, Enforcement Branch, visited the place of business of the opponent and seized account books, katcha rojmel, loose copies of bills, etc. The Sales Tax Officer, Enforcement

Branch, after seizure of the material wrote a letter to the Assistant Commissioner who in his turn wrote a letter to the Deputy Commissioner, bringing to his notice the fact about the new materials seized at the time of his visit. It was thereafter on 27th December, 1966, that the Deputy Commissioner took up the matter in suo motu revision and issued notice to the opponent, asking him to show cause why the order of the Assistant Commissioner of 27th August, 1965, be not revised. The opponent appeared and contended, inter alia, that the Deputy Commissioner was not entitled to exercise revisional jurisdiction u/s 57 of the Bombay Sales Tax Act, 1959. This contention did not find favour with the Deputy Commissioner, who ultimately revised the order of the Assistant Commissioner by his order of 15th July, 1969, and fixed the liability of the opponent from 1st January, 1960, and, consequently, made certain additions to the turnover of sales as well as of purchases. The opponent, therefore, took the matter in appeal before the Gujarat Sales Tax Tribunal. Before the Tribunal, a contention was raised on behalf of the opponent herein that the revising authority had no jurisdiction to initiate the revision proceedings on the materials which did not form part of the record in existence before the taxing authority. This contention found favour with the Tribunal and, therefore revision application of the opponent was allowed and the order passed by the Deputy Commissioner on 15th July, 1969, in revision was set aside. At the instance of the State, the following question has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the Deputy Commissioner of Sales Tax, for the purpose of ascertaining whether there was any illegality or impropriety in the order passed by the Assistant Commissioner of Sales Tax or any irregularity in the proceeding adopted by him, and then assuming revisional jurisdiction u/s 57 of the Bombay Sales Tax Act, 1959, could take into consideration only the record of the proceeding before the Assistant Commissioner or could also take into consideration other material which the Sales Tax Officer, Enforcement Branch, had seized on 27th July, 1965, and which did not form part of the record of the proceeding before the Assistant Commissioner ?"

2. The width and scope of the revisional power under the Sales Tax Act have come for consideration before the Supreme Court on a number of occasions. In State of Kerala Vs. K.M. Charia Abdullah and Co., Shah, J. (as he then was), speaking for the court observed as under :

"Turning then to the jurisdiction which the revising authority may exercise u/s 12(2), attention must first be directed to the phraseology used by the Legislature. The Deputy Commissioner is thereby invested with power to satisfy himself about the legality or propriety of any order passed or proceeding recorded by any officer subordinate to him, or the regularity of any proceeding of such officer, and to pass such orders with respect thereto as he thinks fit. For exercising this power, he may suo motu or on application call for and examine the record of any proceeding or order. There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceeding, he cannot make or direct any further enquiry."

3. In Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, , the principle enunciated in State of Kerala Vs. K.M. Charia Abdullah and Co., , was reaffirmed, where Bhargava, J., speaking for the court, observed :

"................ Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason, why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose, admit additional material. The proceedings for revision, if started suo motu, must not, of course, be based on a mere conjecture and there should be some ground for invoking the revisional powers. Once those powers are invoked the actual interference must be based on sufficient grounds, and if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority holding a further enquiry or directing such an enquiry to be held by some other appropriate authority ...."

4. In Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon and Another v. Dhanalakshmi Vilas Cashew Co., and Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., , the Supreme Court has held that the revisional jurisdiction u/s 15(1)(i) is quite distinct and separate from the one created under rule 33 to tax escaped turnover, and the Deputy Commissioner while exercising revisional jurisdiction u/s 15(1)(i) would be restricted to the examination of the record for determining, whether the order of assessment was according to law. It is further held that rule 33, which confers power to assess escaped turnover is normally to be exercised in matters de hors the record of assessment proceedings Grover, J., speaking for the court observed in that judgment as under :

"Now section 15 of the Act empowers the Deputy Commissioner to call for and examine the record of any case suo motu or on application for the purpose of satisfying himself as to the legality or propriety of an order made by the subordinate authority or as to the regularity of the proceedings. He is further empowered to pass any order with respect thereto as he thinks fit. This jurisdiction is quite distinct and separate from the one created by rule 33 which obviously has been framed under clause (f) of section 24(2). That rule enables the assessing authority within the prescribed period to determine to the best of its judgment the turnover of a ''dealer'' which has escaped assessment. Section

15(1) is meant for interference when there is some illegality or impropriety or irregularity in the order of the assessing authority which has to be set right. It can hardly be said to cover those cases in which the turnover has escaped assessment. As has been observed in State of Kerala Vs. Shri M. Appukutty, in which similar provisions relating to the Madras General Sales Tax Act came up for consideration, the Deputy Commissioner while exercising revisional jurisdiction would be restricted to the examination of the record for determining whether the order of assessment was according to law. The rule which confers power to assess escaped turnover is normally to be exercised ''on matters de hors the record of assessment proceedings'' before the assessing authority ...."

5. In the case before us, it has been found by the Tribunal that the Deputy Commissioner initiated revision proceedings after he received a letter from the Assistant Commissioner, forwarding the report of the Sales Tax Officer, Enforcement Branch, who had seized the account books, etc., of the opponent-company, after the Appellate Commissioner passed an order in appeal, reversing the order of the Sales Tax Officer and holding the opponent to be liable from 1st April, 1960. The Tribunal was, therefore, right when it opined that the Deputy Commissioner has, for purposes of initiating revisional proceedings, relied on the materials which were not part of the matter before the taxing authority. The Deputy Commissioner, in other words, did not restrict himself to the record of the proceedings before invoking revisional powers. In that view of the matter, therefore, the Tribunal was right when it held the ratio of State of Kerala Vs. K.M. Charia Abdullah and Co., , that the revising authority did not only call for the record of the order or the proceedings and did not, for purposes of scrutinising or ascertaining the legality or propriety of the order or regularity of the proceedings, consider the record alone. The Tribunal was, therefore, justified in holding that the Deputy Commissioner had acted beyond his jurisdiction in initiating revisional proceedings on certain materials which were not part of the record of the Assistant Commissioner of Sales Tax.

6. On behalf of the revenue, it was urged that assuming that the Commissioner could not have looked into the materials as disclosed from the seizure of the account books, etc., by the Sales Tax Officer, Enforcement Branch, he has none the less power to order an enquiry in which such materials can be legally considered. In our opinion, this further question does not arise, as rightly held by the Tribunal that the Deputy Commissioner was not within his powers u/s 57 of the Act to initiate proceedings on materials which were not part of the record of the assessment. In that view of the matter, therefore, the further question does not arise and it does not require to be answered. We, therefore, answer that question as under :

"On the facts and in the circumstances of the case, the Deputy Commissioner, for initiating suo motu revision u/s 57 of the Bombay Sales Tax Act, 1959, could take into consideration only the record of the proceeding before the Assistant Commissioner and could not consider the material which did not form part of the said record."

7. The State shall pay the costs of the opponent.

8. Reference answered accordingly.