
(1979) 01 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 783 of 1978

Arbind and Company	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 18-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) RLW 170 : (1979) 43 STC 430 : (1979) WLN 543

Hon'ble Judges : M.B. Sharma, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; B.K. Pathak, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Dwarka Prasad, J.—A very short point arises for determination in this writ petition. The petitioners carry on business of selling stone ballast (gitti) and of undertaking construction work of buildings, etc. The petitioners never submitted any returns under the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"), nor they were assessed to tax under the Act. According to the petitioners, they used to pay sales tax to Messrs. Bhanwardas Sitaramdas Mistri and that they were not liable to payment of sales tax under the Act. On 29th October, 1977, the Commercial Taxes Officer, B-Circle, Bhawani Mandi, District Jhalawar (hereinafter referred to as "the assessing authority"), issued a notice to the petitioners u/s 10(2) of the Act directing them to produce the account books and other records for the period from 1963-64 to 1973-74. The petitioners submitted a reply to this notice stating that the notice was bad in respect of the period beyond 8 years and as the notice in question was a composite one comprising of the period beyond 8 years and that falling within 8 years, the same was illegal and no proceedings u/s 10 could be initiated against the petitioners on the basis of such a notice. As the assessing authority was going to proceed with the assessment proceedings and was not prepared to drop the same on the

basis of the reply of the petitioners, they have approached this Court by means of a writ petition under Article 226 of the Constitution.

2. The respondents in their reply have stated that the petitioners have got themselves registered as a registered dealer under the Act on 2nd November, 1972, and that the petitioners were liable to payment of sales tax under the Act with effect from 1st April, 1963, as sales tax is payable on the commodities supplied by the petitioners on the first point of sale. The petitioners should have paid sales tax on the "gitties" supplied by them to the railways and other purchasers, but as they failed to do so, a notice u/s 10(2) of the Act was served upon the petitioners. The respondents have also denied that the petitioners objected to the taking of proceedings on the ground that part of the period, in respect of which proceedings are sought to be taken, was beyond 8 years. The respondents have further contended that the period of 8 years would start running from the date of knowledge and not from the close of the assessment year.

3. Thus, on facts, it is the admitted case of the parties that no return was submitted by the petitioners u/s 7(1) of the Act nor any assessment of tax was made u/s 10 of the Act in respect of the period from 1963-64 to 1973-74. However, the argument of the learned counsel for the petitioners is based on Section 12(2) of the Act, which provides that no notice u/s 12(1) shall be issued in respect of any business for any year, after the expiry of 8 years from the end of the relevant assessment year. The notice u/s 10(2) in the present case was issued on 29th October, 1977, which was certainly beyond the period of 8 years from the end of the assessment years 1964-65 to 1968-69. The learned Government Advocate submitted that the notice was issued by the assessing authority u/s 10(2) of the Act and not u/s 12(1) of the Act. But on a perusal of Section 10(2) of the Act, we find that a notice could be issued thereunder only after a return has been filed u/s 7(1) of the Act. In a case where no return has been filed by the dealer u/s 7(1) of the Act and no assessment has been made under Clause (b) of Sub-section (1) of Section 10, even after the close of the accounting year, then it must be deemed that the turnover of the dealer has escaped assessment to tax and a notice under-section 12(1) will have to be issued. If the assessing authority for any reason considers that the whole of the business of the dealer has escaped assessment to tax under the Act, then he may serve a notice to such dealer u/s 12(1) and may thereafter seek to assess the amount of tax payable by such dealer. The assessing authority can take action u/s 12(1) of the Act, subject to the condition of limitation prescribed in Sub-section (2) of that section, which prohibits the assessing authority from issuing a notice u/s 12(1) in respect of any business for any year, after the expiry of 8 years from the end of the relevant assessment year. We are unable to hold that a notice u/s 12(1) of the Act in respect of the escaped turnover of the entire business of a dealer could be issued at any time or within 8 years from the date of knowledge of such escapement of the turnover of the dealer. In *Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others*, it was held

by their Lordships of the Supreme Court that escapement of assessment applies equally to cases where a notice was received by an assessee but the same resulted in no assessment at all and to cases where due to any reason no notice was issued to the assessee and on that account there was no assessment of his income. It was also held in the aforesaid case that where the assessee did not file a return of his turnover for any year and as a consequence thereof there was no assessment, then it was a case where the entire turnover of a dealer has escaped assessment, although it may be on account of mere omission or of deliberate and wilful concealment on the part of the assessee that he did not submit any return but, in any case, it is his default that led to the escapement of the turnover for the year and it could be held that the whole of the turnover of the assessee has escaped assessment for that year. Similar view was expressed by their Lordships of the Supreme Court in *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, wherein it was held by their Lordships :

We, therefore, hold that the expression "escaped assessment" in Section 11-A of the Act includes that of a turnover which has not been assessed at all, because for one reason or other no assessment proceedings were initiated and therefore no assessment was made in respect thereof.

4. In the present case also, whether it was a case of omission or of deliberate concealment on the part of the petitioner, but there is no doubt that he failed to file a return and even if he bona fide thought that he was not liable to pay any sales tax and his turnover was not liable to assessment of tax under the Act, yet, it is a case where the whole of the turnover of the petitioner has escaped assessment and Section 12(2) of the Act will apply to such a case. A notice u/s 12(1), therefore, could not have been given to the petitioner after the expiry of 8 years from the end of the relevant assessment year. The notice in the present case includes the period which partly falls beyond 8 years and partly within 8 years and such a composite notice could not have been given by the assessing authority. If the assessing authority for any reason thought that the turnover of the petitioner has escaped assessment, then he should give notice to the petitioner only in respect of the years which fall within the limitation prescribed in Sub-section (2) of Section 12 of the Act. In this view of the matter, the composite notice is bad in law and, therefore, the same is quashed. However, it is made clear that it will be open to the assessing authority if he so considers proper, and there are circumstances appearing, which may satisfy the requirements of Sub-section (1) of Section 12, to give a fresh notice to the petitioners for such period which may fall within the limitation prescribed in Sub-section (2) of Section 12 of the Act.

5. The writ petition is accordingly allowed. The notice dated 29th October, 1977, is quashed subject to the observations made above. The parties are left to bear their own costs.