

(1992) 01 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 5414 of 1985

Vapi Paper Mills Ltd.

APPELLANT

Vs

Sales Tax Officer (2), Vapi, District Bulsar

RESPONDENT

Date of Decision : 09-01-1992

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 41, 41(1), 41(2), 42, 42(1)

Citation : (1992) 01 GUJ CK 0017

Hon'ble Judges : Y.B. Bhatt, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Kamal M. Mehta, instructed by M.G. Doshit, for the Respondent

Judgement

G.T. Nanavati, J.—The petitioner is dealer registered under the Gujarat Sales Tax Act, 1969. It was assessed for the years 1980 and 1981 on December 21, 1983 and April 30, 1984, respectively. Both those orders were challenged by the petitioner by filing separate appeals. The appeals were allowed and the orders of assessment were set aside on the ground that the amount of tax found due and the penalty imposed exceeded the limits specified by section 46A and, therefore, it was not open to the Sales Tax Officer to pass final orders of assessment and he ought to have proceeded further in the manner provided by that section. In respect of the assessment year 1980, the order in appeal was passed on July 30, 1984. For the assessment year 1981, it was on February 28, 1985. Thereupon, the Sales Tax Officer issued notice dated August 16, 1984, for the year 1980 and notice dated May 31, 1985, for the year 1981, calling upon the petitioner to attend his office for the purpose of completing the assessment. The petitioner objected to completion of the assessment proceedings on the ground that the time prescribed by section 42 for completion of such proceedings was over. The petitioner requested the Sales Tax Officer to complete the assessment only u/s 41(2) of the Act. In spite of that, the Sales Tax Officer insisted upon presence of the petitioner and, therefore, apprehending that the Sales Tax Officer may pass assessment orders again under sub-section (3) and (4) of section 41 of the Act,

the petitioner has filed this petition under article 226 of the Constitution of India.

2. It is the petitioner's case that as the time-limit prescribed u/s 42(1) of the Act has already expired, it is not open to the Sales Tax Officer to complete those proceedings or to pass fresh orders of assessment. It has, therefore, prayed that this Court should grant a declaration that the assessment proceedings, which are initiated by the Sales Tax Officer, are illegal and without jurisdiction and that the respondents be directed to refund the amount of Rs. 3,61,269.09, with interest at the rate of 12 per cent. per annum from the respective dates of payment till the date of refund. This Court, while admitting the petition, has stayed further assessment proceedings. Another thing to be noted is that with effect from April 1, 1986, section 46A, which required the Sales Tax Officer in certain cases to serve a draft order, invite objections, and if objected to transfer the proceedings to the authority, to which an appeal would have lain, has been deleted. Both the learned advocates agree that now the Sales Tax Officer is not required to follow that procedure.

3. What is contended by the learned counsel for the petitioner is that the time-limit passed the order of assessment for the year 1980 expired on December 31, 1983; and for the assessment year 1981, it expired on December 31, 1984 and, therefore, it is not open to the Sales Tax Officer to pass fresh orders of assessment for those two years. The learned counsel further submitted that the appellate authority has done in this case is that both the orders of assessment have been set aside on the ground that they were illegal. The cases were not then remanded to the Sales Tax Officer nor any direction for fresh assessment was given by the appellate authority. He submitted that, for that reason, even the second proviso to section 41(1) will have no application. On the other hand, it is contended by the learned counsel for the respondent that this case is governed by the third proviso and, therefore, it is still open to the Sales Tax Officer to pass fresh orders of assessment.

4. Section 42(1)(a) provides that, no order of assessment for a year or part of a year shall be made under sub-section (3) or (4) of section 41 at any time after the expiry of two years from the end of the year in which the last monthly, quarterly, or as the case may be, annual return is filed. There is no dispute that if we have to go by this time-limit, then the time for passing the order of assessment for the year 1980 expired on December 31, 1983 and for the year 1981 on December 31, 1984. But realising that an order of assessment may be challenged by a dealer by filing an appeal and that may require passing a fresh assessment, the Legislature has further provided that, where fresh assessment is required to be made in pursuance of any order u/s 65, 67 and 69 or in pursuance of any order of any court or authority such fresh assessment shall be made at any time within three years from the date of such order. One more proviso to that section is also required to be considered as it has bearing in view of the fact that by way of interim relief, this Court stayed the impugned assessment proceedings. According to the second proviso, while computing the period of

limitation for the purpose of that section, any period during which assessment proceedings are stayed under the first proviso or by an order or injunction of any court or authority has to be excluded. Therefore, we will have to consider effect of both these provisos for deciding whether it is still open to the Sales Tax Officer to pass fresh orders of assessment for the years 1980 and 1981.

5. As stated earlier, the third proviso permits passing a fresh order of assessment within three years from the date of the order contemplated by that proviso. Therefore, if it can be said in this case that fresh assessments are required to be made in pursuance of the orders passed in the appeals, then it will have to be held that it is still open to the Sales Tax Officer to pass fresh orders of assessment for those years. That would depend upon the construction of the phrase "in pursuance of", used in the third proviso. What is contended by the learned counsel for the petitioner is that, the impugned action of the Sales Tax Officer cannot be regarded as taken in pursuance of the orders passed in the appeals, as what has been done by the appellate authority is to quash the assessment orders. But after quashing the same, the appellate authority has not thought it fit to remand the matters to the Sales Tax Officer, nor has thought it fit to give directions to the Sales Tax Officer to complete the assessment proceedings and pass fresh orders of assessment.

6. It cannot be disputed that, it is not expressly stated in the orders that the cases are remanded to the Sales Tax Officer for passing fresh assessment orders, nor do they contain any express direction to the Sales Tax Officer to that effect. In view of the observation made in those orders that the Sales Tax Officer should have conducted the proceedings as provided by section 46A, it can be said that the appellate authority impliedly directed the Sales Tax Officer to proceed further as provided by section 46A. But, we do not want to rest our judgment only on that basis, as a wider contention has been raised before us. Therefore, the question that arises for consideration is whether in the absence of such an order or direction in the order of the appellate authority, it can be said that the Sales Tax Officer is required to make a fresh assessment in pursuance of such order. The answer has to be in the affirmative, for the reason that if held otherwise, that will leave the assessment proceeding incomplete and result in a situation inconsistent with the scheme of the Act. If the Legislature had intended that fresh assessment can be made by the Sales Tax Officer only if the order contemplated by the proviso directed him to do so, then, in that case, instead of using the phrase "in pursuance of", it would have used the word "by" and not the words "in pursuance of". The words "in pursuance of" have various meanings. If it is construed narrowly so as to import into it notion of an obligation, then, in our opinion, that will not be consistent with the intention of the Legislature, nor will it serve the purpose of the Act as it will have to be held that obligation to make fresh assessment must follow from the order contemplated by that proviso. In our opinion, obligation to make fresh assessment would arise not necessarily because of such order, but because of the scheme and provisions of the Act. The Act casts a duty upon the Commissioner to assess and collect the proper amount

of tax due from a dealer. If an order of assessment passed by him is set aside in appeal, resulting in to order of assessment, then it being his duty under the Act to complete the assessment proceedings, he have to pass a fresh order of assessment. The word "required", as used in the proviso, does not mean, as contended by the learned counsel for the petitioner, required by any order contemplated by that proviso. In the context in which the words "in pursuance of" have been used, they will have to be construed as "by reason of". The order passed in appeal becomes the reason for fresh assessment. It is by reason of the order passed in appeal that the Sales Tax Officer will be required to pass a fresh order of assessment. If the said phrase is construed as "by reason of", that will also achieve that object of the Act. In our opinion, in this case, it has become necessary for the Sales Tax Officer to make fresh assessment by reason of the order passed in appeal. Thus, his action must be regarded as in accordance with section 42(1) and not illegal or without jurisdiction, as contended by the petitioner.

7. In the result, this petition fails and is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

8. Petition dismissed.