proceeding is a continuation of the suit and no question of limitation arises. After the suit for partition remains pending and a preliminary decree has been passed, the duty of the drawing up of the final decree proceeding is on the Court until a final decree is drawn up in accordance with law. It follows, as rightly noticed by the learned Subordinate Judge, that an application for a final decree in a suit for partition is not governed by any provision of the Limitation Act."

(14) It is abundantly clear from the aforesaid that in the case of preliminary decree in partition suit, drawing of the final decree is continuation of the said proceeding. It is improper, therefore, to say that the period of limitation would come into play. The trial Court rightly rejected the contention of the petitioners.

(15) For these reasons, the revision petition being without merit must fail and is hereby dismissed.

J.S.T.

Before Jawahar Lal Gupta and N.K. Agrawal, JJ.

M/S MEERA COMPUTERS.—*Petitioner*

versus

STATE OF HARYANA AND OTHERS.—*Respondents*

C.W.P. No. 1579 of 1998

17th February, 1999

Haryana General Sales Tax Act, 1973—S. 40—Central Sales Tax Act, 1956—S. 9(2)—Constitution of India, 1950—Art. 226—Joint Excise and Taxation Commissioner, Faridabad deciding appeal after having been informed of Government orders transferring jurisdiction of the appellate authority to the Joint Excise and Taxation Commissioner (Appeals), Rohtak-JETC (Faridabad) going ahead reducing additional demand from Rs. 9,96,850/- to Rs. 19,476/- Validity of such order—Revisional authority setting aside the order as being wholly without jurisdiction—Petition is liable to be dismissed—High Court upholding revisional order and dismissing petition.

Held that, the Revisional Authority was justified in invoking this power. Apparently, the Commissioner had transferred the jurisdiction with some objective. If despite the order of the Commissioner, an Appellate Authority had proceeded to decide a matter, it could be legally said that the action was without jurisdiction.

(Para 9)

Mr. R.P. Sawhney and Mr. I.K. Mehta, Sr. Advocates with Mr. Rajesh Bindal and Ms. Meetu Verma, Advocates, *for the Petitioner.*

Mr. Parmod Goyal, DAG Haryana, *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) The Assessing Authority-cum-Excise and Taxation Officer, Gurgaon, passed an order dated 26th March, 1993 by which the petitioner's turn-over for the assessment year 1989-90 was fixed at Rs. 2,10,00,000. As a result, an additional demand was created. The petitioner filed an appeal which was allowed by the Joint Excise and Taxation Commissioner, Faridabad. *Vide* order dated 22nd September, 1993 the additional demand of Rs. 9,96,850 was reduced to Rs. 19,476. The Revisional Authority *viz.* the Additional Excise and Taxation Commissioner, Haryana, invoked its powers under Section 9(2) of the Central Sales Tax Act read with Section 40 of the Haryana General Sales Tax Act, 1973. It found that the order dated 22nd September, 1993 was wholly without jurisdiction as District Gurgaon had been placed under the charge of the Appellate Authority at Rohtak instead of Faridabad. Aggrieved by this order, the petitioner filed an appeal. The order of the Revisional Authority having been confirmed by the Tribunal, the assessee has filed the present writ petition. Copies of the orders passed by the Revisional Authority and the Tribunal have been produced as Annexures P-2 and P-4 respectively. The petitioner prays that these orders be quashed.

(2) The respondents have filed a detailed written statement. It has been averred that,—*vide* order dated 9th September, 1993 passed by the Excise and Taxation Commissioner, Haryana, the appellate jurisdiction in respect of District Gurgaon had been conferred on the Appellate Authority, Rohtak. Consequently, the order passed by the Appellate Authority on 22nd September, 1993 was wholly without jurisdiction.

(3) Counsel for the parties have been heard.

(4) Mr. Sawhney, appearing for the petitioner, has contended that the provisions of Section 40 of the Act could not have been invoked in the circumstances of the present case. Secondly, it has been argued that the order dated 9th September, 1993 had not been communicated

to the Appellate Authority and that it could not be said that the order was without jurisdiction. Still further, the learned counsel has contended that the Revisional Authority had taken into consideration two facts *viz.* the issue of order dated 9th September, 1993 and also that only the stay application was fixed for hearing on 22nd September, 1993. It has been contended that in fact the stay order has been passed on 10th July, 1993 and thus the Revisional Authority had proceeded on a wrong assumption of facts. Lastly, learned counsel has submitted that the Tribunal even failed to consider the submission made by the petitioner in this behalf. He has also relied upon certain decisions to which reference shall be made at the appropriate stage.

(5) On the other hand, Mr. Goyal appearing for the respondents has contended that order dated 9th September, 1993 had been issued by the competent authority. By this the jurisdiction of the Appellate Authority had been transferred. This factual position had been pointed out to the authority by the state representative at the time of hearing of the case. Despite that he had proceeded to pass the order. In this situation, the action of the Revisional Authority in invoking its *suo motu* jurisdiction was absolutely legal and valid. Learned counsel further maintains that the Tribunal had rightly affirmed the order passed by the Revisional Authority.

(6) Before proceeding to consider the respective contentions, the factual position needs to be briefly noticed.

(7) It is the admitted position that the Assessing Authority had *vide* its order of 26th March, 1993 created an additional demand against the petitioner. The appeal against this order had been filed on 12th June, 1993. This appeal was pending when the orders regarding the transfer/change of appellate jurisdiction had been issued by the Excise and Taxation Commissioner, Haryana, on 9th September, 1993. In exercise of the power under Rule 3 of the Haryana General Sales Tax Rules, 1975, the Commissioner had amended the earlier order and allocated the jurisdiction in respect of District Gurgaon to the Joint Excise and Taxation Commissioner (Appeals) at Rohtak instead of the authority at Faridabad. A copy of the order passed by the Commissioner has been produced as Annexure R-1 with the written statement. It deserves notice that in paragraph 7 of the written statement it has been specifically averred that "the Joint Excise and Taxation Commissioner, Shri S.R. Yadav, was informed by the State Representative appearing on 22nd September, 1993 regarding the jurisdiction of Gurgaon District and it was disclosed that Joint Excise and Taxation Commissioner, Faridabad, has no jurisdiction after 9th September, 1993 and the appeal cases of Gurgaon District were

transferred to Joint Excise and Taxation Commissioner (A) Rohtak,— *vide* order dated 9th September, 1993............". No replication has been filed to controvert this assertion. It is, thus, clear that the factum of the change in jurisdiction had been communicated to the Appellate Authority at the time of the hearing of the appeal. Despite that, it had proceeded to pass an order in favour of the assessee and to reduce its liability from Rs. 9, 96,850 to Rs. 19,476. Still further, a perusal of the order passed by the Appellate Authority (a copy is at Annexure P-5 with the petition) shows that it purports to have been pronounced on 22nd September, 1993. Yet, the copy was issued on 28th October, 1993. Still further, the order appears to bear a number given by the Stenographer and not by the office. It is in the background of this factual position that the arguments as raised by the learned counsel for the parties have to be considered.

(8) It may also be mentioned that a perusal of the order dated 9th September, 1993 shows that the office of the Excise and Taxation Commissioner, Haryana, had endorsed the copies to the various officers including the instant Appellate Authority on 15th September, 1993. A copy should have normally reached the Appellate Authority within a few days. Normally, the letters do not take a week to reach their destination from Chandigarh to Faridabad etc. In any event, a categorical averment has been made in paragraph 7 of the written statement. This has not even been controverted by the petitioner. In this situation, it can be safely assumed that the Appellate Authority had been apprised of the order dated 9th September, 1993 before it heard or decided the appeal. Yet it proceeded with the matter. Why ? There is no explanation whatsoever.

(9) It is in the background of this factual position that the legality of the order passed by the Revisional Authority has to be considered. Section 40 of the Act empowers the competent authority to call for the record of any case *suo motu*. The officer can do so "for the purpose of satisfying himself as to the legality or the propriety of any proceedings or of any order made therein.............". The power conferred on the authority is wide. It can be invoked whenever the authority has a doubt about the legality or propriety of any proceedings or order. In the circumstances of the present case, the Revisional Authority was justified in invoking this power. Apparently, the Commissioner had transferred the jurisdiction with some objective. If despite the order of the Commissioner, an Appellate Authority had proceeded to decide a matter, it could be legally said that the action was without jurisdiction. To examine this issue the authority could have sent for the file and considered the matter. In the present case the Revisional Authority had done so. It had given a notice to the petitioner to show cause as to

why the order be not declared to be without jurisdiction. The petitioner had availed of that opportunity. Thereafter, the Revisional Authority held that there was no "justification for the Appellate Authority to show unnecessary haste in deciding that case when it was brought to his knowledge that his jurisdiction over the appeal cases of Gurgaon District has been changed by the E.T.C.". This view of the authority was strictly within the purview of Section 40 of the Act. There was no violation of the provision. Consequently, the contention that the action was not in conformity with the provisions of Section 40 of the Act cannot be sustained.

(10) Mr. Sawhney referred to the decision of a Division Bench of this Court in *Commissioner of Income Tax* v. *Kanda Rice Mills* (1) contend that the Revisional Authority could not have exercised its jurisdiction under Section 40 of the Act without recording a firm finding on the facts of the case. In the case of Kanda Rice Mills the Bench has, undoubtedly, observed that the Commissioner had to come to a firm decision that the order of the ITO was erroneous. However, this Rule has not been violated inthe present case. The Revisional Authority has recorded a firm finding of fact that the Appellate Authority had shown unnecessary haste and had passed an order despite the fact that he had been informed about the change of jurisdiction. It is apparent that the Revisional Authority has held the action to be without jurisdiction. The question of jurisdiction goes to the root of the matter. It renders the order non-est. It affects the legality of the action. A firm finding has been recorded. The Rule as laid down in the above case has not been violated.

(11) Mr. Sawhney went on to contend that the order of the Revisional Authority suffered from an apparent error inasmuch as it expressed an opinion that the appeal was not fixed for hearing but only the stay matter was to be considered.

(12) A perusal of the order shows that the Revisional Authority has observed that "the appeal case was not fixed for hearing on 22nd September, 1993......................the case was decided without giving any notice to the department". Assuming that the learned counsel is correct in his submission, still we find no infirmity in the order passed by the Revisional Authority. The order of the Appellate Authority was without jurisdiction. Thus, the view taken by the Revisional Authority cannot be held to be illegal. In view of our finding on the first question, any error even if it is assumed to be there would be of no consequence. Still further, on a perusal of paragraph 7 of the petition it appears that the petitioner has categorically averred that "the entertainment of appeal

(1) 178 I.T.R. 446.

was decided by the Joint Excise and Taxation Commissioner (Appeals) on 10th July, 1993 againt which even the review petition of the Department filed against that order had to be withdrawn subsequently as having become infructuous". In the written statement filed on behalf of the respondents it has been stated that "the said matter was pending with the Joint Excise and Taxation Commissioner, Faridabad, as the department filed a review petition against the said order...........". Mr. Sawhney states that the review petition had been actually filed by the petitioner and not by the department. He submits that there is a typographical error in the averment made in paragraph 7 of the writ petition. Assuming it to be so, the fact remains that on the basis of this confusion, the Revisional Authority might have thought that the main appeal was not yet fixed for hearing. However, the validity of the order is not affected for we are satisfied that the Revisional Authority could have and actually did set aside the order on the ground of lack of jurisdiction.

(13) Mr. Sawhney contends that when one ground in the order is bad the whole order would be vitiated. He has referred to the decision of a Bench of this Court in *M.K. Trading Company* v. *The State of Punjab* (2) We are unable to accept this contention. An order without jurisdiction shall be vitiated without anything more. In the present case, counsel for the petitioner has not been able to satisfy us with regard to the validity of the order despite the undisputed lack of jurisdiction. An authority having no jurisdiction could not have determined the rights of the parties. The order passed by the Appellate Authority was wholly without jurisdiction. Thus, it was rightly set aside by the Revisional Authority.

(14) Lastly, it was contended that the Tribunal could have decided the issue regarding Section 40 of the Act which had been raised by the petitioner. It should not have left the issue undecided. Even this contention is of no consequence. We have already found that the order passed by the Revisional Authority is in conformity with the provisions of Section 40 of the Act. Thus, the omission of the Tribunal to decide the issue is of no consequence.

(15) No other point has been raised.

(16) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed. The parties are left to bear their own costs.

R.N.R.

(2) 34 S.T.C. 237.