

S.B. Gurbaksh Singh Vs Union of India (UOI) and Others

Court: Supreme Court of India

Date of Decision: Jan. 27, 1976

Acts Referred: Bengal Finance (Sales Tax) Act, 1941 " Section 11A(2a), 20(3)

Citation: AIR 1976 SC 1115 : (1976) 2 SCC 181 : (1976) 3 SCR 247 : (1976) 37 STC 425

Hon'ble Judges: V. R. Krishna Iyer, J; N. L. Untwalia, J; A. C. Gupta, J

Bench: Full Bench

Advocate: F.S. Nariman, Randhir, Chawla, G.C. Sharma and A.K. Verma, for the Appellant; G.L. Sanghi, R.N. Sachthey and Girishh Chandra, for the Respondent

Final Decision: dismissed

Judgement

N.L. Untwalia, J.

In these appeals by certificate the question for determination is whether the exercise of the power of revision under Sub-

section (3) of Section 20 of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi-hereinafter called the Act-is

subject to the period of limitation provided in Sub-section (2a) of Section 11 or Section 11-A of the said Act. The requisite facts lie in a narrow

compass and may usefully be stated at the outset.

2. The appellant who was carrying on the business of execution of building contracts was assessed to sales tax under the Act by the Sales Tax

Officer for the year 1955-56 by an order of assessment made on November 23, 1959. The appellant's appeal before the Assistant Commissioner

of Sales Tax succeeded in part. He held that the assessment for the first two quarters of the year 1955-56 was invalid having been made out of

time. The case was, therefore, remanded to the Sales Tax Officer for a fresh assessment in respect of the 3rd and 4th quarters of the year. The

Sales Tax Officer in pursuance of the appellate order of remand dated February 11, 1960, passed a fresh assessment order on March 21, 1960.

The Commissioner, however, after notice dated July 21, 1960, to the appellant, by his order dated July 29, 1960, revised the appellate order of

the Assistant Commissioner in exercise of his power u/s 20(3) of the Act. He held that no part of the assessment for the year 1955-56 was barred

and directed a fresh assessment to be made. A fresh assessment for all the four quarters was accordingly made by the Sales Tax Officer on

September 24, 1960. The appellant filed two writ petitions in the Delhi High Court challenging the order made in revision by the Commissioner and

the fresh assessment order passed by the Sales Tax Officer in pursuance thereof. A learned single Judge of the High Court allowed the writ

applications on April 2, 1969, and quashed the impugned orders. The respondents took up the matter in letters patent appeal and succeeded

before a Bench of the High Court. Hence these appeals by the assesseees.

3. Mr. F.S. Nariman appearing for the appellant contended :

(1) That the appellate and the revisional authorities must exercise their appellate or revisional power within the period prescribed under Sub-

section (2a) of Section 11 of the Act. If their orders are final orders of assessment then directly they are exercising their powers under Sub-

sections (1) or (2) of Section 13. In case their orders are of remand for fresh assessment to the assessing authority then also they must pass their

orders within the periods aforesaid although under the proviso added in 1959 the assessing authority may have a further period of 4 years or 6

years, as the case may be, for passing a fresh assessment.

(2) That the Commissioner while exercising the power in revision cannot overstep and ignore the period of limitation of 3 years provided in Section

11-A of the Act.

(3) That the authority mentioned in Sections 11, 11-A and 20(3) being the Commissioner, the Commissioner is subject to the period of limitation

provided in Sections 11 and 11-A even when exercising the revisional power u/s 20(3).

(4) That in any view of the matter the revisional authority must exercise the power in a reasonable manner and within a reasonable time. It cannot

exercise the power of revision, suo motu, after a long lapse of time at its sweet will and pleasure.

4. u/s 3 of the Act, a hierarchy of officers has been constituted by the Chief Commissioner, namely, the Commissioner of Sales Tax, Sales Tax

Officers and others to assist him. Section 11 of the Act deals with assessment of tax. The Sales Tax Officer exercising the powers as an officer to

assist the Commissioner u/s 11(1) of the Act can proceed to assess the amount of the tax due from a registered dealer within 18 months of the

expiry of a particular period. A dealer who has been liable to pay tax under the Act but has failed to get himself registered can be assessed to tax

under Sub-section (2). Then Sub-section (2a) says:

No assessment under Sub-section (1) shall be made after the expiry of four years and no assessment under Sub-section (2) shall be made after the

expiry of six years from the end of the year in respect of which or part of which the assessment is made.

5. A proviso was added to Sub-section (2a) with effect from October 1, 1959, by the amending Act of 1959 and it reads as follows :

Provided that where such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a court,

the period of four years or six years, as the case may be, shall be reckoned from the date of such order.

6. It is to be noticed that a period of limitation has been provided in Section 11(2a) and no assessment either under Sub-section (1) or Sub-section

(2) can be made after the expiry of the specified period. But where such an assessment is made by the assessing authority in consequence of or to

give effect to any order of an appellate or revisional authority or any order of a court made in reference, writ or in any other proceeding then, under

the proviso, the period of limitation is to be reckoned from the date of such order. The legislature has not provided any period within which an

order is to be made by an appellate or revisional authority or a court. Obviously it would have been unpractical and unworkable to do so.

7. Section 20 deals with an appeal, revision or review. If the appeal is filed in time the appellate authority in disposing of any appeal filed under

Sub-section (1) may-

a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed.

8. For exercise of the appellate power in any of the manners mentioned above, there is no limitation of time. If the assessment can be reduced in

appeal at any time it can be enhanced also without the fetter of time. If the assessment is set aside and case remanded to the assessing authority to

make a fresh assessment, then the authority, because of the proviso to Section 11(2a), is obliged to make the fresh assessment within four years of

the appellate order. Sub-section (3) of Section 20 reads thus :

Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion

may revise any assessment made or order passed under this Act or the Rules there under by a person appointed u/s 3 to assist him, and subject as

aforesaid, the Chief Commissioner may, in like manner, revise any order passed by the Commissioner.

9. The Commissioner can revise any assessment made or order passed under the Act including the order of the appellate authority. The limits of

the revisional power are not circumscribed in Sub-section (3), but it goes without saying that they will be akin to the power of the appellate

authority as mentioned in Sub-section (2). The revisional authority, obviously, as pointed out by this Court in the case of 275118 , should not

trench upon the power expressly reserved by the Act or the Rules to other authorities and cannot ignore the limits inherent in exercise of those

powers. Section 11-A is one such power which deals with assessment and reassessment of tax in case of an escaped assessment or under-

assessment. Exercise of that power is subject to the limitations provided therein. In Rule 66(2) of the Delhi Sales Tax Rules, 1951, a period of

limitation of 60 days has been provided for the filing of an application in revision which can be extended under the proviso appended to that rule on

sufficient cause being shown. But no such limitation has been provided for the suo motu exercise of the revisional power.

10. Mr. Nariman very strongly relied upon the majority decision of this Court in 288163 , and submitted that the power of revision exercised by

the Commissioner in this case beyond the period of four years prescribed in Sub-section (2a) of Section 11 was illegal and ultra vires. A close

scrutiny of the argument will result in its rejection.

11. In the 288163 , all the orders made by the Collector in exercise of his power of revision u/s 23 of the Orissa Sales Tax Act were passed later

than 36 months from the expiry of the period in respect of which the assessment was made. The High Court's view that they were in contravention

of Section 12(7), which was a power of assessment or reassessment in case of an escaped or under-assessment, was not upheld. But it was found

that the proviso to Section 12(6) was in general terms. It was not only a proviso providing for the period of limitation for the first assessment but it

governed the assessment made in exercise of the appellate or the revisional power. The main ratio decidendi of the case is that the proviso in

Section 12(6) is in reality an independent legislative provision unrelated to Section 12(6). Therefore, its operation was not confined to assessment

u/s 12 but applied to any assessment made under the Act. In the alternative it was also opined that assessment made in exercise of the revisional

power was an assessment made u/s 12. It was so said because if the appellate or the revisional authority would have directed the assessing

authority to make a fresh assessment it could do so only u/s 12 and then it would be subject to the period of limitation of 36 months. It was pointed

out in the majority decision of this Court that there would be an anomalous situation. If the appellate authority set aside the assessment and

remanded it for fresh orders, no fresh assessment could be made because of the period of limitation. But if instead of doing so the appellate

authority effected the same assessment there would be no bar of limitation. In the present case, in view of the proviso added to Section 11(2a) the

anomaly flows in the reverse direction. If the appellate or the revisional authority made a remand order, the assessing authority could pass a fresh

order of assessment within 4 years of such order. But if the higher authority itself revised the assessment then it would be barred by the rule of

limitation provided in Section 11(2a). To avoid such an anomaly Mr. Nariman suggested a construction to be put which neither solves the anomaly

nor is warranted by the language of the provisions of the Act. Counsel submitted that in all cases the powers must be exercised within 4 years of

the period in respect of which an assessment was being made on a registered dealer. It will be wholly unreasonable-almost impossible-to say that

all orders in appeal, revision or reference must be passed within four years of the end of the period of assessment, otherwise they will be barred. It

does not solve the anomaly either. Even if the order of remand is made, say, just on the last day of the period of four years, it will be competent to

the assessing authority to make a fresh assessment within the further period of four years. The ratio of the case in 288163 , must be confined within

its four corners and cannot be extended to the facts of the instant case.

12. In 274204 ., the decision of this Court in 288163 , was distinguished on the ground that the provision of limitation of 36 months in substance

was not a real proviso to the section in which it was placed but was in fact a period of limitation for all orders of assessment made under any other

provision of the Orissa Act, while in the Bombay Act there was no such general provision prescribing a period of limitation for making an

assessment. Reference to the period of limitation in Section 11-A of the Bombay Act, which is a power of making assessment or reassessment in

case of an escaped or under-assessed assessment was also rejected. Our attention was also drawn to the decision of a single Judge of the Punjab

High Court, Delhi Bench, in Sir Sobha Singh & Company v. Commissioner of Sales Tax, Delhi [1966] 18 S.T.C. 416., wherein following the

decision of this Court in 288163 ., it was held that an order of review made by the Commissioner u/s 20(4) of the Act in effect is an order of

assessment u/s 11(1) and cannot be made after the expiry of the period prescribed u/s 11(2a). The learned Judge in the course of his judgment

made it clear that he was concerned with the construction of the Act as it stood before 1959 and was not obliged to consider the effect of the

proviso added to Section 11(2a) in 1959. It is not necessary to decide in this case whether without the aid of the proviso aforesaid the decision of

the learned single Judge was correct or not, but surely in the face of the proviso it cannot hold good.

13. In Commissioner of Commercial Taxes, Bihar, Patna v. Sheodutta Prasad Chandeshwar Singh [1970] 25 S.T.C. 114., the review

proceedings initiated by the assessing authority was held to be barred under the proviso to Section 13(6) of the Bihar Sales Tax Act, 1947. But

distinguishing the said decision another Bench of the Patna High Court held in Commissioner of Commercial Taxes, Bihar v. Ashoka Marketing

Ltd. [1974] 33 S.T.C. 24., that the order of review passed by the Deputy Commissioner was not barred by time. The decision of the Patna High

Court in Commissioner of Commercial Taxes, Bihar, Patna v. Sheodutta Prasad Chandeshwar Singh [1970] 25 S.T.C. 114, on identical facts,

was followed in Commissioner of Commercial Taxes, Bihar v. Shiva Pujan Prasad Bhagat [1974] 33 S.T.C. 466. But the principle decided in

those cases cannot help the appellant. It may well be that if the assessing authority itself exercises the power of review it cannot circumscribe the

bar of limitation provided in Section 11(2a). But it will be unjust, unreasonable and impracticable to say that the said bar of limitation must also

continue to run at all stages of the proceedings, namely, the appellate, revisional, reference, writ or any other stage.

14. It was pointed out by this Court in 274204 , that the Deputy Commissioner when seeking to exercise his revisional powers was not

encroaching upon the powers reserved to other authorities. The powers were not exercised for the purpose of assessing or reassessing an escaped

turnover. The revisional powers were sought to be exercised to correct what appeared to be an incorrect order passed by an Assistant Collector

and for such a purpose proceedings could not possibly have been taken u/s 11-A. In the instant case also, it could not be disputed that the view

taken by the Assistant Commissioner in appeal was obviously wrong. The Commissioner while correcting that mistake in exercise of his revisional

power was not doing anything which the Sales Tax Officer was empowered to do u/s 11-A. He was merely setting right the illegality in the

appellate order.

15. The third point urged by the appellant is too obviously wrong to merit any detailed discussion. It was not the Commissioner who had passed

the assessment order u/s 11. That order was of the Sales Tax Officer acting as an officer to assist the Commissioner for the purpose of

assessment. The assessment order was interfered with by the appellate authority, the Assistant Commissioner, and the Commissioner was revising

the order of the Assistant Commissioner. All cannot be treated as Commissioners for the purpose of the different powers exercised by the three

different authorities. The use of the term "Commissioner" in the sections is merely for the purpose of describing and, at any rate, including the

officer assisting the Commissioner as Commissioner.

16. Apropos the fourth and last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo

motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate

order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable

delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-

limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee

can be exercised in due course. No time-limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also,

the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a

reasonable time, however, will depend upon the facts of each case.

17. For the reasons stated above, the appeals fail and are dismissed with costs. One set of hearing fee.