

Jaipuria Brothers Ltd. vs The Sales Tax Officer And Anr. on 4 November, 1955

Equivalent citations: [1956]7STC64(ALL)

ORDER

Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.
2. The petitioner is a public limited liability company having its head office at Calcutta. It was appointed as managing agent of the Swadeshi Cotton Mills Company Ltd., Kanpur, which concern is engaged in the manufacture of cloth and yarn. According to the petitioner, it was also appointed as the sole selling agent of the Swadeshi Cotton Mills with effect from the 5th October, 1946, as a temporary measure. The petitioner used to sell the cloth and yarn manufactured by the Swadeshi Cotton Mills. In 1948 the U.P. Legislature passed the U.P. Sales Tax Act, which came into force from the 1st April, 1948. A sales tax was imposed on the sales of cloth and yarn and the rate was changed from time to time. The petitioner obtained a licence under Section 6 of the Act and the case of the petitioner was that it was not selling any cloth or yarn on its own account but was doing so as the agent of the Swadeshi Cotton Mills. It, therefore, thought that it was not a dealer, as defined in Section 2(c) of the U.P. Sales Tax Act. It did not file a return, as provided for the assessment year 1948-49 and the year in dispute is this year only.
3. On the 20th March, 1952, a notice was issued to the petitioner purporting to be under Section 21 of the U.P. Sales Tax Act stating that the petitioner was liable to assessment to sales tax for the year 1948-49, and the entire turnover of the business had escaped assessment. It called upon the petitioner to file a return on or before the 29th March, 1952, and to produce the account books on the 31st of March. The petitioner filed an application on the 31st March, 1952, stating that it was an agent of the Swadeshi Cotton Mills and it obtained a licence under Section 6 and was not liable for the payment of sales tax. It was also stated that the account books were at the head office at Calcutta and could not be produced at such short notice. The Sales Tax Officer did not agree with the petitioner and passed what may be called "a best judgment assessment" on the 31st March, 1952, assessing the petitioner to a sales tax amounting to more than Rs. 78,000. He was of the opinion that the petitioner was not acting as the agent of the Swadeshi Cotton Mills but as a sole distributor. The petitioner preferred an appeal against this order and the Judge (Appeals), Sales Tax, Allahabad, allowed the appeal and set aside the assessment on the ground that the petitioner was acting merely as the agent of the Swadeshi Cotton Mills and thus did not come within the definition of the word "dealer" as given in Section 2(c) of the U.P. Sales Tax Act. A revision was preferred against this order by the Commissioner of Sales Tax, and it came up for hearing before the Judge (Revisions), Sales Tax. The Judge (Revisions) decided the case on the 18th March, 1955, but he did not come to any

clear decision whether the decision of the Judge (Appeals) was correct or not. He thought that the decision of the matter would depend upon the question whether the petitioner paid the price of the cloth taken from the Swadeshi Cotton Mills and whether it received the goods on payment or otherwise. He thought that if the goods were received on cash payment or that the petitioner debited them with the price of the goods, the obvious inference would be that the petitioner was not acting as an agent and should be held to be dealer. He himself did not decide this question and was of the opinion that the question could only be determined after going into the account books. The operative portion of the order is :-

I, therefore, allow this application and, setting aside the order of the learned Judge as well as the assessment order, remand the case for a fresh assessment after proper scrutiny of the account books in the light of the observations made above.

4. Consequent on this order, the Sales Tax Officer, Kanpur, issued a . notice to the petitioner on the 10th June, 1955, asking the petitioner to appear before the Officer on the 23rd July, 1955, with account books, statements and other relevant documents. On the 23rd July, 1955, the petitioner filed an application before the Officer praying for an adjournment to the 2nd September, 1955. On this date, the petitioner made an application before the Officer pointing out that the original assessment had been set aside and no fresh assessment could be made, as it would be beyond the time provided by Section 21 of the U. P. Sales Tax Act. The Sales Tax Officer did not accept this contention and passed an order, the same day, saying that the period of three years provided in Section 21 referred only to the original assessment under Section 21 and it could not apply to a case which had been remanded to him by the Judge (Revisions). He asked the petitioner to produce account books and other documents before him on the 28th September, 1955. The present petition was filed on the 27th September, 1955, and the prayers contained in the petition are that a writ in the nature of prohibition be issued to the Sales Tax Officer restraining him from taking any further proceedings for the re-assessment of the petitioner for the year 1948-49 and that a writ of certiorari be issued quashing the order of the Sales Tax Officer dated the 2nd September, 1955.

5. The learned counsel for the petitioner has urged only one point in support of the petition. His contention is that according to the wording of Section 21 of the U. P. Sales Tax Act, an assessment on an escaped turnover must be made within a period of three years next succeeding that to which the tax relates. He has contended that a time limit has been imposed on the completion of the assessment under Section 21 and that time limit is three years from the end of the year for which the assessment is made. The present assessment is for the year 1948-49 and the Sales Tax Officer has no jurisdiction to proceed now to make an assessment, as directed by the Judge (Revisions). Section 21 of the Act is as follows :-

Where the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax in any year, the Assessing Authority may, at any time within three years, from the expiry of such year, and after issuing notice to the dealer and making such enquiry as may be necessary, assess the tax payable on such turnover.

6. A reading of the section clearly shows that the Assessing Authority has been given a right at any time within three years from the expiry of the year of assessment to make an assessment on turnover of a dealer that has escaped assessment. The period of three years provided in the section is the period for making the assessment, and what it means is that the assessment itself should be made within the period mentioned above. The period of limitation provided here is unlike the period of limitation provided in Section 34 of the Income-tax Act or the different Articles in the Limitation Act. Under Section 34 of the Income-tax Act, the period provided is for giving a notice and, if a notice has been issued within the period provided in the section, there is then no limitation for passing the order of assessment. If a notice is issued within the time, the assessment can be made at any time after that. Similarly in the different Articles of the Limitation Act the period provided is the period for bringing a suit. In Section 21 of the Sales Tax Act, the Legislature has not adopted this method of providing for a limitation and what it has done is that it has provided a time limit for making the assessment. The assessment can be made only within a period of three years from the date of the expiry of the last date of the year or years of assessment, and a reading of the section shows that the Sales Tax Officer has no jurisdiction to make any assessment after the expiry of three years under the provisions of that section.

7. This section would cover a case where the entire turnover had escaped assessment and also the case where a part of the turnover only had escaped assessment previously.

8. The learned counsel on behalf of the State argued that the present assessment can no longer be said to be an assessment made on any escaped turnover, because the turnover had been discovered in 1952 when the assessment was originally made by the Sales Tax Officer. The present assessment, according to him, is not an assessment on a turnover which had escaped assessment previously and consequently the bar of three years' limitation does not apply. I am unable to accept this contention of the learned counsel, because it would mean that the present assessment is not being made under Section 21 of the Sales Tax Act at all. Under this section an assessment can be made only if the whole or part of the turnover had escaped assessment. It does not apply to the case where an assessment is made not as an assessment on an escaped turnover but as an ordinary assessment under Section 7 of the Act. In the present case the proceedings started by a notice issued specifically under Section 21 of the Sales Tax Act. The petitioner denied its liability, but the Sales Tax Officer made a best judgment assessment because accounts were not produced before him. There was an appeal and the Judge (Appeals) set aside the assessment and the Judge (Revisions) has, in so many words, said :

I remand the case for a fresh assessment after proper scrutiny of the account books in the light of the observations made above.

9. He has directed a fresh assessment to be made and it is obvious that this assessment is to be made under Section 21 of the Act. Under the circumstances, I am not called upon to decide whether any limitation is provided for an assessment made under Section 7 of the Act. The present assessment was expressly made under Section 21 and it has throughout been treated as such.

10. The assessment which would now be made by the Sales Tax Officer under the orders of the Judge (Revisions) would be a fresh assessment under Section 21. The point was raised before the

Sales Tax Officer himself but he said that the limitation of three years might apply to an assessment made in the first instance, but, as he was making an assessment after remand of the case, the period of limitation would not be applicable. I do not think that it makes any difference whether the assessment is being made by the Sales Tax Officer at his own instance or it is being made under the direction of a superior authority. It cannot be doubted that the previous assessment was set aside by the Judge (Appeals) and even the Judge (Revisions) has clearly said in his order that he was setting aside the order of the Judge (Appeals) as well as the assessment order. There is thus no assessment order in existence at the present time and any assessment that the Sales Tax Officer may now make under Section 21 is bound by the period of three years provided in the section.

11. The learned counsel for the State argued that this section should not be interpreted as to include cases received after a remand, because if it is so interpreted the result might be that the power of revision which has been conferred by the Judge (Revisions) may be rendered entirely infructuous. It takes generally three years for the case to be taken up and decided by the Judge (Revisions) and if he passes any order accepting or modifying the original assessment order it would be taken to be a fresh assessment. I do not think that this interpretation of the learned counsel is correct. If the Judge (Revisions), in the instant case, had set aside the order of the Judge (Appeals) and restored that of the Sales Tax Officer, I do not think it could have been said that he had made any fresh assessment himself. The original assessment made by the Sales Tax Officer would have been revived and the date of assessment would be the date when that Officer had made the assessment. Even if that order was modified in revision, the position would be the same, because the assessment would be the assessment by the Sales Tax Officer and not by the Judge (Revisions). In the present case, the Judge has directed a fresh assessment to be made and he has set aside the previous assessment order, so that any assessment that is now made will be a fresh assessment under Section 21 and this could only be done within a period of three years after the expiry of the date of the year or years of assessment. That time has long expired and the Sales Tax Officer has no jurisdiction now to make any assessment under Section 21 of the Sales Tax Act. The question whether he has a right to proceed with that assessment now under Section 7 of the Act does not arise for determination in the instant case.

12. In somewhat similar circumstances, the Privy Council, in the case of Commissioner of Income-tax v. Messrs. Khemchand Ramdas [1938] 6 I.T.R. 414, has taken a similar view of the power of the Income-tax Officer to make an assessment after the expiry of the period of limitation provided in the statute. The relevant observation is to be found at page 180 of the report and is as follows :-

In view of these express provisions of the Act, it is in their Lordships' opinion quite impossible to suppose that the Income-tax Officer may in every kind of circumstance and after any lapse of time make fresh assessments or issue fresh notices of demands or that the Commissioner can direct him so to do.

13. The result is that this petition is allowed and a writ of mandamus shall issue to the respondents not to proceed to assess the petitioner to sales tax in respect of its turnover for the year 1948-49, under Section 21 of the U.P. Sales Tax Act.

14. The petitioner will be entitled to its costs from the respondents.