
(1960) 09 PAT CK 0018

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 319 of 1957

Vishanji

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-09-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
General Clauses Act, 1897 — Section 7

Citation : (1961) 12 STC 226

Hon'ble Judges : Ramaswami, C.J.; Choudhary, J

Bench : Division Bench

Advocate : R.S. Chatterji and Ram Nandan Sahai Sinha, for the Appellant; The Government Pleader, for the Respondent

Judgement

Ramaswami, C.J. and Choudhary, J.—In this case the Assistant Superintendent of Sales Tax, Daltonganj, Shri M. K. Sinha, made an order on the 8th August, 1949, that the assessee was not liable to pay sales tax in respect of the quarter ending the 31st March, 1949. The reason for a "nil" assessment was that a petition was filed on behalf of the assessee stating that his business had been closed. Later on, an inquiry was made by the Inspector of Sales Tax and it was found that during the quarter in question the assessee had despatched by rail goods of considerable amount. The Superintendent of Sales Tax thereupon made an application to the Commissioner of Sales Tax for revising the assessment order of Shri M. K. Sinha, dated the 8th August, 1949. It was contended on behalf of the assessee before the Commissioner of Sales Tax that the proceeding for a suo motu revision can be initiated only within four years of the date of the order of assessment which is sought to be revised, and in support of this argument reference was made to Section 24(4) of the Bihar Sales Tax Act as amended by Bihar Finance Act of 1951 (Bihar Act VII of 1951). The argument was rejected by the Commissioner of Sales Tax on the ground that the amendment does not apply to the present case because the order of the Assistant Superintendent of

Sales Tax was made on the 8th August, 1949, long before the Amendment Act came into force, and the period of limitation prescribed by the Amendment Act cannot be applied to the present case. An application in revision was taken on behalf of the assessee to the Board of Revenue, but the application was dismissed.

2. As directed by the High Court, the Board of Revenue has now stated a case u/s 25(3) of the Bihar Sales Tax Act on the following question of law :-

Whether the Commissioner of Sales Tax had authority to revise the order of the Assistant Superintendent of Sales Tax, dated the 8th August, 1949, in respect of the quarter ending the 31st March, 1949, in view of the amended Section 24(4) of the statute, in the circumstances of this case.

3. On behalf of the assessee learned counsel put forward the argument that the order of the Commissioner of Sales Tax was passed on the 11th August, 1954, more than a period of four years after the date of the order of the Assistant Superintendent of Sales Tax, and the order of the Commissioner was illegal in view of the period of limitation prescribed by Section 24(4) of the Bihar Sales Tax Act as amended by the Bihar Finance Act of 1951 (Bihar Act VII of 1951). It is necessary at this stage to quote Section 24(4) of the Bihar Sales Tax Act as it stood before the amendment of 1951 :-

24. (4) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, upon application or of his own motion, revise any order passed under this Act or the rules thereunder by a person appointed u/s 3 to assist him and, subject as aforesaid, the Board of Revenue may, in like manner revise any order passed by the Commissioner :

Provided that before rejecting any application for the revision of any such order, the Commissioner or the Board of Revenue, as the case may be, shall consider it and shall record reasons for such rejection.

4. After the amendment made by Bihar Act VII of 1951 the sub-section stands as follows :-

24. (4) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the prescribed authority may, upon application or of its own motion, revise any order passed under this Act :

Provided that where the prescribed authority revises any order of its own motion, no proceeding for such revision shall be initiated at any time except before the expiry of four years from the date of such order:

Provided further that no order u/s 13 shall be revised, upon application by a dealer, unless an order under Sub-section (3) of this section has been previously passed in respect of the said order.

5. In the present case the order of assessment was made by the Assistant Superintendent of Sales Tax on the 8th of August, 1949, and the order of

revision by the Commissioner of Sales Tax is dated the 11th of August, 1954. The Amendment Act came into force in the year 1951. Therefore, the question for determination in the present case is whether the earlier right of revision given to the Commissioner by the Bihar Sales Tax Act u/s 24(4) before the Amendment Act of 1951 has been affected as a result of the passing of the Bihar Finance Act of 1951. In our opinion, the right of the Commissioner to revise the assessment is a substantive right, and not merely a matter of procedure. It appears to us that such a right becomes vested in the Commissioner on the date when the proceedings were initiated, and, in any case, not later than the time of assessment, which in this case is the 8th of August, 1949. If the right of revision given to the Commissioner was a vested right on the 8th of August, 1949, it follows that the vested right cannot be taken away by the Amendment Act of 1951 except by express language or by necessary intendment. It is well-established by numerous authorities that an intention to take away or to impair or to imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or by necessary implication. We are, therefore, of opinion that in the present case the amended Section 24(4) of the Bihar Sales Tax Act does not apply, and the period of limitation prescribed in the Amended Act does not apply to the order of the Commissioner made in this case. If the old Section 24(4) of the statute applies, it is not disputed that the order of revision passed by the Commissioner of Sales Tax, on the 11th of August, 1954, is not vitiated by any error of law. The view that we take is borne out by the decision of the Supreme Court in *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, in which it was held that the amendment of the proviso to Section 22(1) of the Central Provinces and Berar Sales Tax Act by the Amending Act 17 of 1949 did not apply to the proceedings commenced before the amendment. It was observed by S. R. Das, J., in that case that the amendment of the proviso to Section 22 had placed substantial restriction on the assessee's right of appeal, for the amended section requires the payment of the entire assessed amount as a condition precedent to the admission of the appeal, and the imposition of such a restriction by the amendment of the section cannot affect the assessee's right of appeal from a decision in proceedings which commenced prior to such an amendment and which right of appeal was free from such restriction under the section as it stood at the time of the commencement of the proceedings. As to the time when the right of appeal vests, it was observed by S. R. Das, J., that for the purposes of right of appeal the critical and relevant date was the date of initiation of the proceeding, namely, the submission of the return u/s 11 of the Sales Tax Act, and not the actual decision of the taxing authority. At page 225 of the report S. R. Das, J., observed as follows :

Finally, Sri Ganapathy Aiyar faintly urges that until actual assessment there can be no "lis" and, therefore, no right of appeal can accrue before that event. There are two answers to this plea. When-ever there is a proposition by one party and an opposition to that proposition by another a "lis" arises. It may be conceded, though not deciding it, that when the assessee files his return a "lis" may not

immediately arise, for u/s 11(1) the authority may accept the return as correct and complete. But if the authority is not satisfied as to the correctness of the return and calls for evidence, surely a controversy arises involving a proposition by the assessee and an opposition by the State. The circumstance that the authority who raises the dispute is himself the Judge can make no difference, for the authority raises the dispute in the interest of the State and in so acting only represents the State. It will appear from the dates given above that in this case the "lis" in the sense explained above arose before the date of amendment of the section. Further, even if the "lis" is to be taken as arising only on the date of assessment, there was a possibility of such a "lis" arising as soon as proceedings started with the filing of the return or, at any rate, when the authority called for evidence and started the hearing and the right of appeal must be taken to have been in existence even at those dates. For the purposes of the accrual of the right of appeal the critical and relevant date is the date of initiation of the proceedings and not the decision itself.

6. In the present case the return of the assessee was filed before the 8th of August, 1949, which was the date of the order of assessment passed by the Assistant Superintendent of Sales Tax. Applying the principle of the Supreme Court decision to this case we are of opinion that the right of revision vested in the Commissioner of Sales Tax at least on the 8th of August, 1949, when the order of assessment was made by the Assistant Superintendent of Sales Tax. If this view is correct, then it follows that the Amendment Act of 1951 cannot affect the vested right of the Commissioner under the old section of the statute, and the order of revision by the Commissioner of Sales Tax on the 11th of August, 1954, cannot be said to be barred by limitation. The view that we take is borne out by other authorities also. In *Fazl Karim v. Ananda Mohan Ray* 15 C.W.N. 844 it was held by a Division Bench of the Calcutta High Court that the right which accrued to a minor judgment-debtor under Act XV of 1877 to apply to set aside a sale, which took place before the Limitation Act of 1908 came into force, upon attaining majority was not taken away by the coming into operation of that Act since this was a privilege which has been preserved by Section 6 15 C.W.N. 844. Clause (c), of the General Clauses Act. A similar view was expressed by a Full Bench of the Calcutta High Court in *Gopeshwar Pal v. Jiban Chandra Chandra* ILR (1914) Cal. 1125. The Full Bench consisting of Jenkins, C.J., and Stephen, Woodroffe, Holmwood and D. Chatterji, JJ., expressed the opinion that where the application of the provisions of an Amending Act makes it impossible to exercise a vested right of suit the Amending Act should be so construed as not being applicable to such cases, and though the procedure may be regulated by an Act for the time being in force, still the intention to take away a vested right without compensation or any saving, was not to be imputed to the Legislature in any case unless it was expressed in unequivocal terms. The same principle was laid down by a Full Bench of the Madras High Court in *Rajah Sahib Meharban-i-Doston Sri Raja Row V. K. M. Surya Row Bahadur, Sirdar, Rajahmundry Sircar and Rajah of Pittapur v. G. Venkata Subba Row and Five Others* ILR (1915) Mad. 645

in which it was held that Section 211 of the Estates Land Act should not be construed retrospectively so as to destroy or practically destroy rights of action existing on the date the Act came into force, and that notwithstanding Section 211 which prohibited application of Section 7 of the Limitation Act to suits under the Estates Land Act, the plaintiff was entitled to the exemption and extension given by Section 7 of the Limitation Act, and the suit brought by the plaintiff was, therefore, within time. The same view was expressed in a recent decision in *K. S. Nazar Ali Mills Ltd. v. Commissioner of Sales Tax, Indore* [1959] 10 S.T.C. 117(MAD) in which it was held by the Madhya Pradesh High Court that the third proviso to Section 12(2) of the Madhya Bharat Sales Tax Act, 1950, which was inserted in 1955 and which became operative from the 15th of April, 1955, could not apply to an application made by a dealer for revision of an order made under the Act passed in assessment proceedings initiated before the 15th of April, 1955, and the imposition of the condition of the payment of the entire assessed tax as a condition precedent to the competence of a revision petition could not affect the dealer's right of revision from an order in assessment proceedings which commenced prior to the insertion of the third proviso to Section 12(2), which right was free from any such restrictions under the section as it stood at the time of the commencement of the assessment proceedings. Reference may also be made to a decision of the Bombay High Court in *Nana Bin Aba v. Sheku Bin Andu* [1908] I.L.R 32 Bom. 337 where it was pointed out by Sir Lawrence Jenkins that the word "right" in Section 7, Clause (c), of the General Clauses Act must mean and include the right of appeal or revision or transfer and that such a right was a substantive right.

7. It was pointed out by a Full Bench of this High Court in *Budhi Nath Jha v. Manilal Jadav*, Supreme Court Appeal No. 100 of 1958, decided on the 15th October, 1958, that the power of revision conferred upon the High Court under Article 227 of the Constitution is similar in nature to the appellate power of the High Court, though the power under Article 227 is circumscribed by various limitations. It was also held by Subramania Ayyar, J., in *Chappan v. Moidin Kutti* ILR (1899) Mad. 68 that the essential things to constitute appellate jurisdiction are the existence of the relation of superior and inferior courts and the power of the former to review the decisions of the latter. It was held in that case by the Madras High Court that an appeal lies against an order made by a Single Judge of the High Court in civil revision under Clause 15 of the Letters Patent when such an order amounts to a judgment. This decision was followed by the Calcutta High Court in *Secretary of State for India in Council v. British India Steam Navigation Company* (1911) 13 C.L.J. 90. It was held in that case that an order passed by the High Court in exercise of its revisional jurisdiction u/s 115 of the CPC of 1908 or its power of superintendence u/s 15 of the High Courts Act of 1861, is an order made or passed in appeal within the meaning of Section 39 of the Letters Patent. We, therefore, hold that there is no difference in the intrinsic quality between a "right of appeal" and a "right of revision" to a tribunal. In either case there is a question of interference with an existing vested right, and

the principle of the Supreme Court decision in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, applies as much to a vested right of appeal as to a vested right of revision given to a superior taxing authority.

8. For these reasons we hold that the Commissioner of Sales Tax had authority to revise the order of the Assistant Superintendent of Sales Tax, dated the 8th of August, 1949, in respect of the quarter ending the 31st of March, 1949, and that the amended Section 24(4) of the statute does not apply to this case. We accordingly answer the question of law referred by the Board of Revenue against the assessee and in favour of the State of Bihar. The assessee must pay the costs of this reference. Hearing fee, Rs. 250.