

State Of Punjab & Ors vs Bhatinda District Coop. Milk P. Union ... on 11 October, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO.:

Appeal (civil) 4808 of 2007

PETITIONER:

State of Punjab & Ors

RESPONDENT:

Bhatinda District Coop. Milk P. Union Ltd

DATE OF JUDGMENT: 11/10/2007

BENCH:

S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) NO.5040 of 2007) S.B. Sinha, J.

1. Leave granted.

2. What should be the reasonable period for reopening an order of assessment under the Punjab General Sales Tax Act is the question involved in this appeal which arises out of a judgment and order dated 22.12.2006 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No.15477 of 2006 whereby and whereunder the writ petition filed against a notice dated 4.9.2006 issued by Revisional Authority- cum-Assistant Excise and Taxation Commissioner, Bhatinda to the respondent was allowed.

3. Before embarking upon the said question, we may notice the basic fact of the matter.

4. Respondent herein is a federation of milk union. It is a cooperative society registered under the Punjab Cooperative Societies Act, 1948. It is also registered as a dealer under the Punjab General Sales Tax Act and the Rules framed thereunder. It has been running milk plants under the control of Punjab State Cooperative Milk Producers Federation Limited, Chandigarh. The Act provides for levy of purchase tax on milk when purchased for use in the manufacture of goods which are specified in Schedule C thereof. Milk when purchased for use in the manufacture of any goods other than tax free goods provides for levy of purchase tax.

5. In respect of the assessment for the year ending 31.3.2000, the assessment proceedings were

completed relying on the return filed by the appellant on 20.3.2001. Indisputably, in terms of Section 11 of the 1948 Act, a period of three years has been prescribed as a period of limitation as contained under sub-section (3) of Section 11 for completing assessment from the last date for filing of return. Sub-section (6) of Section 11 reads as under :

If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount. Section 21 of the said Act provides for revision. Section 21 of the Act with which we are concerned herein reads as under:

1. Revision-(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any Officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order, may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

6. The authority issued notice upon the respondent to show cause as to why the proposed action under Section 21(1) of the Act be not taken on the premise that illegalities, irregularities and improprieties , as enumerated therein had been found in the order of assessment dated 20.3.2001. Cause was to be shown on 14.9.2006. Respondent neither appeared before the revisional authority nor filed any show cause.

7. It filed a writ petition before the Punjab and Haryana High Court praying, inter alia, for the following reliefs :

(i) A writ in the nature of certiorari calling for the records of the case from the respondents and quashing Notice (Annexure P1) as time barred.

(ii) A writ in the nature of prohibition restraining the respondents No.2 from imposing, collecting and recovery of purchase tax proposed in the notice exercising Revisional powers u/s 21(1) of the Act.

(iii) Any other writ, order or direction as this Hon ble Court may deems fit and appropriate in the facts and circumstances of the case.

8. Appellant, in its affidavit in opposition, took a preliminary objection that the said writ petition was pre-mature and, thus, should not be entertained being against a mere show cause notice. It was contended that respondents would be entitled to take all the points raised by it in the writ petition before the Revisional Authority.

9. The High Court, relying on some of precedents, opined that the order of assessment having been passed on 20.3.2001 and as the same is sought to be revised by issuing notice dated 4.9.2006, without assigning any reason justifying exercise of revisional jurisdiction, the same was wholly unsustainable in law.

10. The learned counsel appearing on behalf of the appellant, in support of this appeal, inter alia, submitted that the High Court in passing the impugned judgment committed a serious illegality in so far as it failed to take into consideration that no time limit has been fixed for exercise of suo moto jurisdiction of the Revisional Authority. It was further submitted that as it was open to the respondent to raise all contentions before the Revisional Authority itself, it was not a fit case where the High Court should have exercised its power of judicial review.

11. Punjab General Sales Tax Act provides for levy of purchase tax on certain goods which are specified in Schedule C therein; Entry No. 13 whereof reads as under :

Milk when purchased for use in the manufacture of any goods other than tax free goods for sale.

12. Respondent indisputably has been filing quarterly returns before the assessing authority showing sales turn over and purchase turn over of the goods. Under the said provision, deposit of sales tax and purchase tax as per returns is provided for. It casts a duty on the assessee to deposit the purchase tax on purchase of milk which is used for the manufacture of goods other than tax-free goods as provided for in the Schedule appended thereto. It is neither in doubt nor in dispute that the respondent filed returns for all the quarters for the year ending 31.3.2000. It also stands admitted that the assessment proceedings were completed on 28.3.2001.

13. Indisputably, books of accounts and other relevant documents were taken into consideration by the assessing authority while passing the order of assessment.

14. Sub-section (1) of Section 11 provided for a three years limitation. We may notice that the said period of limitation was introduced by reason of Punjab Act No.12 of 1998 and prior thereto a period of five years was prescribed therefor. Sub-section (3) of Section 11 also provides for a three years limitation. Sub-section (6) of Section 11 which is the residuary provision provides for five years limitation.

15. Sub-section (1) of Section 11 empowers the Commissioner to extend the period of three years for passing the order of assessment wherefor reasons are required to be recorded in writing subject, however, to the maximum period of five years. Ordinarily, therefore, a period of three years has been prescribed for completion of the assessment in terms of the provisions of the Act. We may also notice that in cases where an assessment order is to be reviewed, the same should be done within a period of one year.

16. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.

17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

18. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.

19. In *The State of Orissa v. Debaki Debi & Ors.* reported in [AIR 1964 SC 1413], on interpretation of the provisions of Section 12(6) of the Orissa Sales Tax Act, 1947, 36 months time was considered to be the period of limitation for exercise of the revisional jurisdiction.

20. In *S.B. Gurbaksh Singh v. Union of India & Ors.* [1976 (37) STC 425], Untwalia J., speaking for the Bench, opined :

Appropos the fourth and last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course.

No time-limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case.

21. Our attention has been drawn to a decision in Commissioner of Sales Tax, Orissa & Anr. V. M/s. Halari Store etc. [(1997) 7 SCC 715] wherein this Court, while considering the provisions of Orissa Sales Tax Act, 1948 and the Rules framed thereunder, held :

But, the same is not the position where the Commissioner decides to exercise his suo motu revisional power to revise an appellate order. Significantly the words on his own motion occurring in the enactment are conspicuously present in the proviso the legislature has excluded the revisional jurisdiction of the Commissioner of Sales Tax to revise an appellate order if invoked at the instance of a dealer or a person when such dealer or person has a remedy by way of an appeal. As noticed earlier, the limitation on the suo motu power of the Commissioner as to revise an appellate order has not been expressly provided in the proviso. In the absence of any expressed provisions, no limitation on suo motu power of the Commissioner to revise an appellate order can be implied. We accordingly hold that the provisions of proviso to sub-section (4)(a) of Section 23 of the Act do not prohibit the Commissioner to exercise suo motu revisional power to revise an appellate order.

22. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretofore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4.9.2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of 5= years.

23. Question of limitation being a jurisdictional question, the writ petition was maintainable.

24. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself. This case, however, poses a different question. The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21(1) of the Act. The High Court, furthermore in its judgment, has referred to some binding precedents which have been operating in the field. The High Court, therefore, cannot be said to have committed any jurisdictional error in passing the impugned judgment.

25. There is, thus, no merit in the case. It is dismissed accordingly. No costs.