
(1989) 01 GAU CK 0006

Gauhati High Court

Case No: Civil Rule No. 207 of 1977

Biswanath Trivedi @
Biswanath Tewari

APPELLANT

Vs

Assam Board of
Revenue, Gauhati

RESPONDENT

Date of Decision: Jan. 19, 1989

Acts Referred:

- Assam Finance (Sales Tax) Act, 1956 - Section 12, 12

Citation: (1989) 1 GLJ 411

Hon'ble Judges: A.Raghuvir, C.J. and S.K.Homchaudhuri, J

Bench: Division Bench

Advocate: V.K.Bhatra, B.Choudhary, J.P.Bhattacharjee, Advocates appearing for Parties

Judgement

Homchaudhri, J.

In this petition under Article 226 of the Constitution of India the question involved and to be decided is whether the Assam Board of Revenue is an "Authority" as contemplated under section 12 of the Assam Finance (Sales Tax) Act, 1956 (Assam Act XI of 1956) hereinafter referred to as "The Act" and whether an application under section 12 of the Act for rectification of the errors apparent on the face of the records appearing in the order passed in appeal or in review application, by the Board of Revenue is maintainable.

Petitioner"s case in brief is that he neither sold any taxable goods nor transferre 1 any taxable goods/bill of lading thereof in the State of Assam during return periods ending on 30.9.57 and 31.3.58. The Superintendent of Taxes, Gauhati, the respondent No. 3 however, in spite of his protest, registered him as dealer under the provision of the Act and thereafter illegally passed assessment orders dated 3 6.58 and 4.6.58 in respect of aforesaid return periods and saddled by the petitioner with the liabilities to pay taxes under the provisions of the Act. Petitioner impugned the said assessment orders in two

appeals before the Assistant Commissioner of Taxes and the appellate Authority by orders dt. 22. 3.62 set aside the assessment orders and remanded the matter to the Superintendent of Taxes with the direction to pass appropriate orders after thorough enquiry in all perspective. After remand the Superintendent of Taxes again by separate orders of assessment dated 5. 8. 1963 determined Rs. 18,685.31 P and Rs.18,027.03 P. to be payable by the petitioner as taxes under the provisions of the Act in respect of the return period ending on 30.9.57 and 31.3.58 respectively. Petitioner assailed the two assessment orders dated 5.8.63 in two appeals before the Assistant Commissioner of Taxes, but the Assistant Commissioner of Taxes by the common appellate judgment and order dated 22.4.1970 dismissed the appeals. Being aggrieved, petitioner approached the Board of Revenue by filing two appeals registered as Case No. 59 STA of 1970 and Case No. 60 STA/70. The learned Board of Revenue by a common judgment and order dt. 20.9.71 dismissed both the appeals. The petitioner filed an application under section 7 of the Assam Board of Revenue Act, 1962 for review of the aforesaid common judgment dt. 20.9.71. The learned Board of Revenue by order dated 18.5.73 rejected the review application. The petitioner thereafter filed an application under section 12 of the Act for rectification of some errors appearing from the order dt. 18.5.73 passed by the learned Board of Revenue in review application. The said application, was registered as Case No.2 STA 74. The petitioner states that on 7.8.74 another application was also made by the petitioner in the said case pointing out some errors apparent on the face of the record and served a copy thereof on respondent on 30.8.74. The learned Board of Revenue however, by the impugned judgment dt. 22.6.76 dismissed the application for rectification holding :

"Coming to the application filed u/s 12 of the Act, it is to be held that such a petition is also not at all maintainable. Section 12 of the Act provides for rectification of orders by the Authority which made an assessment or passed an order on appeal or revision in respect thereof. Section 4 of the Act has defined Taxing Authority. Rule 3 of the Assam Finances (Sales Tax) Rules, 1956 has enumerated the Authorities to Assist the Commissioner. From section 4 of the Act and Rule 3 of the Rules, it is to be continued that section 12 of the Act is not applicable in case of orders passed by the Board in appeals before it. The Commissioner of Taxes is the Taxing Authority and the officers enumerated in Rule 3 of the Rules are the Taxing Authorities to assist the Commissioner in the matter of assessment. The Assam Board of Revenue can never be taken and considered as one of the Authorities for rectification of order as laid by section 12 of the Act. The Assistant Commissioner of Taxes has pointed out that the Assam Board of Revenue Act was passed in 1962 after the Assam Finance (Sales Tax) Act, 1956 came into force and that section 7 of the Assam Board of Revenue Act has laid down the procedure for review of its own order or decision. Section 8 of the Assam Board of Revenue Act has laid down the procedure for correction of any order of the Board by the Board itself. Clearly, the scope of section 12 of the Act is restricted by the sections 7 and 8 of the Assam Board of Revenue Act, 1962. So far the orders of the Board are concerned, the "Authority" mentioned in section 12 of the Act does not and cannot connote the applicable to the

orders etc. passed by the Taxing "Authority" only in respect of an assessment made or on appeal or revision in respect thereof. Apparently, the clause "in respect thereof" of section 12 of the Act and section 7 and 8 of the Assam Board of Revenue Act have left no scope for application of section 12 of the Act to order passed by the Board."

Although, in the writ petition, the petitioner impugned the orders of assessment, appellate judgment, the judgment and order passed in the review application as well as judgment and order passed in the application for rectification under section 12 of the Act, the real attack is to be against the impugned judgment and order dt. 22.6.76. Mr. J. P.

Bhattacharjee, the learned counsel for the petitioner has rightly confined his submission assailing the impugned judgment and order dt. 22.6.76 passed by the learned Board of Revenue, rejecting the application for rectification. Learned counsel for the petitioner submits that under section 20 (A) of the Act, an appeal lies against the appellate order passed by the Asstt. Commissioner of Taxes before the Assam Board of Revenue and as such Assam Board of Revenue is an appellate authority. Section 12 of the Act provides that authority which made an assessment or passed an order in appeal or revision in respect thereof may at any time within 3 years from the date of such assessment or order rectify any mistake apparent on the face of the record and that being so it is apparent that Assam Board of Revenue is an authority as contemplated under section 12 of the Act and errors appearing in the order passed by the Assam Board of Revenue can be rectified by it in the exercise of power U/s 12 of the Act. As such, the learned Board of Revenue committed manifest error of law apparent on the face of the record in holding that, it is not an authority within the meaning of section 12 of the Act to rectify the error apparent on the face of the record appearing in the order passed by it in the application for review of its appellate order. Learned Government Advocate Mr. B. Chaudhury on the other hand submits that section 4 of the Act has defined the taxing authority within the meaning of the Act and Rule 3 of the Rules framed under the Act has enumerated the authorities as contemplated under section 4 of the Act and the Board of Revenue not being enumerated in Rule 3 as an authority, it has been rightly held by the impugned order that Board of Revenue was not the authority U/S 12 of the Act and as such petition for rectification filed before it was not maintainable.

To appreciate the rival contentions it is apt to quote of the relevant provisions of the Act and the Rules in this case.

Section 4 : Taxing Authority (1) The State Government may, for carrying out the purposes of the Act, appoint a Commissioner of Taxes, and such other persons to assist him as they think fit.

(2) Persons appointed under subsection (1) shall exercise such powers as may be conferred, and perform such duties as may be required by or under this Act.

(3) The Government may, instead of appointing any person under subsection (1) invest by notification any officer to exercise any power under this Act and also specify therein

the area in which power is to be exercised and thereupon such officer or officers shall be deemed to have been appointed under subsection (1).

(4) All persons appointed under subsection (1) shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (Act XLV of 1860)."

Rule 3 of the Rules as follows :

13. Taxing Authorities There shall be the following authorities to assist the Commissioner

(i) Deputy Commissioner of Taxes

(ii) Asstt. Commissioner of Taxes (Appeals .

(iii) Asstt. Commissioner of Taxes,

(iv) Superintendent of Taxes,

(iv) Inspector of Taxes,

(vi) All Assam Investigation Officer.

(vii) Any other persons appointed as such by the State Government. It was substituted by the present rule 3 by Notification No. FTX. 143/79/61 dated 17/3/1981." Section 12 : as follows

12 Rectification of orders (1) The authority which made an assessment or passed an order on appeal or revision in respect thereof, may, at any time within three years from the date of such assessment or order and of its own motion, rectify any mistake apparent from the records of the case, and shall, within the like period, rectify any such mistake as has been brought to its notice by a dealer,

Provided that no such rectification shall be made having the effect of enhancing the assessment unless the authority concerned has given notice of its intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, a refund shall be due to the dealer.

(3) Where any such rectification has the effect of enhancing the assessment, a notice of demand shall be issued for the sum payable."

Section 20 (A) as follows :

20 A Appeal of the Board (1) Any dealer aggrieved by an order passed in appeal under section 19 or passed in revision under subsection (H of section 20 may appeal to

the Board within sixty days of the date on which such order is communicated to him.

(2) The Board may admit an appeal after the expiration of the sixty days referred to in subsection (1) if it is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

(3) An appeal to the Board shall be in the prescribed form and shall be verified in the prescribed manner, and shall, be accompanied by a fee of twenty five rupees.

(4) The Board may, after giving the dealer an opportunity of being heard, pass such orders thereon as it thinks fit, and shall "communicate any such orders to the dealer and to the Commissioner."

It is apparent that section 4 of the Act only speaks of the taxing authorities under the provisions of the Act and not the appellate or Revisional Authority and Rule 3 enumerates the Taxing Authorities only although Asstt. Commissioner of Taxes (appeal) has been enumerated amongst the taxing authorities.

Section 12 of the Act clearly empowers the authority to rectify the error apparent on the face of the records which appears in the assessment order appellate order, and order passed in the revision.

The Assam Board of Revenue is an appellate Authority under section 20A and as such giving plain meaning of the provision of the section 12 of the Act, it is apparent that errors appearing in the appellate order passed by learned Board of Revenue can be rectified by it in exercise of powers under section 12 of the Act. The stand taken by the learned Board of Revenue in the impugned order is super technical and erroneous. In our opinion, to meet the ends of justice, ambit of power to rectify the errors apparent on the face of the records appearing in the order passed by an authority, should be given wider meaning and the exercise of such powers should be liberally construed. We find much force in submissions made on behalf of the petitioner and we hold that the Board of Revenue is also an authority contemplated under section 12 of the Act which is empowered to rectify errors apparent on the face of the record appearing in the order passed in appeal by it. Now the question arises whether the ambit of power to rectify the errors apparent on the face of the records appearing in the appellate order passed by the Board of Revenue provided under section 12 of the Act should also be extended to rectify such errors appearing in order passed in the application for review of the appellate judgment and order. We are inclined to hold, to meet the ends of justice ambit of power under section 12 of the Act to rectify the errors appearing in the appellate order passed by the Board of Revenue should be expanded to take in its sweep the rectification of errors apparent on the face of records appearing in the order passed in the application for review of the appellate judgment and order.

The impugned judgment and order dt. 22.6.76 passed by the learned Board of Revenue rejecting the application for rectification is therefore set aside. The application for

rectification is restored of file and the case is remanded to the learned Board of Revenue for disposal of the application U/S 12 of the Act for rectification in accordance with law. We make it clear that we have not expressed any opinion as regards the merit of the application for rectification.

The petition is allowed to the extent indicated above. We make no order as to costs.

A. Raghuvir, C. J. I agree.