

(1987) 01 MAD CK 0027

In the Madras High Court

Case No : T.C. No. 606 of 1978 (Revision No. 199 of 1978)

The State of Tamil Nadu

APPELLANT

Vs

Everest Trading Co.

RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 55, 55(1)

Citation : (1987) 67 STC 148

Hon'ble Judges : Swamikkannu, J; Bhaskaran, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; K. Mani, for the Respondent

Judgement

Swamikkannu, J.—This is a revision petition filed by the State of Tamil Nadu represented by the Deputy Commissioner (C.T.), Madras

Division, Madras-1, for reversing the order of the Second Additional Bench of the Sales Tax Appellate Tribunal in T.M.P. No. 508 of 1977 in

T.A. No. 64 of 1977, allowing the petition and setting aside the order passed in T.A. No. 64 of 1977, sustaining the addition of Rs. 10,000 made

to the taxable turnover of the assessee for the assessment year 1975-76, and holding that the disputed turnover of Rs. 10,000 being the subject-

matter of appeal in T.A. No. 64 of 1977 forms the taxable turnover of the assessee determined for the assessment year 1975-76 is not correct.

2. The learned Government Pleader contends that the order under revision is erroneous in the sense that the Tribunal has not properly appreciated

the scope and extent of power vested in it u/s 55 of the Tamil Nadu General Sales Tax Act, 1959. It is submitted on behalf of the Revenue that the

Tribunal has followed the decision reported in N. Kuppana Gounder Vs. The

Appellate Assistant Commissioner (C.T.), Salem and Another,

which has been reversed by the Division Bench of this Court in Appellate Assistant Commissioner v. N. Kuppana Gounder [1975] 35 STC 170.

In other words, it is represented on behalf of the Revenue that the Tribunal ought not to have entertained the application u/s 55 of the Act in view

of the facts and circumstances of the present case. It is also submitted on behalf of the Revenue that the Tribunal ought to have followed the

decision in Kalyan Textiles Vs. Appellate Assistant Commissioner of Commercial Taxes and Another, .

3. Mr. K. Mani, the learned counsel for the respondent, on the other hand, submits that the Tribunal is correct in having rendered the order under

revision since the decisions reported in N. Kuppana Gounder Vs. The Appellate Assistant Commissioner (C.T.), Salem and Another, . The

Appellate Assistant Commissioner (Commercial Taxes) Salem, and Another Vs. N. Kuppana Gounder, , The State of Tamil Nadu Vs.

Thakorebhai and Brothers, and The State of Tamil Nadu Vs. Ks. M.G. Meenambal and Co., support the said decision under revision.

4. The learned Government Pleader appearing on behalf of the Revenue, in support of his contentions refers to the decisions in N. Kuppana

Gounder Vs. The Appellate Assistant Commissioner (C.T.), Salem and Another, . The Appellate Assistant Commissioner (Commercial Taxes)

Salem, and Another Vs. N. Kuppana Gounder, . and The State of Tamil Nadu Vs. Ks. M.G. Meenambal and Co., . The arguments advanced

on behalf of the Revenue in a nutshell is that the Tribunal cannot reverse its own judgment on the basis of the subsequent decision rendered by the

higher appellate forum. In the instant case before us, in the order under review, the Tribunal observed as follows :

..... In the appeal T.A. No. 64 of 1977 the point at issue was, whether the estimated addition of Rs. 10,000 to the book turnover for the only

defect of non-maintenance of stock was proper

After the order was passed in T.A. No. 64 of 1977, the Main Bench of this Tribunal had considered the said observation of the High Court in

T.C. No. 138 of 1971 and came to the conclusion that the High Court did not state the opinion that the only defect of non-maintenance of

manufacturing or regular stock book did not warrant rejection of accounts and so

it again reaffirmed the opinion given by it earlier in T.A. No. 946

of 1976 dated 19th February, 1977 and upheld its earlier opinion that the rejection of accounts for the sole ground of non-maintenance of stock

account is not justifiable. So, in so far as a subsequent decision by the Main Bench of this Tribunal had clarified the observations of the High Court

made in T.C. No. 138 of 1971, to that extent, there is a subsequent decision on the point that the observation of the High Court in T.C. No. 138

of 1971 did not conclude that mere non-maintenance of manufacturing account, did not require rejection of accounts. Therefore, we are of the

view that the assessee could rely upon the observations made by the Main Bench of this Tribunal in T.A. No. 399 of 1977 to urge this Bench also

to take the same view as had been taken by the Main Bench of this Tribunal in T.A. No. 946 of 1976.

5. In this regard, the learned Government Pleader refers to the original order of the Tamil Nadu Sales Tax Appellate Tribunal (Second Additional

Bench), Madras-1, in Tribunal Appeal No. 64 of 1977, dated 28th day of May, 1977, wherein it is observed by the said additional Bench as

follows :

We considered the contentions put forward by both sides carefully, and we have to state that the decision rendered by our High Court in T.C.

No. 138 of 1971 has to be followed in preference to a decision rendered by the Allahabad High Court in [1975] 36 STC 220 (Commissioner,

Sales Tax v. Khera Shoe Co.) with respect to a similar provision in the Sales Tax Act of Uttar Pradesh. It has also to be stated that the decision

rendered in T.C. No. 138 of 1971 does not appear to have been brought to the Main Bench of the Tribunal and so the same has not been

adverted to in T.A. No. 946 to 1976. So, following the approval given by the High Court in T.C. No. 138 of 1971 for sustaining an addition made

by way of best judgment assessment because of non-maintenance of regular stock book, we are bound by the observations and so, we find the

addition of only Rs. 10,000 made to a large book turnover of Rs. 18,80,457 reported by the assessee as ordered by the first appellate authority is

justified. In view of our above findings, the appeal is devoid of merits and the same is dismissed.

6. The point that arises for consideration in this revision is whether the Tribunal

is correct in coming to the conclusion that it has got the power to reverse its original stand taken, under the provisions of section 55 of the Tamil Nadu General Sales Tax Act holding that the said reversing of its own judgment is nothing else than a rectification of the error in the earlier order.

7. In *N. Kuppana Gounder Vs. The Appellate Assistant Commissioner (C.T.), Salem and Another*, , *Ramaprasada Rao, J.*, observed as follows :

If, therefore, the power vested in the authorities in sub-section (1) of section 55 is not always a discretionary power, but is normally to be

understood as a duty with which the concerned authority is enjoined, then the next question is when shall the power be exercised. The learned

Government Pleader would say that the interception of a judicial pronouncement between the concluded appellate, original or revisional order and

the memorandum for rectification would not enable the authorities, even though bound to do so, to exercise such a power. Here again there is a

fallacy. Of course, at one time this Court took the view that such supervening judgments of courts, whether of the High Court or the Supreme

Court, cannot by themselves form the foundation for the exercise of power to rectify an assessment order when the appropriate authority is asked

to do so. But, in view of the decision in *S.A.L. Narayana Row, Commissioner of Income Tax, Bombay City, and Another Vs. Model Mills*

Nagpur Ltd., , it is difficult to hold that view. The Supreme Court in that case was considering the scope of the power of rectification vested in the

Income Tax Officer u/s 35 of the Income Tax Act. The short facts are : The respondent company was subjected to, among other things, pay an

additional tax on the excess dividends declared by it. The order was complied with. Thereafter, in *The Khatau Makanji Spg. and Weaving Co.*

Ltd. Vs. Commissioner of Income Tax, Bombay City, Bombay, , the Bombay High Court held that the levy of tax on excess dividends was illegal.

The view of the Bombay High Court was confirmed by the Supreme Court in *The Commissioner of Income Tax, Bombay City Vs. The Khatau*

Makanji Spinning and Weaving Co. Ltd., Bombay, . Soon after the Bombay High Court rendered the above judgment, the respondent-company

applied to the Income Tax Officer for refund of the tax paid and incidentally sought for a rectification of the original order. This was negated by

the Income Tax Officer as well as the Commissioner of Income Tax in revision.

The Bombay High Court, however, on an application made to it under article 226 of the Constitution directed the Income Tax Officer to revise the order in the light of the judgment in *The Khatau Makanji Spg.*

and *Weaving Co. Ltd. Vs. Commissioner of Income Tax, Bombay City, Bombay*, . The department took up the matter in appeal to the Supreme

Court. The learned Judges said :

"There is no doubt that, in view of the judgment of this court in *The Commissioner of Income Tax, Bombay City Vs. The Khatau Makanji Spinning*

and *Weaving Co. Ltd., Bombay*, , the levy of an additional tax was illegal The High Court was right in making the order directing the

Commissioner to refund the amount of tax which was illegally collected."

In the said decision reported in *N. Kuppana Gounder Vs. The Appellate Assistant Commissioner (C.T.), Salem and Another*, it was held that if a

levy is found to be illegal or becomes illegal by reason of a subsequent decision of the court, even the exercise of power by an authority under the

provisions governing the rectification of assessments is justified and legal. On the other hand if the application for rectification is returned without

being entertained, there is an avoidance of public duty on the part of the authority concerned, when it is obliged in law not only to entertain the

same but also deal with it so as to render justice and avoid injustice.

8. In the instant case before us, we find that on the second appeal before the Sales Tax Appellate Tribunal (Second Additional Bench), Madras-1,

the Tribunal in T.A. No. 64 of 1977 by its order dated 28th May, 1977, had dismissed the appeal sustaining the addition of Rs. 10,000 for non-

maintenance of stock accounts. The respondent herein had filed a miscellaneous petition u/s 55 of the Tamil Nadu General Sales Tax Act, 1959,

against the original order of the Tribunal in T.A. No. 64 of 1977 dated 28th May, 1977, seeking for the relief that the Tribunal has to rectify an

error on the part of the Tribunal in not following the opinion of the Main Bench of the Tribunal in T.A. No. 399 of 1977 dated 8th August, 1977

holding that for the only defect of non-maintenance of stock account, the book turnover need not be rejected and best judgment assessment made.

The Tribunal after verifying the records had followed the decision in *N. Kuppana Gounder Vs. The Appellate Assistant Commissioner (C.T.),*

Salem and Another, and the order of the Main Bench of the Sales Tax Appellate

Tribunal, Madras-1, in T.A. No. 399 of 1977 dated 8th August, 1977, and set aside the addition of Rs. 10,000 allowing the miscellaneous petition.

9. Now, we find that the decision in The Appellate Assistant Commissioner (Commercial Taxes) Salem, and Another Vs. N. Kuppana Gounder,

, which had reversed the decision in N. Kuppana Gounder Vs. The Appellate Assistant Commissioner (C.T.), Salem and Another, holds good and

it is still a good law. The said decision in The Appellate Assistant Commissioner (Commercial Taxes) Salem, and Another Vs. N. Kuppana

Gounder, lays down that where a statutory provision is interpreted as to its precise ambit and effect, it will have effect right from the inception of

the statutory provision and, therefore, where ex facie the record or order, an error is evident with reference to such declaration of ambit and effect

of the statutory provision, it may well fall within the purview of section 55 of the Tamil Nadu General Sales Tax Act, 1959. The question involved

in this revision is whether the order of the Tribunal in reversing its own prior order invoking the provisions of section 55(1) of the Act is correct and

is in accordance with law. It has been laid down succinctly in The Appellate Assistant Commissioner (Commercial Taxes) Salem, and Another Vs.

N. Kuppana Gounder, that where the law as declared will in its application depend on facts and those facts will have to be presented by the

assessee, then the error will be on the part of the assessee if he has not placed them before the authorities at the time the assessment order was

made. In the instant case, we find that when the facts that are now being placed, that is even at the stage of the petition the order of which is the

subject-matter of this revision were placed before the appellate authority, there was no submission of the facts necessary. It was held in The

Appellate Assistant Commissioner (Commercial Taxes) Salem, and Another Vs. N. Kuppana Gounder, that "although at the time the assessment

order was made the sales turnover would be chargeable to tax at the concessional rate of tax if such turnover came out of raw hides and skins

which had suffered tax according to the decision of the High Court, as the assessee had not claimed the concessional rate by placing the necessary

facts, such omission would not be an error apparent on the face of the record within the meaning of section 55.

10. Section 55 of the Tamil Nadu General Sales Tax Act (1 of 1959), reads as follows :

55. Power to rectify any error apparent on the face of the record. - (1) An assessing authority or an appellate or revising authority (including the

Appellate Tribunal) may, at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record

:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given

notice to the dealer and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund which may be due to

the dealer.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice

of assessment or penalty and thereupon the provisions of this Act and the Rules made thereunder shall apply as if such notice had been given in the

first instance.

(4) The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the

order in respect of which such order of rectification has been made.

11. "Rectification" implies the correctness of an order or removal of defects or imperfections. It implies prior existence of error, mistake or defect,

which after rectification is made right, and corrected by removal of the flaws.

12. In the instant case, what we are very much concerned is whether section 55 of the Act gives such a wide power to the Tribunal to reverse its

own order when an application is made under the provisions of the said section relying on a subsequent decision that had been rendered. On a

careful and anxious consideration of the facts involved in this case together with the decisions rendered on the point of rectification under the

provisions of section 55 of the Act, we are of the definite opinion that the order under revision is necessarily to be set aside, since the law on the

question has not been properly appreciated by the Tribunal. Such a wide power of reversing of its own order is not contemplated u/s 55(1) of the

Act, on the pretext and guise of rectifying the error in the earlier order. The provision of section 55 does not in any way authorise an authority to

disown its own earlier judgment on an interpretation of a subsequent decision that had been rendered by a higher forum. Under these

circumstances, the revision is allowed with costs. The order of the Tribunal is set aside. Fee for the learned Government Pleader is fixed at Rs.

250.

13. Petition allowed.