

Indian Copper Corporation Limited vs State Of Bihar And Ors. on 8 February, 1965

Equivalent citations: [1965]16STC772(SC)

Bench: J.C. Shah, M. Hidayatullah, P.B. Gajendragadkar, S.M. Sikri

JUDGMENT

Hidayatullah, J.

1. In this appeal by special leave the Indian Copper Corporation Ltd. impugns a judgment of the Patna High Court dated April 12, 1961, arising from a petition in the High Court under Article 225 of the Constitution. By that petition the Corporation challenged certain review proceedings pending before the Superintendent of Sales Tax as the result of an application by the Commissioner of Commercial Taxes, Bihar, Patna, asking for review of the previous order in the light of the decision of this Court in *State of Bombay and Another v. United Motors (India) Ltd. and Others* (1953 S.C.R. 1069; 4 S.T.C. 133). The application by the Commissioner was made in the following circumstances :-The Corporation is a company incorporated in England and it carries on its business and trade in India at Ghatsila, District Singhbhum, in the State of Bihar. It is registered as a dealer under the Bihar Sales Tax Act, 1947. The Corporation used to deposit sales tax in advance with the Sales Tax Authority at Jamshedpur and in the year 1950-51 it deposited Rs. 4,80,786-10-0. Later the Superintendent of Sales Tax assessed the tax for the year at Rs. 5,88,833-14-0. The Corporation appealed to the Deputy Commissioner, Sales Tax, claiming exemption in respect of goods dispatched outside the State of Bihar. The claim of the Corporation was that goods worth Rs. 5,63,398 were sold to the Bengal-Nagpur Railway and delivered at Kharagpur in the West Bengal for the purpose of consumption and therefore no tax should have been levied on the amount in view of the provisions of Article 286(1)(a) of the Constitution and the Explanation thereto. By his order dated December 4, 1952, the Deputy Commissioner remanded the case with the direction "that it should be re-examined to find out if the goods have been actually delivered outside Bihar for direct consumption". The Corporation took a revision before the Board of Revenue and by the order dated August 20, 1953, the Board of Revenue let the remand stand but with a different direction in view of the decision of this Court in the *United Motors* case (1953 S.C.R. 1069; 4 S.T.C. 133), which was then available. Its direction drew attention to the decision in that case and then said : "The case is, therefore, remanded to the Sales Tax Officer for passing an order afresh after verification of the quantities under different categories which may be proved to have been sent outside Bihar. "The Superintendent of Sales Tax, Jamshedpur, then passed an order on February II, 1956, holding the Corporation entitled to a refund of Rs. 4,05,404-15-0 and reassessed the petitioner to sales tax amounting to Rs. 36,395-1-0. The same day the Superintendent of Sales Tax issued a notice to the Corporation for forfeiture of the amount refundable to it under section 14A of the Act inasmuch as the Corporation had collected this amount, by way of tax, in contravention of the law. The

Corporation applied for refund on March 25, 1956. The Corporation then applied to the Patna High Court to quash the proceedings for forfeiture of the amount and the High Court by its judgment dated September 25, 1956, quashed the proceedings begun under section 14A of the Act. As the amount was not refunded the Corporation filed another petition under Articles 226 and 227 of the Constitution for orders or directions to obtain it. Meanwhile, the Commissioner of Commercial Taxes had applied to the Superintendent of Sales Tax, Jamshedpur, for review of the order of February 11, 1956. The application of the Commissioner was made on August 27, 1957. The High Court by its order dated January 9, 1959, in the last-mentioned petition to it, directed the Commissioner of Sales Tax to deal with the refund application according to law and to order refund of the excess amount paid as sales tax. The excess amount was thereupon refunded to the petitioner-firm. That is how the matter stands today. All this while the application for review was pending. It was contended by the Corporation before the Assistant Commissioner of Sales Tax that the officer had no jurisdiction to review the order of February 11, 1956, made by his predecessor. This objection was over-ruled on October 17, 1960, and on October 20 the Corporation was ordered to produce its books of account for 1950-51 together with statements of sales outside Bihar and any other evidence the Corporation thought necessary to bring. The Corporation then filed a petition for quashing these orders and this appeal arises from the order of the High Court dismissing this petition. Many grounds were urged before the High Court and were dealt with by it in the judgment under appeal. It was contended before the High Court that the powers of review granted by section 24(5) of the Act must be construed to have the same meaning as in section 114 and order 47, rule 1, of the Code of Civil Procedure. The High Court went into this question at great length and rejected the contention. It appears to us that this was unnecessary and, in fact, premature. The extent of review allowed by the Act was a matter for the determination of the authority concerned and the High Court should not have taken on itself the duty of explaining the extent of those powers. That was something which might well have been left to the determination of the Tribunal concerned and we, therefore, decline to express any opinion on it. The Tribunal will no doubt reach its conclusions unhampered by the observations of the High Court. If the Tribunal makes a mistake there would be time enough to correct it. Two other objections were raised. The first was that as the order of February 11, 1956, was passed in accordance with the directions of the Board of Revenue there was no room for review because the order of the Board was bound to be given effect to by the Superintendent of Sales Tax as decided by this Court in *Bhopal Sugar Industries Ltd. v. Income-tax Officer, Bhopal*. The High Court rightly pointed out that all that the Board did by its order of August 20, 1953, was to direct the Superintendent to give effect to the judgment of the Supreme Court in the *United Motors* case (1953 S.C.R. 1069; 4 S.T.C. 133) while making the reassessment. If there is an error apparent on the face of the record in carrying out this direction, a review will lie at least to correct it, whatever the extent of the other powers of review under the Act. The second contention was based on law and it was that a review could only be made with the prior sanction of the Commissioner and within 12 months of the making of the order, and as there was no sanction and the period of 12 months had passed there could be no review. These grounds were not accepted by the High Court. These points were urged before us and they alone need to be considered in this appeal. Before we consider them it is necessary to set out the relevant provisions of the Act. The power of review is granted by section 24(5) which reads : "Subject to such rules as may be prescribed, any order passed under this Act or the rules made thereunder by any person appointed under section 3 may be reviewed by the person passing it or by his successor-in-office." Rule 39 of

the Bihar Sales Tax Rules, 1949, is framed under the above sub-section and provides : "39. Review - (1) When the Commissioner or any other officer reviews any order under sub-section (5) of section 24, he shall record his reasons in writing for doing so. (2) Save with the previous sanction of the Commissioner an order not passed by the Commissioner shall not be reviewed more than twelve months after the passing of the order which is sought to be reviewed. (3) No officer below the rank of Commissioner shall review any order which has been passed by any of his predecessors-in-office except with the previous sanction of the Commissioner. "It is contended by the Corporation that the review in this case cannot take place because 12 months have passed since the making of the order sought to be reviewed; that no previous sanction of the Commissioner has been obtained to the initiation of the review proceedings and that the application made by the Commissioner cannot take the place of the sanction which is an exercise of a very different power. It may be pointed out that at the hearing before us a sanction by the Commissioner under rule 39(2) and (3) dated May 9, 1959, was produced but we think that it cannot be taken into account at this stage. The review in the present case is being made by an officer who is below the rank of the Commissioner and who is proposing to review an order passed by his predecessor. The officer, therefore, cannot review the order except with the previous sanction of the Commissioner. Similarly, as the order was passed on February 11, 1956, more than 12 months before the proceedings for review were even started it cannot be reviewed unless the requirements of sub-rule (2) of rule 39 as to sanction of the Commissioner are again complied with. In either case the Commissioner's sanction is a condition precedent though only one sanction would do. It is necessary first to decide whether there is such sanction. The Commissioner has moved for a review because the law, as explained by this Court in the United Motors case (1953 S.C.R. 1069; 4 S.T.C. 133), was perhaps not followed. On that application notices have been issued to the Corporation to produce its books of account. The officer concerned has not yet reviewed the order of his predecessor. The petition has been made to question the initiation of review proceedings. The officer is merely considering whether a case for review exists. The words of the rule are that the order passed "shall not be reviewed" save with the previous sanction of the Commissioner and if the officer concerned does not review the order and leaves it intact there would ex facie be no occasion to obtain the sanction of the Commissioner. It is, however, contended that the very notice to the Corporation is "reviewing" the order passed by the predecessor-in-office of the present Superintendent of Sales Tax. If this were so the application of the Commissioner denotes his sanction to initiate the proceedings. Whether one reads sub-rules (2) and (3) as applicable at the time of the initiation of the proceedings or as applicable at the time of the passing of an order actually reviewing the previous order, it is quite clear that the sanction of the Commissioner is available in this case. If the rules are intended to apply to the making of the order incorporating an actual review that order has not yet been made and the Commissioner's sanction of May 9, 1959, is available. If, however, the sanction was necessary for the initiation of the proceedings for review then what better sanction can there be than the Commissioner himself asking that the proceedings for review should commence ? The only question is whether the time limit under sub-rule (2) of rule 39 for review has expired and the contention is that this time marks out the commencement of the proceedings. In our opinion, sub-rule (2) cannot be read in this way. It says that an order not passed by the Commissioner shall not be reviewed more than 12 months after the passing of the order which is sought to be reviewed save with the previous sanction of the Commissioner. The emphasis is no doubt on the passage of time but the rule indicates that within the period specified the sanction of the Commissioner is not necessary. Even after the passage of

time action can be taken but with the previous sanction of the Commissioner. This limit of time does not apply to orders passed by the Commissioner himself. A sanction is thus needed after the expiry of 12 months but sanction is not necessary within that period. If proceedings are commenced within 12 months and also concluded within 12 months there is no need for sanction. If they are commenced within 12 months but actual review takes place after 12 months, sanction must be obtained before reviewing the earlier order. It is thus obvious that this is not a limit of time for the commencement of the proceedings but to the making of the order for review. The Commissioner can review his own order without the limit of time and it is for the Commissioner, after the expiry of 12 months, to determine whether review should or should not take place in other cases. The free power is curtailed by the passage of a year in respect of not the initiation but of the making of the order of review. In the present case, as the Commissioner has himself moved for review, the requirements of sub-rule (2) as also of sub-rule (3) are fully satisfied and express consent is also available if the order is required to be reviewed. We see no force in the appeal. It fails and will be dismissed with costs.