

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
TVL. JEEVANLAL LTD

DATE OF JUDGMENT: 13/08/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
BHARUCHA S.P. (J)

CITATION:
JT 1996 (7) 272 1996 SCALE (5)809

ACT:

HEADNOTE:

JUDGMENT:

W I T H

[Civil Appeal Nos.3442 (NT)/83: 4550(NT)/84: Special Leave
Petition (C) Nos.7928/80 and 7712/80].

J U D G M E N T

S.B. Majmudar, J.

The aforesaid three civil appeals by special leave to appeal under Article 136 of the Constitution of India filed by the common appellant State of Tamil Nadu and the two special leave petitions also moved by the same State of Tamil Nadu and which are ordered to be tagged with the aforesaid civil appeals, raise a common question for our consideration. The common appellant, State of Tamil Nadu, in all these proceedings, seeks to challenge identical decisions rendered by different Division Bench of the Madras High Court impugned in Civil Appeal No. 2295 of 1980 and Civil Appeal No.4550 of 1984 as well as in the companion special leave petitions; while in Civil Appeal No. 3442 of 1983 the State of Tamil Nadu seeks to challenge the decision of full Bench of the same High Court concurring with the decisions of the Division Benches of the High Court taking the same view. The short question which is posed for our consideration by the appellant-State of Tamil Nadu Revenue functioning under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the Act') can revise in exercise of its suo motu revisional jurisdiction that part of the order of the Appellate Assistant Commissioner which is, against the Revenue when the other part of this very order of the Appellate Assistant Commissioner against the assessee is made subject-matter of an appeal before the Sales Tax Appellate Tribunal functioning under the same Act. In the impugned Judgments the High Court has taken the being aggrieved be that part of the order of the Appellate Assistant Commissioner which is against him, the entire order comes within the purview of the Appellate Tribunal and under these circumstances the Board of Revenue will have no jurisdiction to exercise suo

motu revisional powers against the remaining part of the order of the Appellate Assistant, Commissioner which is in favour of the assessee and against the Revenue. The appellant State disputes the aforesaid conclusion reached by the High Court on the jurisdiction of the Board of Revenue.

Learned counsel appearing for the appellant contended before us that the High Court was in error when it took the view that once the order of the Appellate Assistant Commissioner is challenged in appeal before the Appellate Tribunal by the assessee who is aggrieved by a part of the order against him the other part of the order which is in favour of the assessee and which is obviously not the subject-matter of the appeal before the Appellate Tribunal could not be examined by the Board of Revenue in exercise of its suo motu revisional powers with a view to seeing whether the order against the Revenue and in favour of the assessee was correct in law or not. Learned counsel for the appellant submitted that the assessee had no occasion to challenge that part of the order of the Appellate Assistant Commissioner which was in his favour and, therefore, the Tribunal was not seized of any inquiry regarding the validity of that part of the order. That part of the order, therefore, was outside the ken of the scrutiny of the Tribunal and consequently it could not be said that it was subject-matter of appeal before the Tribunal. Consequently the Board and ample power under Section 34 of the Act to examine the correctness of that part of the order.

Learned counsel for the respondent appearing in one of these matters, on the other hand, submitted that the High Court was justified in construing the sweep of Sections 34 and 36 of the Act which dealt with special powers of the Board of Revenue on the one hand and powers of the Appellate Tribunal on the other and in taking the view that once appeal is taken by the assessee before the Tribunal challenging that part of the order of the Appellate Assistant Commissioner which was against him the Tribunal would be seized of the entire matter and not in piecemeal and as the Tribunal has ample jurisdiction in appropriate cases even to enhance the assessment, of course, at the instance of the Revenue and after hearing the assessee appellant before it, the field of controversy would be occupied by the Appellate Tribunal's jurisdiction and consequently the Board of Revenue would lose its jurisdiction to trench upon that field of controversy between the parties. It was, therefore, contended that the High Court was right in taking the view that the impugned orders of the Board of Revenue under Section 34 of the Act in these proceedings were incompetent and accordingly they were rightly set aside by the High Court.

Having given our anxious consideration to these rival contentions we find that on the scheme of the relevant provisions of the Act to which we will presently refer no exception can be taken to the view which appealed to different Division Benches of the High Court as well as to the Full Bench of the High Court and these appeals and special leave petitions are, therefore, liable to fail. The controversy before us is required to be resolved in the light of the statutory settings projected by two relevant Sections of the Act. They are Section 34 dealing with special powers of the Board of Revenue and Section 36 dealing with powers of the Appellate Tribunal. It will be profitable to extract them in extenso :

"34. Special powers of Board of Revenue.- (1) The Board of Revenue may, of its own motion,

call for and examine an order passed or proceeding recorded by the appropriate authority under section 4-A, section 12, section 14, section 15 or sub-section (1) or (2) of section 16 or an order passed by the Appellate Assistant Commissioner under sub-section.

(3) of section 31 or by the Deputy Commissioner under Sub-section (1) of section 32 and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act may pass such order thereon as it thinks fit.

(2) The Board of Revenue shall not pass any order under sub-section (1) if-

- (a) the time for appeal against that order has not expired; or
- (b) the order has been made the subject of an appeal to the Appellate Tribunal or of a revision in the High Court; or
- (c) more than five years have expired after the passing of the order.

36. Appeal to the Appellate Tribunal.-

(1) Any person objecting to an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 31, or an order passed by the Deputy commissioner under sub-section (1) of section 32 may, within a period of sixty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Tribunal :

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(3) In disposing of an appeal, the Appellate Tribunal may, after giving the appellant a reasonable opportunity of being heard.

- (a) confirm, reduce, enhance or annual the assessment of penalty or both:
- (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed: of

(iii) pass such orders as it may think fit: or
(b) in the case of any other order, confirm, cancel or vary such order;
Provided that at the hearing of any appeal against an order of the Appellate Assistant Commissioner or the Deputy Commissioner, the assessing authority shall have the right to be heard either in person or by a representative;

Provided further that, if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision of an appeal in the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition in the High Court or the appeal in the Supreme Court is disposed of."

A mere look at Section 34 sub-section (2)(a) and (b) shows that the Board of Revenue can exercise its suo motu powers to call for and examine the orders passed by the lower authorities provided such orders are not made appeal before the Tribunal or revision before the High Court. In fact Section 34 (2) (a) imposes a temporary bar on the powers of the Board to call for the record of any appellate order passed by the authorities below if time for preferring an appeal before the Tribunal has not expired. This is a limited bar. During the non-expiry of that time to file appeal before the Tribunal the Board cannot touch such an order. Section 34 (2)(b), on the other hand, imposes a permanent bar on the power of the Board to exercise suo motu revisional powers against those orders of the Appellate Assistant Commissioner or Deputy Commissioner which get appealed against before the Tribunal or are carried in revision before the High Court, obviously within the period available for filing such appeals or revisions or even after such period has expired once the delay in filing such proceedings before the Tribunal or High Court is condoned and the appeal before the Tribunal or revision before the High Court becomes live and is entertained for decision on merits. In short the Board of Revenue will have no jurisdiction to touch any order of subordinate authority passed under Section 31(3) or 32(3) in exercise of its revisional jurisdiction under Section 34(2)(a) for the temporary period till the time for appeal against such orders is not over and even its jurisdiction will be permanently barred under Section 34(2) (b) once appeal or revision against such order of the subordinate authority is carried for scrutiny in appeal before the Tribunal or in revision before the High Court. It is pertinent to note that Section 34(2)(a) does not refer to any part of the order which only might be against the assessee. It refers to the order as a whole. Now the order of the subordinate authority, namely, the Appellate Assistant Commissioner can be wholly in favour of the assessee or can be wholly in favour of the Revenue or can be partly in favour of the

assessee and can be partly in favour of the Revenue. In the first case there will be no occasion for such an order to be carried in appeal or revision either before the Tribunal or before the High Court by the assessee. In such a case the Board of Revenue will have ample jurisdiction to exercise its suo motu revisional powers in scrutinizing the correctness of the concerned orders of the subordinate authorities which are passed against the Revenues and the bar of Section 34(2)(b) would not get attracted. But in latter two cases such order of the Appellate Assistant Commissioner can certainly be made a subject-matter of grievance by the assessee before the Appellate Tribunal or even before the High Court in revision. So far as second type of order is concerned, as it is wholly against the assessee, there will be no occasion for the Board to exercise its suo motu revisional powers against such an order, especially when the assessee prefers to challenge it in appeal before the Tribunal. But a possibility of Board and Tribunal being simultaneously approached by the Revenue and the assessee would arise of at all the order of the appellate authority is partly in favour of and partly against the assessee. However, even in such a case the fact that such order is partly against the assessee and partly in his favour will make no difference as the whole would be available for scrutiny before the Tribunal or before the High Court in revision. Consequently the bar of jurisdiction under Section 34 (2)(b) would operate against the Board of Revenue qua such an order.

When we turn to Section 36 the same conclusion flows from the various provisions of the said Section. It was vehemently submitted by learned counsel for the appellant that in an appeal filed by the assessee against that part of the order of the Appellate Assistant Commissioner which is against him, the jurisdiction of the Appellate Tribunal will be invoked for scrutinizing only that part of the order of the order of the Appellate Assistant Commissioner which is against the assessee. Under these circumstances the Appellate Tribunal will have no occasion to look into the other part of the order of the Appellate Assistant Commissioner which is in favour of the assessee. In short it would not be on the anvil of scrutiny of the Appellate Tribunal. When such part of the order of Appellate Assistant Commissioner is out of focus before the Tribunal it could not be said that part of the order is made subject matter of appeal to the Tribunal or a revision to the High Court as contemplated by Section 34(2)(b). It is not possible to agree with this contention. Section 36 sub-section (3)(a)(i) clearly indicates that in an appeal taken out by the assessee before the Tribunal, the Tribunal can even enhance the assessment or penalty or both. It is obvious that the assessee who is an appellant would never urge for enhancement of assessment or penalty. His appeal would be confined to the prayer of getting the assessment reduced or annulled. In the process the Tribunal may even confirm such assessment by dismissing the appeal wholly. Consequently the contingency envisaged by section 26 sub-section (3)(a)(i) empowering the Appellate Tribunal to enhance the assessment or penalty in appeal by the assessee would obviously contemplate a situation where the Revenue being respondent in such appeal would seek such enhancement by filing cross objections. Of course before deciding such a grievance put forward by the Revenue seeking such enhancement the appellant has to be given reasonable opportunity of being heard as contemplated by sub section (3) of Section 36 itself. But subject to that procedural safeguard there is no

prohibition against the Appellate Tribunal in considering the question of enhancement of assessment or penalty in an appeal preferred by the assessee against that part of the order of the Appellate Assistant Commissioner which is against him, if the Revenue as respondent in appeal seek to get the other part of the order which is against it also reconsidered by the Tribunal in exercise of its jurisdiction under Section 36(3)(a)(i). Consequently it must be held that once the order of the Appellate Assistant Commissioner is brought on the anvil of scrutiny of the Appellate Tribunal by the dissatisfied assessee by filing appeal against the adverse part of that order, the entire order becomes open for scrutiny of the Appellate Tribunal and the entire controversy qua that order vis-a-vis both the contesting parties, namely, the assessee on the one hand and the Revenue on the other comes under the focus of scrutiny of the Tribunal. Once the entire appellate order being partly in favour and partly against the assessee becomes subject to the jurisdiction of the Appellate Tribunal, the bar of Section 34(2)(b) against the revisional powers of the Board of Revenue would operate in its full swing and such an order of the Appellate Assistant Commissioner which is pending scrutiny before the Appellate Tribunal will go out of the ken of revisional jurisdiction conferred on the Board of Revenue under Section 34. We entirely concur with the view of the High Court that piecemeal scrutiny of the order of the Appellate Assistant Commissioner partly by the Appellate Tribunal at the instance of the dissatisfied assessee and partly by the Board of Revenue in exercise of its suo motu revisional powers against other part of the same order in favour of the assessee is contra-indicated by the aforesaid relevant provisions of the Act. It must, therefore, be held that once the order of Appellate Assistant Commissioner is made subject matter of appeal before the Appellate Tribunal by the assessee who is aggrieved by only a part of such order the Board of Revenue cannot exercise its revisional jurisdiction against the remaining part of that very order of the Appellate Assistant Commissioner which is in favour of the assessee and against the Revenue. In view of the conclusion reached by us as aforesaid the result is obvious. These appeals and special leave petitions fail and are dismissed. In the facts and circumstances of the cases there will be no order as to costs.