(2003) 02 GAU CK 0020

Gauhati High Court

Case No: Civil Rule No. 2909 of 1993

Shree Automobiles Private Limited		APPELLANT
	Vs	
Commissioner of Taxes and Others		RESPONDENT

Date of Decision: Feb. 14, 2003

Acts Referred:

- Assam General Sales Tax Act, 1993 - Section 18, 36

Citation: (2003) 3 GLT 40 : (2003) 132 STC 125

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: A.K. Saraf, S. Mitra and K.K. Gupta, for the Appellant; B.J. Talukdar, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

Ranjan Gogoi, J.

The challenge in the present writ application is against a notice dated September 23, 1993 issued by the Deputy Commissioner of Taxes, Guwahati Zone-C, u/s 36(1) of the Assam General Sales Tax Act, 1993 read with Section 9(2) of the Central Sales Tax Act, 1956. By the aforesaid notice, a suo motu revision of the assessment of the petitioner-firm under the Central Sales Tax Act for the period ending March 31, 1992 and September 30, 1992 was proposed by the authority. The writ petition has come up before this Court challenging the aforesaid notice by contending that the same has not been lawfully issued and therefore, would be open to appropriate interference by this Court.

2. The facts of the case, in brief, may be recited hereinbelow : The assessments of the petitioner-company in respect of its liability under the Central Sales Tax Act, 1956 for the two periods in question were completed u/s 17(4) of the Assam Sales

Tax Act, 1947 read with Section 9(2) of the Central Sales Tax Act, 1956. The petitioner applied to the authority for cancellation of the aforesaid best judgment assessment and the Superintendent of Taxes, i.e., the assessing authority, asked the petitioner to appear before him on April 19, 1993 with full records of all transactions made in course of its business in respect of the periods in question. The petitioner complied with the said requirement imposed by the assessing authority and thereafter by an order dated May 19, 1993 and May 20, 1993 the assessing authority reassessed the petitioner-firm by invoking Section 17(3) of the Act of 1947 read with Section 9(2) of the Central Sales Tax Act, 1956. Thereafter, the impugned notice dated September 23, 1993 was issued u/s 36(1) of the Assam General Sales Tax Act, 1993 which Act had come into force in the meantime with effect from July 1, 1993, giving rise to the challenge in the instant proceeding.

3. Dr. A.K. Saraf, learned Senior Counsel appearing on behalf of the writ petitioner has advanced a two-fold argument in support of the challenge made in this writ petition. Learned counsel has argued that the assessments of the writ petitions for the periods in question were made by the assessing authority after full scrutiny of the records produced and after due satisfaction of the turnover of the petitioner. The power of suo motu revision u/s 36(1) of the Act of 1993 would not be available to revise the said assessments completed on the basis of the documents and records produced before the assessing officer, merely because the revisional authority, is of the view that the assessments have not been made correctly and properly. Learned counsel for the petitioner by relying on a judgment of this Court in the case of Rajendra Singh v. Superintendent of Taxes [1990] 79 STC 10 has contended that to enable the authority to exercise the power of suo motu revision conferred by Section 36(1) of the Act of 1993, two conditions have to be fulfilled, namely, the assessment order is erroneous and prejudicial to the interest of the revenue. Learned counsel has argued that this Court in the case of Rajendra Singh [1990] 79 STC 10 has interpreted the expression "erroneous" to mean an error committed by the assessing officer in respect of his jurisdiction meaning thereby that either the assessment has been made without jurisdiction or the same has been made with material irregularity or illegality in exercise of jurisdiction. Learned counsel has further argued that an assessment/order passed by a lower authority may be erroneous in the context of the ordinary meaning of the said expression. However, the same would not make the assessment/order amenable to correction in exercise of suo motu power of revision unless an error of jurisdiction, i.e., a jurisdictional error had been committed. In the instant case, the assessments of the writ petitioner for the period in question were made after due scrutiny of the documents produced by the assessee pursuant to the requisitions made by the assessing officer. No jurisdictional error according to the learned counsel is disclosed in the assessments made so as to justify recourse to the provisions of Section 36(1) of the Act of 1993.

4. Dr. Saraf has further argued that a mere perusal of the notice dated September 23, 1993 would go to show that the revisional authority is seeking to revise the assessments made on the basis of certain additional materials which had subsequently come to the knowledge of the said authority. Learned counsel has argued that the revisional power must be exercised on the basis of the materials already on record in course of assessment proceeding and any attempt to correct the assessment made in the light of the additional materials may be appropriate to the power to reopen the assessment as conferred by Section 18 of the Act of 1993. The power of reopening a concluded assessment is vested on the assessing officer and not on the revisional authority and therefore, the impugned notice dated September 23, 1993 would be wholly without jurisdiction.

5. Mr. B.J. Talukdar, learned Government Advocate appearing on behalf of the State, has sought to controvert the arguments advanced by the writ petitioner by contending that the present writ application is a premature one, inasmuch as, by the impugned notice, the petitioner has been merely asked to show cause and it will be always open for the petitioner to advance the arguments now put forward before the revisional authority. On the said basis, the learned Government counsel has argued that this Court ought not to exercise its discretionary power to issue a writ in favour of the writ petitioner. On the merits of the case, the argument of the learned Advocate is that there are sufficient materials in possession of the revisional authority which would justify the issuance of the impugned notice and therefore, no interference is called for.

6. The rival submissions advanced by the parties have been duly taken note of. In case of Rajendra Singh [1990] 79 STC 10 a division Bench of this Court has clearly held that the expression "erroneous" as appearing in Section 21 of the Tripura Sales Tax Act, 1976 which is in pari materia with Section 36(1) of the Assam Act of 1993 would mean that an error had been committed in respect of exercise of jurisdiction and that an erroneous order must reflect a jurisdictional error. In the aforesaid case, the division Bench further held that if the assessing officer on scrutiny of the records and after holding an enquiry, had finalised the assessment, the revisional authority would not be empowered to revise the said assessment merely because it holds a different opinion with regard to the merits of the adjudication made by the assessing authority. An error, jurisdictional in nature going to the root of the matter or a wrong or illegal exercise of jurisdiction, apparent on the face of the record, must be disclosed to justify the recourse to the suo motu revisional jurisdiction. Any and every error would not be amenable to such revisional power. This is not to say that the error must be allowed to remain ; what has to be emphasised is that the correction of such error must be by adoption of other modes as contemplated by the Act. In the instant case what is noticeable is that the assessments had been completed by the assessing officer upon due and proper satisfaction on the basis of the records produced by the assessee. No error, jurisdictional in nature, is disclosed in the assessment orders passed though the revisional authority has subsequently

come into possession of certain materials which in its opinion has rendered the assessments bad in law. The same, however would not justify recourse to the suo motu revisional power. The required correction, if any, has to be made by recourse to other modes within the four corners of the statute.

7. Coming to the second argument advanced on behalf of the writ petitioner, it must be noticed that the apex Court in the case of State, of Kerala v. K.M. Cheria Adbulla and Company reported in [1965] 16 STC 875, reliance on which has been placed on behalf of the petitioner, has clearly held that while it would not be correct to say that in exercise of the revisional power, the authority would not be competent to make an enquiry beyond the record of the proceedings sought to be revised, the power to make such an enquiry must necessarily be understood, in the context of the scheme of the Act. While exercising such powers and in conducting such enquiry, the authority must not encroach upon the other corrective powers, vested in other authorities, by the provisions of the Act. The aforesaid view stands further fortified by a subsequent judgment of the apex Court in the case of Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Dhanalakshmi Vilas Cashew Co. reported in [1969] 24 STC 491 wherein the apex Court has clearly laid down that the scope of enquiry in exercise of revisional jurisdiction cannot be allowed to encroach upon any matter which on proper interpretation, would fall within the scope of a proceeding for determination of escaped turnover.

8. In the instant case what is evident from the impugned notice dated September 23, 1993 is that the revisional authority has sought to revise the assessment initially made on the basis of certain additional information which it claims has subsequently come into its possession. If the information stated to be in possession of the revisional authority is correct, what has happened is that turnover has escaped assessment. Section 18 of the Assam Act, 1993 has contemplated a proceeding for determination of escaped turnover to make the same exigible to tax. The power to initiate a proceeding to determine escaped turnover is vested on the assessing officer and therefore, recourse to the impugned notice and the power u/s 36(1) of the Act of 1993 on basis thereof cannot be held to be justified. The argument advanced on behalf of the State that the present challenge is premature has to be negatived inasmuch as submission to the jurisdiction of an authority would only be justified if the authority concerned is legally empowered to initiate and conduct the proceeding in question. As the revisional authority has been held to be not competent to issue the impugned notice, this Court sees no justifiable ground to require the assessee to appear before the authority on the basis of the impugned notice which has already been held to be contrary to the provisions of the Act.

9. For the foregoing reasons, this writ petition is allowed and the notice dated September 23, 1993 stands quashed.