
(1959) 09 MAD CK 0061
In the Madras High Court

The State of Madras

APPELLANT

Vs

The Indian Coffee Board

RESPONDENT

Date of Decision : 23-09-1959

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 12

Citation : (1960) ILR (Mad) 245 : (1960) 1 MLJ 376

Judgement

1. The Indian Coffee Board, Batlagundu, the petitioner, was assessed to sales tax on a turnover of Rs. 3,89,38,275/- for the assessment year 1949-50. The Deputy Commercial Tax Officer who ordered the assessment excluded a turnover of Rs. 33,73,733 on the ground that this represented sales of coffee exported outside the Indian Union.

2. The petitioner contended that it was not a dealer at all and that it was not liable to be assessed to sales tax. Even the assessment ordered by the Deputy Commercial Tax Officer was challenged by an appeal to the Commercial Tax Officer. That appeal was dismissed on 31st May, 1951. A further appeal to the Sales Tax Appellate Tribunal failed, and, the Tribunal affirmed the order of assessment on 24th July, 1952. A revision u/s 12-B of the Madras General Sales Tax Act to this Court also failed. The judgment of this Court delivered on 14th April, 1954, was reported in Indian Coffee Board, Batlagundu v. The State of Madras 5 S.T.C. 292.

3. After the Tribunal had dismissed the appeal preferred to it by the petitioner and during the pendency of the revision petition in this Court the Deputy Commissioner of Commercial Taxes, Madurai, initiated proceedings suo motu u/s 12 of the Act to revise the assessment confirmed by the Commercial Tax Officer. The Deputy-Commissioner issued a notice to the assessee on 31st March, 1954, to show cause why the assessment should not be revised. The Deputy Commissioner was of the view,, that the turnover of Rs. 33,73,733 was not entitled to any exemption, as the assessee did not export the coffee itself but had sold the coffee to other dealers in the State who alone exported that coffee

outside the Indian Union. In addition the Deputy Commissioner found that a turnover of Rs. 3,03,187-8-0 was also liable to be taxed as also a further sum of Rs. 4,733-5-0, which represented sales tax. The objections of the assessee were overruled, and the Deputy Commissioner revised the assessable turnover for 1949-50 and included these three items also.

4. It should be noticed that the proceedings taken by the Deputy Commissioner were u/s 12 of the Act in the exercise of his revisional powers. There was no occasion to have recourse to Rule 17 of the Madras General Sales Tax Rules, which applied to turnovers which escaped assessment.

5. Against the order of the Deputy Commissioner the assessee preferred an appeal to the Tribunal. The Tribunal held that, as the order of the original assessment had been appealed against to the Tribunal and thereafter the matter was taken up further to the High Court in revision, the order of the Commercial Tax Officer should be deemed to have finally merged in the order of the High Court, and that the Deputy Commissioner had no power to re-open the assessment in exercise of his revisional jurisdiction. This Tribunal, therefore, excluded from the assessable turnover of the assessee the two sums, Rs. 33,73,733 and Rs. 3,03,187-8-0. The Tribunal, however, held that the assessee was liable to sales tax on the sum of Rs. 4,437-5-0, which represented amounts collected by the assessee by way of tax.

6. The State of Madras applied u/s 12-B of the Act to revise the order of the Tribunal.

7. The learned Government Pleader contended that there could be no question of any merger of the order of the Commercial Tax Officer in its entirety in the judgment either of the Appellate Tribunal or that of the High Court. The learned Government Pleader pointed out that only the assessee could have appealed against the order of the Commercial Tax Officer, and that only in so far as the assessment order was against the assessee; such an appeal could not be deemed to comprehend that portion of the order of the assessing officer which was in favour of the assessee, for example, the exemption granted to the assessee on the turnover of Rs. 33,73,733. The State itself had no right to appeal to the Tribunal against the order of the Commercial Tax Officer. Therefore, the learned Government Pleader contended, the only remedy open to the State, when there was an order to the prejudice of the revenue of the State, was for the Deputy Commissioner to exercise his revisional jurisdiction u/s 12(2) of the Act. The learned Government Pleader urged that irrespective of the fact, whether there was an appeal by the assessee or not, the Deputy Commissioner had jurisdiction to revise the order of the Commercial Tax Officer in so far as it was to the detriment of the interest of the State.

8. In effect the contention of the learned Government Pleader was that the Act provided for two hierarchies of Tribunals functioning simultaneously to deal with separate parts of an assessment. Whether the Act does provide for it is the

question. u/s 11 the assessee can appeal to the Commercial Tax Officer against the order of assessment. u/s 11(4) the decision of the Commercial Tax Officer, as the appellate authority, is final, subject to the provisions of Sections 12 to 12-C. Against the order of the Commercial Tax Officer a further appeal is provided for to the Tribunal, again only at the instance of the assessee. The assessee can also challenge any order in revision passed by the Deputy Commissioner or by the Board of Revenue acting suo motu by preferring an appeal to the Appellate Tribunal and to the High Court respectively. See Sections 12-A and 12-C. Thus the order of assessment, either original, appellate or revisional, can be appealed against to the appropriate tribunal. But, the right of appeal is conferred only on the assessee. The assessing authority and the officers of the Department, including the Commercial Tax Officer, and the Deputy Commissioner, are departmental officials, to whom is entrusted the function of levying and assessing tax, and normally no prejudice could be expected to be caused to the revenue by orders of the Department. Even so, errors and mistakes may occur in an assessment. Powers to revise the orders of assessment are, therefore, conferred u/s 12 on the Commercial Tax Officer, the Deputy Commissioner and the Board of Revenue, each vested with the authority to revise the order of the officers subordinate to it. Such powers of revision could be exercised (1) suo motu, or (2) on the application of the assessee. The latter jurisdiction could be exercised only if no appeal is preferred by the assessee. Thus an order of assessment, if prejudicial to the State, could only be revised by the appropriate authority and cannot be appealed against by the Department. The revisional powers conferred on the High Court to revise the orders of the Tribunal, however, can be invoked either by the assessee or by the State. That is the scheme of the statutory provisions for appeals and revision.

9. These provisions make it clear that an order of assessment is treated as a single one subject to an appeal by a tax-payer, the State being left with the limited right to get the orders revised by the competent authority to correct errors in assessment. The powers of revision conferred on the respective authorities may be exercised both for the benefit of the State and the tax-payer. There is nothing in Section 12 to warrant an assumption, that such powers are given only to protect the interests of revenue and not to protect the interests of the tax-payer as well. Though the statute envisages two sets of remedies, appeals and revision, the former being available only to the tax payer and the latter both to the tax-payer and the State, the order of assessment itself is not treated as a severable one with respect to each item of the total turnover. We are unable to see any basis in principle or authority for a view, that the Act provided two independent hierarchies of tribunals one to exercise appellate jurisdiction and the other to exercise revisional jurisdiction in the interests of the State, each functioning independent of the other in their respective fields with reference to the same order of assessment.

10. Section 12(2) states:

"The Deputy Commissioner may-

(i) suo motu, or

(ii) in respect of any order passed or proceeding recorded by the Commercial Tax Officer under Sub-section (1) or any other provision of this Act and against which no appeal has been preferred to the Appellate Tribunal u/s 12-A, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit.

11. Section 12(4)(b) is to this effect:

In relation to an order of assessment passed under this Act-

* * *

(b) The power of the Deputy Commissioner under Clause (i) of Sub-section (2) and that of the Board of Revenue under Clause (i) of Sub-section (3) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee.

12. It will be noted that a revision petition at the instance of a party can be entertained by the Deputy Commissioner u/s 12(2)(ii) only if no appeal has been preferred against the order u/s 12-A. No such limitation, however, restrains the exercise of the revisional powers suo motu, the only limitation being what is contained in Section 12(4)(b). There is thus no impediment to the exercise of revisional powers suo motu by the Deputy Commissioner even after an appeal has been filed to the Tribunal. But the question remains, whether that power or jurisdiction to revise would subsist even after the Appellate Tribunal has passed its order on the appeal, either confirming or modifying or setting aside the order of the Commercial Tax Officer. It must be noticed that if the Deputy Commissioner, purporting to act u/s 12(2)(i) i.e., acting suo motu, passed an order prejudicial to the assessee, the latter can prefer an appeal against such an order to the Tribunal u/s 12-A. If the Tribunal had already passed an order on an appeal by the assessee against the order of the Commercial Tax Officer, it should be anomalous to have another appeal on the same subject-matter, viz., the assessment, to the Tribunal, after the Deputy Commissioner has passed an order in exercise of his revisional jurisdiction with reference to the same assessment. Principle and reason suggest that there should be no scope for the appellate Tribunal adjudicating on the same assessment over again, and that the jurisdiction of the Deputy Commissioner should end when the Appellate Tribunal has passed its order in exercise of its appellate jurisdiction.

13. We have already pointed out that an order of assessment should be viewed as single and indivisible. In an appeal filed to the Appellate Tribunal u/s 12-A, although the Tribunal is not entitled to increase the assessment, there is nothing

to preclude the Tribunal from considering the propriety of the order appealed against, that of the Commercial Tax Officer, in so far as it was against the State, provided the final order has not the effect of enhancing the tax liability. The appeal would, however, be against the order of assessment as a whole, in which the whole assessable turnover could be considered, though interference could be only in favour of the assessee, e.g., where the Commercial Tax Officer disallows a turnover on a wrong view, but -equally wrongly included a turnover, an appeal can only be in regard to the order against the assessee. It would, however, be open to the Tribunal to retain or alter the assessment without increasing it by taking a correct view of the whole matter and by deleting the latter turnover and including the former in the assessable turnover. The existence of such a power would show that the whole order of the Commercial Tax Officer forms the subject-matter of the appeal. When, therefore, the Appellate Tribunal passes an order u/s 12-A(4), the order of the Commercial Tax Officer would be superseded by that of the Tribunal. There is still only a single order of assessment. u/s 12(2) of the Act the Deputy Commissioner can have no jurisdiction to revise the order of the Tribunal. If the Deputy Commissioner might act suo motu even after the Tribunal has disposed of the appeal, it would imply that the Tribunal's order itself was not final even so far as it was concerned, because the assessee has the right to challenge the order of the Deputy Commissioner by an appeal to the Tribunal u/s 12-A of the Act. Recognition of such simultaneous exercise of powers would obviously lead to inconvenience, confusion and uncertainty in a matter of taxation. A power to alter assessment by two independent hierarchies of tribunals, simultaneously functioning with reference to separate portions of the same order of assessment would not be conducive either to the interests of the State or to the interests of the tax-payer. It should be remembered that provision has been made in the rules to assess escaped turnover. We have pointed out that in this case no question arose of having recourse to the powers vested by Rule 17. Where it is not a case of escaped assessment, an order u/s 9 of the Act should be held to be a single assessment, comprehending within it the entire assessable turnover and capable of being set aside either by appeal or by revision, but there being only one final order of assessment all through. We are unable to see anything in the provisions of the Act to justify the principle that an assessment or an order on appeal therefrom is a severable one, liable to be simultaneously interfered with by two independent authorities or Tribunals.

14. The Appellate Tribunal held that the order of the Commercial Tax Officer was merged in the order of the Appellate Tribunal. Independent of any theory of merger of the order of the subordinate authority in the order of the appellate authority, we are of the view that the provisions of the Act, do not warrant the existence of any power in the Deputy Commissioner to interfere u/s 12 of the Act with an order of the Commercial Tax Officer passed u/s 11, when such an order has itself been superseded by the order of the Appellate Tribunal. In the present case, the assessment order went a stage further. There was the final disposal by the High Court u/s 12B of the Act. The Deputy Commissioner had no jurisdiction

to revise an assessment which had been the subject-matter of a final order of the High Court, i.e., an assessment to which the statutory finality attached itself only under the order of the High Court.

15. The view taken by the Tribunal that the order of the Deputy Commissioner was beyond his jurisdiction is correct. The petition fails and is dismissed with costs. Advocate's fee Rs. 100.