

PETITIONER:
KUNDAN LAL SRIKISHAN MATHURA (U.P.).

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX, U.P. AND ANOTHER.

DATE OF JUDGMENT 03/02/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
DUTT, M.M. (J)

CITATION:
1987 AIR 793 1987 SCR (2) 140
1987 SCC (1) 684 JT 1987 (1) 321
1987 SCALE (1) 234

ACT:

Uttar Pradesh Sales Tax Act, 1948--Ss. 21 and 22--Order passed under s.21--Assessee held not liable to pay any more tax--Application for rectification of the original assessment order moved--Period of limitation-- Whether to commence from the date of the original assessment order or from the date of order passed under s.21.

HEADNOTE:

An assessment order was passed in respect of the turnover of the appellant-firm for the year 1975-76 by the Sales Tax Officer on 7.2.1979. Thereafter, the Sales Tax Officer issued a notice under s.21 of the Uttar Pradesh Sales Tax Act, 1948, proposing to make a reassessment on the ground that the mandi cess and arhat (commission) had escaped assessment and directed the appellant to appear along with its account books on 18.1.1980. The Sales Tax Officer passed the order under s.21 on the same date holding that the appellant was not liable to pay any more tax.

In the year 1982 the appellant filed four applications under s.22 for rectification of the mistakes in the assessment orders for assessment years 1975-76, 1976-77, 1977-78 and 1978-79 on the ground that the turnover in respect of purchases made on behalf of Ex-U.P. principals had been wrongly assessed to sales tax. All the four applications were rejected by the Sales Tax Officer on merits.

The appellant preferred appeals and the Appellate Authority allowed the appeals relating to the assessment orders for the assessment years 1976-77, 1977-78 and 1978-79 on merits but dismissed the appeal in respect of the assessment order for the assessment year 1975-76 on the ground that the application for rectification had been filed beyond three years from the date of the original order of assessment and was thus barred by limitation.

The appellant filed second appeal before the Sales Tax Tribunal in respect of the assessment year 1975-76. The Department also preferred second appeals in respect of the orders of assessment for assessment years 1976-77, 1977-78 and 1978-79. The Tribunal allowed the appeal

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of the appellant holding that the rectification application

made in respect of the assessment order for the assessment year 1975-76 was within limitation as the original order dated 7.2.1979 had ceased to exist on the re-opening of the assessment and the final order had been passed on 18.1. 1980 within three years from the date of the application for rectification which had been filed on 4.11.1982. However, the appeals of the Department were dismissed.

Out of the four revision applications filed by the Department, the High Court dismissed three applications and allowed the revision application in respect of the application for rectification of the assessment order for the assessment year 1975-76 holding that the application for rectification had been filed beyond three years from the date of the original order dated 7.2. 1979 and that the order dated 18. 1. 1980 had no effect on the question of limitation.

In the appeal to this Court, on behalf of the appellant it was contended that on the issue of the notice under s.21 of the Act original assessment order ceased to be in force and that the only order of assessment in respect of assessment year 1975-76 which should be taken into consideration for all purposes including the application for rectification of mistake is the order dated 18.1. 1980.

On behalf of the State it was contended that since no order of reassessment had actually been passed in the instant case on 18.1. 1980 but only an order discharging the notice issued under s.21 of the Act had been passed the original order of assessment passed on 7.2. 1979 continued to remain in force.

Allowing the appeal,

HELD: 1. The judgment of the High Court is set aside and the decision of the Tribunal restored. [150G]

2. Section 21 of the Uttar Pradesh Sales Tax Act, 1948, authorises the assessing authority to make an order of assessment or reassessment. It says that if the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under the Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary assess or reassess the dealer or tax according to law. [149G-H;150A-B]

3. Section 21 of the Act does not require the assessing authority to pass an order deciding whether it is necessary to proceed with the inquiry under that section or not before passing an order of assessment or reassessment under that section. The only order which the assessing authority is required to make under s.21 after a notice is issued to the dealer under that section is an order of assessment or reassessment. [150C-D]

4. Once a notice is issued for purposes of making reassessment the earlier proceedings become re-opened and the initial order of assessment ceases to be operative. The effect of the re-opening of the assessment is to vacate or set aside the initial order of assessment and to substitute in its place the order made on reassessment and that the result of the re-opening of the assessment is that a fresh order for reassessment would have to be made in respect of all matters including those matters in respect of which there is no allegation of the turnover escaping assessment.

[148H;149A-B]

5. Once an assessment order had been rectified and it was sought to make a further rectification of that order the period of limitation for making such further rectification would commence not from the date of the original assessment order but from the date of the earlier rectification order.

[148G-H]

Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu, [1977] 2 S.C.R. 593; Shinde Brothers etc. v. Deputy Commissioner, Raichur, A.I.R. 1967 S.C. 15 12; Commissioner of Income-tax, Excess Profits Tax, Hyderabad, Andhra Pradesh v. V. Jagan Mohan Rao & Others, [1970] 1 S.C.R. 726; Commissioner of Sales Tax, Madhya Pradesh v. M/s. H.M. Esufali, H.M. Abdulali, Siyaganj, Indore, [1973] 3 S.C.R. 1005 and International Cotton Corporation (P) Ltd. v. Commercial Tax Officer, Hubli & Ors., [1975] 2 S.C.R. 345, followed.

6. The order dated 18.1.1980 is an order of reassessment notwithstanding the fact that a regular order of reassessment has not been passed. The order passed on 18.1.1980 should be construed as a fresh order of assessment passed under s.21 of the Act and the initial order of assessment dated 7.2.1979 should be deemed to be the order passed again on 18.1.1980. [149E-F]

7. If the assessee is able to show any error apparent on the record from the order of assessment dated 7.2.1979 the appellant is entitled to

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succeed in its application for rectification provided it is made within the prescribed time, i.e., three years from the date of the order passed under s.21 of the Act. [149E-F]

Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu, [1977] 2 S.C.R. 593, referred to.

8. It should be held that the assessing authority had adopted the earlier order dated 7.2.1979 as the order of assessment passed at the conclusion of the proceedings under s.21 of the Act. The period of limitation for the application for rectification should, therefore, be calculated from the date of the order under s.21 of the Act, i.e. 18.1.1980. [150F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 625 of 1986.

From the Judgment and Order dated 20.11.1985 of the Allahabad High Court in Sales Tax Revision No. 3 18 of 1985.

Shanti Bhushan, Prashant Bhushan and Madan Lokur for the Appellant.

Gopal Subramaniam, R.S. Rana and Ashok K. Srivastava for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The short question which arises for consideration in this appeal relates to the period of limitation within which an application for rectification of an order of reassessment passed under section 21 of the Uttar Pradesh Sales Tax Act, 1948 (Uttar Pradesh Act No. XV of 1948) (hereinafter referred to as 'the Act') can be preferred under section 22 of the Act.

The brief facts which are necessary for deciding this case are these. The appellant-firm is a dealer carrying on business in Mathura in the State of Uttar Pradesh. An order of assessment was passed in respect of the turnover of the appellant for the year 1975-76 by the Sales Tax Officer, Sector 2, Mathura under the Act on 7.2.1979. Thereafter on

January 8, 1980 the Sales Tax Officer issued a notice to the appellant under section 21 of the Act proposing to make a reassessment in respect of the said assessment year, i.e., 1975-76 on the

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ground that the mandi cases and arhat (commission) which should have been included in the turnover had escaped assessment and directed the appellant to appear before him along with its account books on 18.1.1980. After looking into the books of accounts and hearing the advocate who appeared on behalf of the appellant, the Sales Tax Officer passed the order under section 21 of the Act on the same date holding that the appellant was not liable to pay any more tax under the Act. The order passed by the Sales Tax Officer reads thus:

"Office of the Sales Tax Officer Sector 2,
Mathura
S/Shri Kundan Lal Srikishan Lala Gan j, Mathu-
ra
Year: 75-76 Section 21
ORDER UNDER SECTION 21

The original tax assessment order in respect of you was passed on 7.2.79. The audit, however, had objected that the businessman's arhat (commission) and mandi cess amount was left out from taxation. On this basis the businessman was called by issuing him notice under the said section. On the appointed day, his advocate appeared and submitted the accounts books. On examination it was found that the businessman had already included the arhat and mandi cess amount in the taxable income and he had already been assessed. Therefore, no tax is to be levied now and the businessman is declared as free from paying any more tax under section 21.

Sd/B. Lal
Sales Tax

Officer Sector 2, Mathura
Dated: 18.1.80"

In the year 1982, the appellant realised that it was not liable to pay sales tax on purchases made on behalf of Ex-U.P. principals as such purchases had occasioned inter-State movement of the commodities in question and were as such exempt from the purview of the Act. The appellant, therefore, filed four applications under section 22 of

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the Act for rectification of the mistakes in the assessment orders for assessment years 1975-76, 1976-77, 1977-78 and 1978-79 on the ground that the turnover in respect of purchases made on behalf of Ex-U.P. principles had been wrongly assessed to sales tax in the aforementioned four years. The applications for rectification made in respect of assessment years 1976-77, 1977-78 and 1978-79 were all within three years of the assessment orders but the application made in respect of the assessment order in respect of the assessment year 1975-76 was beyond three years from the date of the original order of assessment which had been made on 7.2.1979 but within three years from the date of the order passed by the Sales Tax Officer under section 21 of the Act. All the four applications made by the appellant were rejected by the Sales Tax Officer on merits on 3.1.1983. Thereupon the appellant preferred appeals against the orders rejecting the applications before the Appellate Authority. The said Appellate Authority by its order dated 21.1.1983

allowed the appeals relating to the assessment orders for the assessment years 1976-77, 1977-78 and 1978-79 on merits but dismissed the appellant's appeal in respect of the assessment order for the assessment year 1975-76 on the ground that the appellant's application for rectification filed under section 22 of the Act had been filed beyond three years from the date of the original order of assessment and was thus barred by limitation. Aggrieved by the order of the Appellate Authority dismissing the appellant's appeal arising out of the application for rectification of the assessment order passed in respect of the assessment year 1975-76, the appellant preferred a second appeal before the Sales Tax Tribunal, Uttar Pradesh. The Department also preferred second appeals against the orders of rectification passed by the Appellate Authority in respect of the orders of assessment for assessment years' 1976-77, 1977-78 and 1978-79. The Tribunal disposed of all the appeals by a common order dated 26.2. 1985 by which it allowed the appeal of the appellant and dismissed the appeals filed by the Department. The Tribunal held that the appellant was entitled to succeed on merits in each of the appeals and further held that the rectification application made in respect of the assessment order for the assessment year 1975-76 was within limitation as the original order dated 7.2. 1979 passed in respect of the said assessment year had ceased to exist on the re-opening of the assessment by the notice issued under section 21 of the Act and the final order under that section had been passed on 18.1. 1980 within three years from the date of the application for rectification which had been filed on 4.11. 1982. Aggrieved by the orders of the Tribunal the Department filed four revision applications before the High Court of Allahabad. The High Court by its order dated 15.11. 1985 dismissed three of the

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Department's revision applications pertaining to the appellant's rectification applications in respect of the assessment orders for the assessment years 1976-77, 1977-78 and 1978-79 on merits holding that the orders of the Tribunal were correct and no ground had been made out to interfere with them. It, however, allowed the revision application filed by the Department in respect of the application for rectification of the assessment order for the assessment year 1975-76 on the ground that the application for rectification had been filed beyond three years from the date of the original order dated 7.2. 1979 and that the order dated 18.1.1980 passed under section 21 of the Act had no effect on the question of limitation. Aggrieved by the said order of the High Court the appellant has filed this appeal by special leave.

The material part of section 21 of the Act, which is relevant for the purposes of this case, reads thus:

"21. Assessment of tax on the turnover not assessed during the year--(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary assess or re-assess the dealer or tax according to

law "

Section 22 of the Act provides that the assessing, appellate or revising authority or the Tribunal may, on its own motion or on the application of the dealer or any other interested person rectify any mistake in its order, apparent on the record within three years from the date of the order sought to be rectified. The question for consideration is whether for purposes of limitation the date of the order of assessment for the year 1975-76 in the instant case should be the date of the original assessment order, i.e., 7.2. 1979 or whether it should be the date of the order passed under section 21 of the Act, i.e., 18.1. 1980.

On behalf of the appellant it is contended before us that on the issue of the notice under section 21 of the Act the original assessment ceased to be in force and that the only order of assessment in respect of assessment year 1975-76 which should be taken into consideration for

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all purposes including the application for rectification of mistake is the order dated 18.1.1980. In support of the above plea the appellant has relied upon the decision of this Court in Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu, [1977] 2 S.C.R. 593 which was a case arising under the Mysore (Karnataka) Sale Tax Act, 1957. In that case the original assessment order had been passed on March 21, 1963. Thereafter there was an order of reassessment made under section 12A of the Mysore (Karnataka) Sales Tax Act, 1957 on June 8, 1966 because certain amounts had escaped assessment under the original assessment order. Thereafter on June 28, 1967 the Deputy Commissioner of Commercial Taxes passed an order revising the order dated June 8, 1966 as a consequence of the decision of this Court in Shinde Brothers etc. v. Deputy Commissioner, Raichur, A.I.R. 1967 S.C. 1512. Thereafter the assessee filed an application for rectification of the order passed by the Deputy Commissioner of Commercial Taxes requesting him to set aside the order passed on revision under section 21 of that Act on the ground that the revision of assessment was barred by limitation under section 21(3) of that Act and as such there was a mistake apparent on the record. The Deputy Commissioner of Commercial Taxes rejected the said application. The assessee questioned the order of the Deputy Commissioner of Commercial Taxes before the Mysore (Karnataka) Sales Tax Appellate Tribunal. The Tribunal too rejected that appeal. The assessee thereafter filed a petition before the High Court under Article 226 of the Constitution of India. The High Court allowed the appeal and quashed the order passed by the Deputy Commissioner of Commercial Taxes on June 28, 1967 on the ground that the said order had been passed without jurisdiction as the power of revision had been exercised beyond the prescribed period of four years from the date of the original assessment order dated March 21, 1963. The Deputy Commissioner of Commercial Taxes filed an appeal against the order of the High Court before this Court. Allowing the said appeal this Court observed thus at page 596:

"The short question which arises for determination in these appeals is that in the event of an order having been made under section 12A of the Act, what is the starting point for computing the period of four years, mentioned in section 21(3), for the exercise of the powers under section 21(2). Is it the initial assessment-order or is it the order made under section 12A? In the context of the present

case, the question to be answered is as to whether the period of four years, is to be calculated from March 21, 1963-when the initial assessment orders were made, or from June 8, 1966 when

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the orders under section 12A of the Act were made. So far as this question is concerned, we are of the opinion that the period of four years should be calculated from June 8, 1966 i.e., the date on which orders under section 12A of the Act were made. The reason for that is that once an assessment is reopened, the initial order for assessment ceases to be operative. The effect of reopening the assessment is to vacate or set aside the initial order for assessment and to substitute in its place the order made on reassessment. The initial order for reassessment cannot be said to survive, even partially, although the justification for reassessment arises because of turnover escaping assessment in a limited field or only with respect to a part of the matter covered by the initial assessment order. The result of reopening the assessment is that a fresh order for reassessment would have to be made including for those matters in respect of which there is no allegation of the turnover escaping assessment. As it is we find that in the present case the assessment orders made under section 12A were comprehensive orders and were not confined merely to matters which had escaped assessment earlier. In the circumstances, the only orders which could be the subject matter of revision by the appellant were the orders made under section 12A of the Act and not the initial assessment orders."

In reaching the above conclusion the Court relied upon three decisions of this Court, namely, Commissioner of Income-tax, Excess Profits Tax, Hyderabad, Andhra Pradesh v. V. Jagan Mohan Rao & Others, [1970] 1 S.C.R. 726; Commissioner of Sales Tax, Madhya Pradesh v. M/s. H.M. Esufali, H.M. Abdulali, Siyaganj, Indore, [1973] 3 S.C.R. 1005 and International Cotton Corporation (P) Ltd. v. Commercial Tax Officer, Hubli & Ors., [1975] 2 S.C.R. 345. The third of the above three cases, namely, International Cotton Corporation (P) Ltd. v. Commercial Tax Officer, Hubli & Ors., (supra) was a case arising out of rectification proceedings. In that case this Court held that once an assessment order had been rectified and it was sought to make a further rectification of that order the period of limitation for making such further rectification would commence not from the date of the original assessment order but from the date of the earlier rectification order. In Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu (supra) this Court has clearly laid down that when once a notice is issued for purposes of making reassessment the assessment proceedings become re-opened and the initial order of assessment

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ceases to be operative. The Court has further held that the effect of the re-opening of the assessment is to vacate or set aside the initial order of assessment and to substitute in its place the order made on reassessment and that the result of re-opening of the assessment is that a fresh order

for reassessment would have to be made in respect of all matters including those matters in respect of which there is no allegation of the turnover escaping assessment. The same principle should apply even to a Case like the present one where an application for rectification is filed after the completion of the reassessment proceedings.

In order to overcome the observation made by this Court in Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu (supra) it was argued on behalf of the State Government that since no order of re-assessment had actually been passed in the instant case on 18.1.1980 but only an order discharging the notice issued under section 21 of the Act had been passed the original order of assessment passed on 7.2.1979 continue to remain in force. It is true that after going through the books of accounts produced by the appellant and hearing the advocate who appeared on its behalf the Sales Tax Officer was of the view that the assessee had already included in its taxable turnover the arhat (commission) and mandi cess amounts and therefore, no extra tax was leviable under section 21 of the Act. Even so it has to be held that the order dated 18.1.1980 is an order of reassessment notwithstanding the fact that a regular order of reassessment has not been passed. The order passed on 18.1.1980 should be construed as a fresh order of assessment passed under section 21 of the Act and the initial order of assessment dated 7.2.1979 should be deemed to be the order passed again on 18.1.1980. If the assessee is able to show any error apparent on the record from the order of assessment dated 7.2.1979 which as we have observed earlier should be deemed to have been passed again on 18.1.1980, the appellant is entitled to succeed in its application for rectification provided it is made within the prescribed time, i.e., three years from the date of the order passed under section 21 of the Act.

We do not find any merit in the submission made on behalf of the Department that the order passed on 18.1.1980 should be understood as an order discharging the notice issued under section 21 of the Act and not an order of reassessment as such. This is obvious from the language of section 21, itself. Section 21 authorises the assessing authority to make an order of assessment or reassessment. It says that if the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part

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thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under the Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary assess or re-assess the dealer or tax according to law. The assessing authority gets jurisdiction to make the reassessment by issuing a notice to the dealer as provided by section 21 of the Act. When once the notice is issued under that section the original order of assessment gets re-opened and thereafter any order made under section 21 of the Act alone would be the order of assessment in respect of the period in question. Section 21 of the Act does not require the assessing authority to pass an order deciding whether it is necessary to proceed with the inquiry under that section or not before passing an order of assessment or reassessment under that section. The only order which the assessing authority is required to make under section 21 after a notice is issued to the dealer under that section is

an order of assessment or reassessment. It is not required to pass first an order whether it should proceed with the reassessment proceedings or not. Such a preliminary order is not contemplated under section 21 of the Act. Hence the order dated 18.1.1980 has to be treated as an order of assessment even though it is not in the form in which an order of assessment has to be passed and not as an order merely on the question whether the reassessment proceedings under section 21 of the Act should be proceeded with or not. In other words it should be held that the assessing authority had adopted the earlier order as the order of assessment passed at the conclusion of the proceedings under section 21 of the Act. The period of limitation for the application for rectification should, therefore, be calculated from the date of the order under section 21 of the Act. We cannot, therefore, subscribe to the view of the High Court expressed in its observation that since no fresh order of assessment had been passed after examining the accounts of the assessee the 'original assessment order should be considered to remain intact a nothing is added or altered in pursuance of the order under section 21 of the Act'.

No other contention is urged before us. In the result we set aside the judgment of the High Court and restore the decision of the Tribunal. The appeal is accordingly allowed. There shall, however, be no order as to Costs.

A.P-J.
allowed.
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Appeal