

Supreme Court of India

I.T.C. Ltd. vs Superintendent Of Commercial ... on 9 April, 1997

Equivalent citations: JT 1998 (9) SC 277, (1997) 11 SCC 88, 2000 119 STC 530 SC

Bench: S Sen, K Thomas

ORDER

1. This is a case under the Bihar Sales Tax Act, 1959. The period of assessment involved is 1964-65 and 1965-66. Mr. Nariman, appearing on behalf of the appellant, has taken the point that notices in these cases for reopening the assessment were given sometime in March 1973. Both the notices were beyond the period of six years but within eight years from end of the assessment period. Our attention was drawn to Section 18 of the Act which reads as follows :

18. Turnover of registered dealer escaping assessment.-(1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under Sub-section (5) of Section 16 has been under-assessed or assessed at a rate lower than that which was correctly applicable or any deductions therefrom have been wrongly made, the prescribed authority may, subject to such rules as may be made by the State Government under this Act, and ;

(a) within eight years of the expiry of such period, where the said authority has reasons to believe that the dealer has concealed, omitted or failed to disclose fully the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the real amount,

(b) within six years of the expiry of such period in any other case, serve on the dealer a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 16 and proceed to assess or reassess, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice under this Sub-section was a notice under Sub-section (2) of Section 16.

2. It is well-settled that these notices are mandatory and cannot be waived. The contention of Mr. Nariman is that in these cases, there is no concealment, omission or failure to disclose on the part of the assessee any particulars about his turnover which he was required to. In fact, he has furnished full particulars in form XXVIII-B which were within the knowledge of the taxing authority.

3. The second contention is that in any event, there is no provision of law which obliges the assessee to furnish particulars of sales made outside the State. The Sales Tax Officer under the Bihar Act is concerned with only what is assessable to tax in Bihar. It appears that not only proceedings for reopening of the assessment were initiated but also penalty proceedings were commenced against the assessee. In the case of penalty the onus is on the department to establish that conditions exist for imposition of penalty. In case of reopening of an assessment, if challenge is thrown, the department has to establish that it is entitled to do so. The condition precedent for reopening of an assessment must be fulfilled.

4. We are of the view that Mr. Nariman's argument is of substance and must be upheld in the facts of this case.

5. It has not been stated anywhere in the judgment of the High Court what material fact that the assessee was required by law to disclose which he had failed to do. The High Court has come to the conclusion that there has been under-assessment of the turnover of the assessee. If that be so, reopening could be done under Sub-clause (b) of Section 18(1) within a period of six years from the end of the accounting period. No material has been brought out in the order of the High Court to show that the Sales Tax Officer was unaware of the contents of form XXVIII-B submitted by the assessee. As far as the requirement of full disclosure of turnover by the assessee is concerned, the High Court itself has observed that "the law as it stands today has been put in a very confused manner and from a perusal of the provisions it is not easy to cull out the obligations of the assessee". On the basis of this reasoning, the High Court struck down the penalty proceeding on the ground that concealment had not been established.

6. If that be so, how could the High Court jump to the conclusion that so far as reassessment is concerned, the assessee has not discharged his obligations which led to escapement of full amount of the assessee's turnover from assessment under the Sales Tax Act ?

7. No one has appeared on behalf of the State of Bihar to controvert the allegation made on behalf of the appellant. No material has been placed before this Court to justify the reopening of the assessment beyond the period of six years under Section 18(1)(a) of the Bihar Sales Tax Act, 1959.

8. On the basis of the findings of fact and also the statement of law made by the High Court, it is difficult to uphold the initiation of proceedings under Section 18(1)(a) of the Bihar Sales Tax Act, 1959. These appeals are allowed. The impugned judgment of the High Court now under appeal is set aside. There will be no order as to costs.