

PETITIONER:
FAG PRECISION BEARING

Vs.

RESPONDENT:
SAES TAX OFFICER (I) & ANR.

DATE OF JUDGMENT: 09/12/1996

BENCH:
S.P. BHARUCHA, S.C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

BHARUCHA, J.

The respondents have been served but have not <??>.

The Judgment and order under appeal was passed by a Division Bench of the high Court of Gujarat. It dismissed a writ petition filed by the appellant.

The appellant carries on the business of manufacture and sale of ball and railer bearing at Vadodara in Gujarat. It is registered as a dealer under the Central Sales Tax Act, 1956, and the Gujarat Sales Tax Act, 1969. The writ petition was filed to quash the order of the Deputy Commissioner of Sales Tax dated 31st August, 1987, passed under Section 42(1) of the Gujarat Sales Tax Act and Rule 37-A of the rules thereunder staying until 31st August, 1988, the appellant's assessments for the period 1st September, 1976, to 31st August, 1984, and to restrain the Sales Tax officer from making any assessment and penalty orders for the said period and for consequential relief.

The order of the Deputy Commissioner dated 31st August, 1987, so far as is relevant, stated:

"since some more time will be taken and the assessment proceedings are not likely to be completed within the prescribed time, and the assessment for the period 1.9.1976 to 31.3.1984 for the said assessee cannot be completed within the time limit prescribed under Section 42(1) of the Gujarat Sales Tax Act, 1969. Hence it is considered proper to stay the assessment in the case of the said assessee upto 31.8.1988, and in this respect show cause Notice was given vide letter No. Jaorut/sk/Anve/Ch/5.42/87-88/JA Nil dated Nil as to the <??> of assessment should not be extended. In response to the said notice, the assessee has remained present, he did not make any reforestation

either by post or in person. The assessee has made representation vide letter dated Nil. Accenting the representations of the assessee. I under the authority conferred on me under Section 9(2) of the Central Sales Tax Act, 1956 read with Rule 37-A of the Gujarat Sales Tax Rules 1969 hereby order that the assessment in respect of M/s. Precision Bearing India Limited, Baroda who is registered vide Registration No. 40602801/Gui 9 B 81 under Local-Central sales Tax Acts and who is under the jurisdiction of Sales Tax Officer (1) Div. (6) Enforcement, Baroda for the period 1.9.1976 to 31.8.1984 by stayed upto 31.8.1988."

On behalf of the appellant it was contended before the High Court that no order for stay of the assessment proceedings had in fact been passed on 31st August, 1987 and thus, the assessment proceedings had become time barred: that the order dated 31st August, 1987, ("the said order") was null and void inasmuch as no show cause notice in that behalf had been given to the appellant nor had it been near before the said order did not justify its passing.

The High Court held against the appellant on the first contention and, that being a finding of fact, we do not concern ourselves therewith. Insofar as the second contention was concerned, the High Court considered whether the power of staying assessment proceedings was quasi-judicial in nature. The High Court noted that prior to 6th May, 1970, there was no provision in the State Act prescribing a time limit within which assessment proceedings were required to be completed. A Sales Tax Enquiry Committee had been appointed by the State Government and it gave its report in 1967. This showed that the position of cases of assessment lingering for years was unsatisfactory as dealers had to preserve account books for long periods of time and it became difficult for them to produce evidence at late stages to support their claims to set off, exemptions and the like: also. Because recoveries became difficult and Government revenues were reabsorbed. It was then that the period of three years for the completion of assessment proceedings had been prescribed in the State Act. In 1979 this period was reduced and stay of assessments was introduced into the State Act. The High Court found no merit in the case of the appellant that, as the assessee right, to be assessed within the period of limitation and not be subjected to any liability thereafter, was adversely affected by an order of stay of assessment, the function of granting the stay should be regarded as quasi-judicial. It was of the opinion that, while passing the order of stay, neither the State Government nor the Commissioner of Sales Tax was under an obligation to issue a prior notice to the assessee or to give him the opportunity of a hearing. The State Government, or the Commissioner, had to record the reasons for passing of such order and that order had to be served upon the assessee: that was the only requirement of the principles of natural justice which could be read into the provision. The third contention does not appear to have been dealt with separately by the High Court but in the course of the discussion of the second contention, it was

observed assessment proceedings might be required to be stayed not only because of any difficulty in completing assessment proceedings individually. a war or a strike by the offerers of the Sales Tax Department. for example. might make it impossible or difficult to complete assessment proceedings within the period of limitation. In such cases. in order to see that the revenues did not suffer the Government or the commissioner might be required to stay all assessment proceedings. Again. if an important point of law was pending consideration by a higher court. assessment proceedings where such question was involved might have to be stayed.

While the writ petition was pending before the High Court. there was a stay of assessments for the period covered by the said order. When leave was granted by this Court. stay was refused. Consequently assessment orders are stated to have been passed. Necessarily, their validity depends upon the validity of the said order.

Section 42 of the State Act. as it then stood so far as it is relevant. reads:

"Section 42. Time limit for completion of assessments.- (1) (a) No order of assessment for a year or part of a year shall be made under sub-section (3) or (4) of section 41 at any time of the year in which the last monthly quarterly, or as the case may be. annual return is filed.

Provided that for the purpose of this section if it is considered necessary so to co. the State Government as it may seem fit, and the Commissioner may subject to such conditions as may be prescribed. by a general or special order. stay. either generally or for a specified period. the assessment proceedings of a dealer or class of dealers.

Rule 37-A sets out the conditions subject to which the Commissioner may grant stay. It reads thus:

Rule 37-A. Conditions subject to which Commissioner may grant stay.

- Conditions to which the Commissioner may. under the first proviso to sub-section of a dealer or a class of dealers. shall be as follows namely.

1. no assessment proceeding shall be stayed by the Commissioner for a period more than five years at any time.

2. the Commissioner shall reduce in writing the reasons and circumstance necessitating stay of any proceeding in respect of a dealer or a class of dealer."

Under the terms of Rule 37-A, the Commissioner must set out the reasons and circumstances necessitating stay of assessment proceedings in writing. In the instant case. the reasons and circumstances necessitating stay are that the assessment was in progress and "since some more time will be taken and the assessment proceedings are not likely to be completed within the prescribed time.....it is

considered proper to stay the assessment.....". To accent the aforesaid as good reason to stay assessment proceedings is to hold that the Commissioner. or the State Government, can give a go-by to the statutory provision prescribing the period during which assessment proceeding shall be completed only because the Sales tax authorities have not completed the assessment proceedings within the stipulated time. we cannot accent this as a good reason. The aftertaste power to stay assessment proceedings can be exercised only in stay assessment proceedings can be exercised only in extraordinary circumstance and for supervising reasons which cannot be attributed to the default or failure of the assessing authorities. It would be a valid exercise of the power to stay assessment proceedings of a class of assessee, for example. when a point of law inclosed such assessments in pending decision is a higher court. It would availed exercise of such power in an individual case where, for example, search and seizure of the assessee's premises has unearthed material which requires to be sifted and analyses before a satisfactory assessment order can be passed. It is not enough that the order should state. as has been done in the present case. That the assessment proceeding were pending and would take "some more time".

Under the terms of Rule 37-A. the commissioner is required to put in writing the "reasons and circumstances" that necessitate the stay of proceedings. The stay of assessment proceedings has consequences of a civil nature upon as assessee. which the High Court has as aforesaid. noted. The more the time that elapses the more difficult it is for the assessee to power his accounts and claim set off, exemptions and the like. We take the view that. in the circumstances. the power under Rule 37-A may not be exercised by the Commissioner without first giving to the assessee notice to show cause why his assessment proceedings should not be saved for a stated period. The notice should set out what the reasons and circumstances are which. according to the Commissioner necessitate such stay so that the assessee his opportunity of meeting the same. This is a requirement of natural justice that having regard to the scope of Rule 37-A requires to be read into it.

The said order states that notice to show cause why the assessments should not be stayed was given to the appellant. The number of the notice is mentioned and its date is stated to be "Nil". the writ petition averred that no such notice had been served upon the appellant. The affidavit in reply to the writ petition did not counter the averment: it stated that no hearing was necessary. The High Court proceeded upon the basis that the notice had not been served. and it held that a notice was not required. As set out above, we do not agree.

In the premises. the impugned order must be set aside. Consequently. all proceedings taken and assessment orders passed on the strength thereof must also be set aside. The Commissioner of Sales Tax shall be entitled. if so advised. to issue to the appellant a notice to show cause why assessments for the period 1st September. 1976. to 31st August, 1984. should not be stayed for a stated period for the reasons and in the circumstances to be set out therein. and he may proceed thereafter in the manner laid down above. This notice must, issue. if so minded within 16 weeks. If this is not done within 16 weeks. all amounts collected as and by way of sales tax for the period 1st September. 1976. to 31st March. 1984. shall forthwith be refunded to the appellant.

The appeal is allowed accordingly. There shall be no

order as to costs.

JUDIS