

(1982) 12 BOM CK 0013

Bombay High Court

Case No: Sales Tax Reference No. 27 of 1978 in Reference Application No. 171 of 1975

Commissioner of
Sales Tax,
Maharashtra State,
Bombay

APPELLANT

Vs

Ravi Coffee Works

RESPONDENT

Date of Decision: Dec. 3, 1982

Acts Referred:

- Bombay Sales Tax Act, 1959 - Section 20, 3, 4, 5, 70

Citation: (1983) 52 STC 432

Hon'ble Judges: Sujata V. Manohar, J; D.P. Madon, J

Bench: Division Bench

Judgement

Sujata V. Manohar, J.

The assessee in the present case is M/s. Ravi Coffee Works. The place of business of the assessee was visited by the Sales Tax Officer, Enforcement Branch, on 12th May, 1966, on account of certain information received. The Sales Tax Officer took possession of certain books of account of the assessee from the premises. On a scrutiny of those books of account he came to the conclusion that the assessee had suppressed certain sales. Thereafter the Sales Tax Officer, Enforcement Branch, reassessed the assessee for the period from 1st April, 1962, to 31st March, 1963, and for subsequent periods.

2. In the present reference we are only concerned with the period from 1st April, 1962, to 31st March, 1963. In respect of this period, an assessment order had already been passed earlier by the Sales Tax Officer, E(III) Ward. The reassessment order in respect of this period was passed by the Sales Tax Officer, Enforcement Branch, on 26th December, 1968. There was no order u/s 70 of the Bombay Sales Tax Act, 1959, transferring the proceedings from the Sales Tax Officer, E(III) Ward, to the Sales Tax Officer, Enforcement Branch, prior to the reassessment order of 26th

December, 1968. Such an order transferring the proceedings from the Sales Tax Officer, E(III) Ward, to the Sales Tax Officer, Enforcement Branch, was passed by the Deputy Commissioner of Sales Tax only on 29th November, 1971. By consent this order of transfer has been taken on the record of the reference.

3. An appeal was preferred from the order of reassessment passed by the Sales Tax Officer, Enforcement Branch, by the assessee to the Assistant Commissioner of Sales Tax. The Assistant Commissioner allowed the appeal in part, scaling down the estimated sales. Against the order of the Assistant Commissioner the assessee filed a second appeal before the Tribunal. The Tribunal came to the conclusion that the reassessment order was passed without jurisdiction inasmuch as the reassessment order was passed without there being any transfer order u/s 70 of the Bombay Sales Tax Act, 1959, transferring the proceedings to the Sales Tax Officer, Enforcement Branch. The Tribunal also held that a transfer order passed after the reassessment proceedings had already been completed, could not give retrospective jurisdiction to the Sales Tax Officer, Enforcement Branch, to reassess. In view of this decision of the Tribunal, at the instance of the department the following question has been referred to us for determination :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the reassessment order passed by the Sales Tax Officer, Enforcement Branch, on 26th December, 1968, in respect of the assessment for the period from 1st April, 1962, to 31st March, 1963, was bad in law, being the order passed without jurisdiction ?"

4. Section 70 of the Bombay Sales Tax Act, 1959, as it existed prior to its amendment in 1971 was as follows :

"Power to transfer proceedings. - The Commissioner may after due notice to the parties, by order in writing transfer any proceedings or class of proceedings under any provision of this Act from himself to any other officer and he may likewise transfer any such proceedings (including a proceeding already transferred under this section) from one such officer to another or to himself."

This section was amended by the Bombay Sales Tax (Amendment and Validating Provisions) Ordinance, 1970, which was subsequently replaced by the Bombay Sales Tax (Amendment and Validating Provisions) Act, 1970 (hereinafter referred to as the Amending and Validating Act). By virtue of the amendment made in section 70 by the Amending and Validating Act, Section 70 reads as follows :

"70. Power to transfer proceedings. - The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceedings or class of proceedings under any provision of this Act, from himself to any other officer and he may likewise transfer any such proceedings (including a proceeding pending with any officer or already transferred under this

section) from any officer to any other officer or to himself :

Provided that, nothing in this section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both officers are situated in the same city, locality or place.

Explanation. - In this section, the word "proceedings" in relation to any dealer whose name is specified in any order issued thereunder, means all proceedings under this Act in respect of any year, which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such dealer."

5. Both the Ordinance as well as the Amending and Validating Act contain a provision validating retrospectively proceedings commenced, continued or completed by officers to whom such proceedings were transferred in certain cases. This provision is contained in section 7 of the Amending and Validating Act which is in terms identical with section 7 of the Ordinance. The relevant provision for the purpose of this reference is contained in section 7, sub-section (1) of the Amending and Validating Act which is as follows :

"7. Validation of jurisdiction conferred on certain officers and of proceedings commenced, continued or completed by them and saving. - (1) Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal, any proceedings under any provisions of the principal Act commenced, continued or completed by any officer without the proceedings being transferred to him and any order made by such officer in such proceedings or any order made by any officer to the best of his judgment in any reassessment proceedings and any tax levied or collected or purported to have been levied or collected under any such order, before the commencement of this Act, shall not be deemed to be invalid or ever to have been invalid merely on the ground that the transfer of proceedings was not made in accordance with the provisions of the principal Act before its amendment by sections 3, 4 and 5 of this Act, if the transfer has in fact been effected in accordance with the provisions as now amended; or that the officer was not empowered to make the order in the reassessment proceedings to the best of his judgment, any such tax levied or collected or purporting to have been levied or collected shall be deemed to be and always to have been validly levied or collected; and accordingly - no suit or other proceeding shall be maintained or continued in any Court or before any Tribunal against the State Government or any officer or servant or authority whatsoever for the refund of any tax so paid; and

no Court or Tribunal shall enforce any decree or order directing the refund of any such tax."

6. According to Mr. Jetly, the learned counsel for the department, the order of reassessment is validated by virtue of the provisions of section 7(1) of the Bombay Sales Tax (Amendment and Validating Provisions) Act, 1970. In order to consider this submission it is necessary to reproduce the relevant portion of section 7(1) of the Amending and Validating Act. Under this clause, "notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal, any proceedings under any provisions of the principal Act commenced, continued or completed by any officer without the proceedings being transferred to him and any order made by such officer in such proceedings before the commencement of this Act, shall not be deemed to be invalid or ever to have been invalid merely on the ground that the transfer of proceedings was not made in accordance with the provisions of the principal Act before its amendment, if the transfer has in fact been effected in accordance with the provisions as now amended" u/s 70 of the Bombay Sales Tax Act, 1959, prior to its amendment, the Commissioner had the power to transfer the proceedings from one officer to another or to himself; but he was required to give due notice to the parties and to pass an order of transfer in writing after such notice. u/s 70, as amended, the Commissioner is required to pass an order of transfer in writing after giving the parties a reasonable opportunity of being heard in the matter wherever possible, and after recording his reasons for the transfer. Under the proviso to the amended section 70, however, such opportunity of being heard is not required to be given where the transfer is made to an officer who is situated in the same city, locality or place as the officer from whom the proceedings are to be transferred. Thus, it is open to the Commissioner under the amended section 70, where he is transferring the proceedings from one officer to another in the same city, locality or place, to pass such an order without giving the parties an opportunity of being heard. This was not permissible under the unamended section 70. Therefore, by virtue of section 7(1) of the Bombay Sales Tax (Amendment and Validating Provisions) Act, 1970, if the order of transfer prior to the amendment of section 70 of the Bombay Sales Tax Act, 1959, was passed in such a manner that it would have been valid under the amended section 70 of the Act if that section had been in force, it is deemed to be valid, even though it may not be in compliance with the then existing unamended section 70. In other words, orders of transfer passed prior to the amendment, transferring proceedings to an officer in the same city, locality or place without giving notice to the parties are validated by section 7. In order, however, to attract the saving grace of the validation clause the least that is required is an order of transfer. Both the unamended and amended sections 70 require the Commissioner to make an order to transfer in writing before he transfers proceedings from one officer to another. In a case where there is no order of transfer at all, it is not possible to uphold its validity by saying that the order of transfer complies with the amended section 70. Mr. Jetly emphasised the first part of section 7 of the Amending and Validating Act which refers to proceedings being completed by any officer without the proceedings being transferred to him, and orders passed in such proceedings. He submitted that these

words refer to cases where no orders of transfer have been passed and submitted that even proceedings transferred to other officers without orders of transfer have been validated. We find it difficult to accept this interpretation of section 7. The entire sub-section (1) of section 7 constitutes one sentence albeit a somewhat clumsy one. The portion emphasised by Mr. Jetly cannot be read in isolation. The transferred proceedings and the orders passed therein are validated under sub-section (1) of section 7 only if the transfer is effected in accordance with the provisions of section 70 as amended which in turn requires an order of transfer. If the words "without the proceedings being transferred to him" are interpreted literally to mean "without there being any order of transfer", then the condition imposed for such validation, namely, that the transfer should have been effected in accordance with the provisions of the amended section 70 - would have no application at all, because section 70 as amended requires an order of transfer. In a case where there is no order of transfer, there cannot be any compliance with the amended section 70. To interpret section 7, sub-section (1), in the manner suggested by Mr. Jetly, would amount to holding that in a proceeding which has been commenced without there being any order of transfer, the proceedings would be valid if the order of transfer is in accordance with the requirements of the amended section 70. This would be an absurd interpretation, where the first half of the clause would contradict the second half. It is a golden rule of construction that a statute must be read as a whole and one provision of an Act should be so construed with reference to the other provisions of the Act as to read harmoniously. This principle of harmonious construction must apply, a fortiori to different parts of the same section, and even more so to the parts of the same sub-section which parts form one sentence. Thus the words "without the proceedings being transferred to him" in the first part of section 7 of the Amending and Validating Act cannot be interpreted as referring to cases where there is a total absence of an order of transfer. These words refer to proceedings which have not been validly transferred, i.e., proceedings where the orders of transfer have not complied with the requirements of section 70 prior to its amendment by the Validating Act. It is such proceedings, where the orders of transfer exist, but these orders are not in compliance with the provisions of section 70 prior to its amendment, that are validated, provided of course, that such orders of transfer comply with the requirements of section 70, as amended.

7. Mr. Jetly drew our attention to the Statement of Objects and Reasons accompanying the Legislative Assembly Bill No. 56 of 1970 which was subsequently enacted as the Bombay Sales Tax (Amendment and Validating Provisions) Act of 1970. In clause 4 of the Statement of Objects and Reasons it is stated, inter alia, that the existing procedure u/s 70 is time-consuming and difficult to follow in every case. Hence section 70 is being amended for doing away with a formal hearing, when proceedings are to be transferred from one officer to another in the same city, locality or place. Provision is also made to validate the jurisdiction of certain officers

who have commenced, continued or completed the assessment proceedings in the past, without those proceedings being formally transferred to them. Now, the Statement of Objects and Reasons does refer to a provision being made in the Bill to validate proceedings before other officers without those proceedings being formally transferred to them. The Statement of Objects and Reasons, however, which is appended to a Bill which is subsequently enacted, cannot be used to determine the meaning and effect of the substantive provisions of a statute. In the case of [State of West Bengal Vs. Union of India](#),¹ Sinha, C.J., has observed :

"It is however well-settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as aid to the construction of the enactment"

It is not possible for us to resort to the Statement of Objects and Reasons for the purpose of interpreting section 7 of the Amending and Validating Act. Any attempt to interpret section 7 in the light of the Statement of Objects and Reasons, by reading within the provisions of the section cases where no orders of transfer have been passed, leads to absurdity.

8. It was further submitted by Mr. Jetly that in the present case, there was an order of transfer, although the order of transfer was passed after the conclusion of reassessment proceedings before the "transferee" officer. He submitted that even concluded proceedings can be transferred to another officer. He relied upon the explanation to the amended section 70 which provides, inter alia, that the word "proceedings" means all proceedings under the Bombay Sales Tax Act, 1959, which may be pending on the date of the order of transfer or which may have been completed on or before such date. Mr. Jetly submitted that in view of these provisions, it was open to the Commissioner to pass an order of transfer on 29th November, 1971, even in respect of reassessment proceedings which had been completed. We do not find any merit in this submission. The completed proceedings referred to in the explanation are proceedings completed before an officer from whom they are being transferred to another officer by an order of transfer. The explanation has no relevance to the facts of the present case. Moreover, the order of transfer dated 29th November, 1971, in the present case does not refer to any reassessment proceedings or order passed in such proceedings. The order of transfer merely refers to the transfer of proceedings from the file of the Sales Tax Officer, E Ward, Bombay, to the file of the Sales Tax Officer (VIII), Enforcement Branch, Bombay.

Paragraphs 2 and 3 of the transfer order are as follows :

"2. It is seen from the report of the Sales Tax Officer (VIII), Enforcement Branch, Bombay, that he detected some suppression of sale/purchases. I am satisfied that in the interest of administration, it is necessary that the case be reassessed by the Sales Tax Officer (VIII), Enforcement Branch, Bombay.

3. In view of the aforesaid and in exercise of the powers vested in me u/s 70 of the B.S.T. Act, 1959, I hereby order that the reassessment proceedings for the periods from 1st April, 1962, to 31st March, 1963, under both the B.S.T. Act, 1959, and the C.S.T. Act, 1956, in case of M/s. Ravi Coffee Works, holders of R.C. No. NIF-1413, and Bom/IF-199 be transferred from the file of Sales Tax Officer, E Ward, Bombay, to the file of Sales Tax Officer (VIII), Enforcement Branch, Bombay."

This order of transfer therefore does not relate to the reassessment proceedings completed by the Sales Tax Officer, Enforcement Branch, by an order passed by him on 26th December, 1986. It merely relates to the transfer of proceedings from the Sales Tax Officer, E Ward, to the Sales Tax Officer, Enforcement Branch. In the present case, at the time when the order of transfer was passed, the assessment proceedings before the Sales Tax Officer of the relevant ward as well as the reassessment proceedings before the Sales Tax Officer, Enforcement Branch, were both completed. There cannot be any transfer for the purpose of reassessment when reassessment has already been completed. There is therefore no merit in the submission that the order of transfer dated 29th November, 1971, validates the reassessment order of 26th December, 1968, passed by the "transferee" officer.

9. Mr. Jetly also submitted that the Sales Tax Officer, E Ward, as well as the Sales Tax Officer, Enforcement Branch, have concurrent jurisdiction to assess and reassess the assessee. In this connection reliance was placed on a notification dated 2nd May, 1960, issued by the State Government u/s 20 of the Bombay Sales Tax Act, 1959, which specifies against each of the officers mentioned in column 2 of the schedule to the notification, the local area over which such officer shall have jurisdiction. Under this notification, Sales Tax Officer, E Ward, has jurisdiction over E Ward, Sales Tax Officers, Enforcement Branch, Greater Bombay have jurisdiction within the limits of Greater Bombay which would include E Ward also. Hence it was submitted that they have concurrent jurisdiction and in view of the concurrent jurisdiction enjoyed by these officers, it is not necessary to pass any order to transfer u/s 70 of the Bombay Sales Tax Act, 1959. It is open to either of these officers to exercise jurisdiction either in assessment proceedings or in reassessment proceedings. After this point was argued for some time, Mr. Jetly stated that he did not wish to press this point and we need not give our findings on this point. In view of this statement, we are not dealing with this aspect of the case.

In the premises, the order of reassessment which was passed by the Sales Tax Officer, Enforcement Branch, was passed without there being any order of transferring the proceedings to him from the Sales Tax Officer, E Ward. As such, the order of reassessment was without jurisdiction.

We accordingly answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the department. Applicant will pay to the respondent costs of this reference.