

COMMISSIONER OF SALES TAX, MADHYA PRADESH A

v.

M/S. AMARNATH AJITKUMAR OF BHIND, MADHYA PRADESH

September 20, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.] B

Madhya Bharat Sales Tax Act, Samv. 2007, s. 12(1) and Madhya Pradesh Sales Tax Act, 1959, ss. 39(2) and 52—Assessment under former Act—Larger period for revision of assessment by Commissioner provided in latter Act—If could be availed of.

Section 12(1) of the Madhya Bharat Sales Tax Act, Samv. 2007 prohibits the Commissioner of Sales-tax from revising an order of assessment which had been made more than two years previously, while s. 39(2), of the Madhya Pradesh Sales Tax Act, 1959, which came into force on April 1, 1959 and which repealed the Madhya Bharat Act, permits the Commissioner to revise an order till the expiry of three years from the date of the order sought to be revised.

The assessee was a registered dealer under the Madhya Bharat Act. For the period from July 1, 1957 to 31st March, 1958 he submitted returns. The Assistant Commissioner of Sales Tax passed an assessment order on November 28, 1961. On October 30, 1964, the Commissioner of Sales Tax initiated proceedings under s. 39(2) of the Madhya Pradesh Act for revising the assessment made. The assessee contended that as the assessment related to the period when the Madhya Bharat Act was in force the revision of the assessment was governed by s. 12(1) of that Act, and therefore, the Commissioner could not have revised the order of assessment after the expiry of two years after the assessment was made. The High Court, in reference, held that, in view of s. 52 of the Madhya Pradesh Act, the governing provision was s. 12(1) of the Madhya Bharat Act.

Dismissing the appeal to this Court,

HELD: (1) The proviso to s. 52(1) of the Madhya Pradesh Act, provides that the repeal of the Madhya Bharat Act shall not affect any *right* already acquired or accrued there. The effect of s. 12(1) of the Madhya Bharat Act is that after the time prescribed in that provision the Commissioner could not revise the order of assessment either to the prejudice of the assessee or of the Revenue. The section thus conferred a *right* both on the assessee as well as on the Department to see that an order of assessment is not revised to their prejudice after two years from the date of the assessment order. Therefore, the effect of s. 52(1) of the Madhya Pradesh Act, is that all assessments, which include reassessments, should be in accordance with the repealed Act. [835 B-E]

Sales Tax Officer Circle I, Jabalpur v. Hanuman Prasad 19 S.T.C. 87 and Swastik Oil Mills Ltd. v. H. B. Munshi, Dy. Commissioner of Sales Tax, Bombay, 21 S.T.C. 383, followed.

(2) The second part of the proviso no doubt provides that any action taken under the repealed Act shall, in so far as it is not inconsistent with the provisions of the latter Act, be deemed to have been done under the latter Act. But there is undoubtedly a conflict between s. 12(1) of the Madhya Bharat Act and s. 39(2) of the Madhya Pradesh Act. Therefore, the Revenue cannot call in aid the second part of the proviso. [835 E-H]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 367 of 1969.

Appeal by special leave from the judgment and order dated October 28, 1968 of the Madhya Pradesh High Court in Misc. Civil Case No. 188 of 1967.

B *I. N. Shroff*, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

C **Hegde, J.** This appeal by special leave arises from the decision of the Madhya Pradesh High Court in a reference under s. 44 of the Madhya Pradesh Sales Tax Act, 1959. The reference was made by the Board of Revenue. After stating the case, the Board of Revenue referred the following question to the High Court for its opinion.

D “Whether on the facts and circumstances of the case the Commissioner of Sales Tax acted illegally in exercising his powers of revision under section 39(2) of the Madhya Pradesh General Sales Tax Act, 1958 in respect of the assessment order dated 28-12-1961 which was passed in respect of the returns submitted on 30-1-1958 and 17-6-1958 and on the basis of the notice in form XI issued on 29-8-1961 ?”

E The High Court answered that question in the affirmative and in favour of the assessee. Aggrieved by that order, the Commissioner of Sales Tax, Madhya Pradesh has come up in appeal to this Court.

F The assessee, M/s. Amarnath Ajitkumar was a registered dealer under the Madhya Bharat Sales Tax Act, Samv. 2007. For the period from July 1, 1957 to 31st March, 1958, the period with which we are concerned in this appeal, the assessee submitted its return for the second and third quarters on January 30, 1958 and for the fourth quarter on 17th June 1958. These returns were made under s. 9(3) of the Central Sales Tax Act,

G 1956. The sales tax concerned in the present case was that leviable under the Central Sales Tax Act, 1956. But the procedure to be adopted in the matter of assessment and collection was that prescribed in the Madhya Bharat Sales Tax Act Samv. 2007. The Madhya Bharat Act was repealed by the Madhya Pradesh General Sales Tax Act, 1959, which came into force on April 1, 1959. Thereafter the Assistant Commissioner of Sales Tax, issued a notice in form XI of the Madhya Pradesh Sales Tax (Central) Rules, 1959 on August 29, 1961. That Officer passed the assessment order on November 28, 1961. On October 30,

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1964, the Commissioner of Sales Tax initiated proceedings under s. 39(2) of the M.P. Sales Tax Act, 1959 for revising the assessment made. After notice to the dealer the Commissioner on April 15, 1965 revised the assessment and enhanced the same by a sum of Rs. 993.06 paise. The assessee's appeal to the Board of Revenue was dismissed on June 20, 1966. Both before the Commissioner as well as the Board of Revenue, the assessee contended that as the assessment related to the period when Madhya Bharat Sales Tax Act, Samv. 2007 was in force, the revision of that assessment is governed by s. 12(1) of that Act and not s. 39(2) of the M.P. Act, 1959. It was urged on its behalf that under the Madhya Bharat Act, the Commissioner could not have revised the order of assessment after the expiry of two years after the assessment was made. Hence the Commissioner was not competent to revise the assessment. The Commissioner as well as the Board of Revenue rejected that contention. They came to the conclusion that it was open to the Commissioner to take action under s. 39(2) of the M.P. General Sales Tax Act, 1959 in the matter of revising the assessment. The High Court did not agree with that view. It held that in view of s. 52 of the 1959 Act, the governing provision in the matter of revising the assessment was s. 12(1) of the Madhya Bharat Act.

The only question that we have to decide is whether in the facts and circumstances of the case, the Commissioner could have exercised his power under s. 39(2) of the M.P. Sales Tax Act, 1959.

Section 12(1) of the Madhya Bharat Act provides :

"The Commissioner may in his discretion at any time *suo moto* or being moved by the assessing authority, call for and examine the records of any proceedings under this Act and if he considers any order is illegal or improper or erroneous in so far as it is prejudicial to the interests of the revenue he may pass orders as he thinks fit :

Provided that no order shall be passed prejudicial to a dealer without giving him an opportunity of hearing;

Provided further that the Commissioner shall not revise an order which has been made more than two years previously."

From the second proviso, it is clear that the Commissioner is precluded from revising an order which had been made more than two years previously. That proviso did not lay down any rule of limitation. But it took away the power of the Commissioner

A to revise any assessment after the prescribed period. Thereafter the assessment became final and conclusive as against the Department as well as the assessee, unless it was liable to be changed under some other provision of the Madhya Bharat Act.

Section 39(2) of the M.P. Sales Tax Act of 1959 says :

B "The Commissioner may of his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person appointed under section 3 to assist him is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the dealer an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment;

D Provided that no proceedings shall be initiated under this sub-section after the expiry of three years from the date of the order sought to be revised."

The M.P. Sales Tax Act, 1959 which repealed the Madhya Bharat Act by s. 52 therein provided the following repeal and saving provisions.

E "52(1). The Central Provinces and Berar Sales Tax Act, 1947, the Madhya Bharat Sales Tax Act, Samv. 2007, the Central Provinces and Berar Sales Tax Act, 1947 as extended to Vindhya Pradesh and Bhopal region and as in force in those regions immediately before the commencement of this Act and the Rajasthan Sales Tax Act, 1954, as in force in Sironj region, are hereby repealed :

G Provided that such repeal shall not affect the previous operation of the said Acts or any right, title, obligation or liability already acquired, accrued, or incurred thereunder, and subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate or licence) in the exercise of any power conferred by or under the said Acts shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken; and all arrears of taxes and other

amounts due at the commencement of this Act may be recovered as if they had accrued under this Act."

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The High Court came to the conclusion that in view of the decisions of this Court in *The Sales Tax Officer Circle 1, Jabalpur v. Hanuman Prasad*⁽¹⁾ and *The Swastik Oil Mills Ltd. v. H. B. Munshi, Dy. Commissioner of Sales Tax, Bombay*,⁽²⁾ the Commissioner was incompetent to revise the order because of s. 12(1) of the Madhya Bharat Act read with s. 52(1) of the M.P. Sales Tax Act, 1959.

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Hanuman Prasad's case (supra) arose out of M.P. Sales Tax Act, 1959. Therein in respect of a period governed by the Central Provinces and Berar Sales Tax Act, 1947, the assessee therein filed its return and a notice in form XII was issued to him on March 10, 1959. The assessee's turnover was assessed by an order dated May 23, 1959. But in the meantime, M.P. Sales Tax Act, 1959 came into force on April 1, 1959. The Commissioner sought to revise the order of assessment on the ground that a portion of assessee's turnover had escaped assessment. The question arose whether he had to exercise his powers within the time fixed by the Berar Sales Tax Act, 1947 or that fixed under M.P. Sales Tax Act, 1959. The specific question that arose for decision in that case was whether the Commissioner's power to revise had to be exercised in accordance with s. 11A(1) of the Central Provinces and Berar Sales Tax Act, 1947, as contended by the assessee or under s. 19(1) of the M.P. Sales Tax Act, 1959 as contended by the Department. That question was examined by this Court from several angles. One of the tests applied was what is the effect of s. 52 of the M.P. Sales Tax Act, 1959. Dealing with that aspect, this Court observed at p. 90 of the report :

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"It was under section 52 of the new Act that the repealed Act was repealed, and that section itself, under the proviso laid down that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder. There was also the further addition that subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate or licence) in the exercise of any power conferred by or under the said Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the date on view of this proviso it has to be held that when this new which such thing was done or action was taken. In

- A Act came into force on 1st April, 1959, all rights, title, obligation or liability already acquired, accrued or incurred under the repealed Act by the respondent remained unaffected and intact. The rights and liabilities, which had been acquired or incurred under the repealed Act, included the right or liability to be assessed in accordance with the provisions of the repealed Act in respect of turnover of sales effected during the time when that Act was in force."
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Agreeing with the High Court this Court held in *Hanuman Prasad's*⁽¹⁾ case that the Commissioner could not have revised the order of assessment after the period prescribed in the repealed

- C Act. One of the reasons given in support of that conclusion is that "the rights and liabilities, which had been acquired or incurred under the repealed Act, included the right or liability to be assessed in accordance with the provisions of the repealed Act, in respect of turnover of sales effected during the time when that Act was in force". The expression assessment includes re-assessment.
- D *Swastik Oil Mills*⁽²⁾ case is a converse case. Therein the assessee was assessed to sales tax under the Bombay Sales Tax Act, 1946, for the periods 1st April 1948 to March 31, 1950 and April 1, 1950 to March 31, 1951. On January 7, 1963, Deputy Commissioner initiated proceedings under s. 31 of the Bombay Sales Tax Act, 1953 proposing to revise the order of the Assistant Collector of Sales Tax in so far as he had allowed deduction in respect of the entire goods despatched by the assessee to its branches in other states overlooking the provisions of proviso (b) to rule 1(ii) under section 6(3) of the Act of 1946 as amended in 1949. The question was whether the Deputy Commissioner could take advantage of the longer period prescribed under the Bombay Sales Tax Act, 1946 or whether he was required to exercise his powers within the shorter period fixed under the 1953 Act. Bombay High Court as well as this Court came to the conclusion by applying the provisions in s. 7 of the Bombay General Clauses Act (1 of 1904) that the Deputy Commissioner was entitled to exercise his power of revision within the period prescribed under the repealed Act. Section 7 of the Bombay General Clauses Act provides "where this Act or any Bombay Act or Maharashtra Act, made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not :
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(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

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(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed"

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Dealing with the scope of those provisions this is what this Court observed :

"Very clearly, the repeal of the Act of 1953 by the Act of 1959 did not affect the rights and liabilities of the assessee to tax under the Act of 1953 or the Act of 1946 in respect of the turnover which became liable to sales tax under the Act of 1946. The effect of clause (e) of section 7 of the Bombay General Clauses Act further is that any legal proceeding in respect of levy, imposition or recovery of that tax is to continue and any fresh investigation, legal proceeding or remedy could be instituted as if there had been no repeal by the Act of 1959. Consequently, the repeal of the Act of 1953 did not in any way affect the power of the Deputy Commissioner to institute proceedings for revision *suo motu* against the appellate order of the Assistant Collector which had been passed in exercise of his powers under the Act of 1946. It is true, as urged by Mr. Desai in the alternative, that, in fact, the proceedings should have been taken not under section 31 of the Act of 1953, but under section 22 of the Act of 1946. That is so, because, when the Act of 1946 was repealed by the Act of 1953, similar provisions were made in the Act of 1953 to continue in force the provisions of the Act of 1946 in respect of rights and liabilities which may have accrued or have been incurred under the Act of 1946. Section 48(2) and section 49(1) clearly contained provisions indicating that, in respect of a liability to tax under the Act of 1946, the rights and liabilities of the assessee had to be determined in accordance with the provisions of the Act of 1946 and all legal proceedings or remedies in respect thereof had also to be taken under the same Act. Consequently the Deputy Commissioner in seeking to exercise revisional powers against the order of the Assistant Collector passed under the Act of 1946, had to proceed under section 22 of the Act of 1946. That, however, is not at all material, because the provisions of section 22 of the Act of 1946 are quite similar to those of section 31

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A of the Act of 1953. The mere incorrect mention of section 31 of the Act of 1953 in the notice is immaterial. The Deputy Commissioner has the jurisdiction and power to revise the order under section 22 of the Act of 1946 and, consequently the proceedings initiated by him are not without jurisdiction."

B Now coming back to s. 52 of the M.P. Sales Act of 1959, the proviso to s. 52(1) provides that the repeal of the Madhya Bharat Act shall not affect any right already acquired or accrued thereunder. The question is whether the bar on the power of the Commissioner from exercising the powers under s. 12(1) of the Madhya Bharat Act after the prescribed period did create a right in favour of the assessee ? The effect of that provision is that after the time prescribed in that provision, the Commissioner could not revise the order of assessment to the prejudice of the assessee. Similarly he could not revise the order of assessment to the prejudice of the Revenue. Section 12(1) conferred a right both on the assessee as well as on the Department to see that an order of assessment is not revised to their prejudice after a particular date. We fail to see why s. 12(1) of the Madhya Bharat Act should not be considered as conferring on the assessee a right to see that the assessment made against him is not altered to his prejudice after a particular date. That is a valuable right. The effect of s. 52(1) of M.P. Sales Tax Act, as seen earlier is that all assessments, which includes reassessments should be in accordance with the repealed Act.

The second part of that proviso says that subject to what has been provided in the first part of the proviso, anything done or any action taken including an order in the exercise of any of the powers conferred by or under the repealed Act, shall, in so far as it is not inconsistent with the provisions of the M.P. Sales Tax Act, 1959 be deemed to have been done in the exercise of powers conferred by or under that Act as if that Act were in force on the date on which such thing was done. There is undoubtedly a conflict between s. 12(1) of the Madhya Bharat Act and s. 39(2) of the M.P. Sales Tax Act, 1959. The former provision prohibits the Commissioner from revising an order which has been made more than two years previously and the latter provision permits him to revise the order till the expiry of three years from the date of the order sought to be revised. Therefore the Revenue cannot call into aid the second part of the proviso. The resulting position is that the governing provision would continue to be s. 12(1) of the Madhya Bharat Act.

H For the reasons mentioned above this appeal fails and the same is dismissed. Respondent is *ex parte*. No costs.