

(1982) 05 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 975 of 1974

Atul Glass Industries

APPELLANT

Vs

The Assessing Authority

RESPONDENT

Date of Decision : 19-05-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147
Punjab General Sales Tax Act, 1948 — Section 11, 7

Citation : (1983) 53 STC 144

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : Bhagirath Dass, A.K. Jaiswal and Ramesh Kumar, for the Appellant;
B.S. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Tandon, J.—The petitioner, Atul Glass Industries, a partnership firm, is manufacturing mirrors in Faridabad since 1960. It was not registered under the Punjab General Sales Tax Act, 1948 (hereafter "the Act"). The Assessing Authority, Faridabad, issued notice (annexure P2) in form S.T. XIV u/s 11(6) of the Act to the petitioner on 3rd March, 1965, for the years 1960-61, 1961-62, 1962-63 and 1963-64. The petitioner was called upon to produce all the account books for the four years detailed above on 8th March, 1965. This notice was served on the petitioner on 6th March, 1965. The same Assessing Authority issued another notice dated 20th February, 1970 (annexure P3), for the year 1964-65 directing the petitioner to produce the account books for the year 1964-65. The Assessing Authority thereafter created liability of the petitioner under the Punjab General Sales Tax Act as also under the Central Sales Tax Act vide order dated 3rd December, 1965. The petitioner assailed that order of assessment in Civil Writ Petition No. 2544 of 1966 which was accepted on 3rd December, 1970, vide order reported as Atul Glass Industries, Faridabad v. State of Haryana [1971] 28 STC 148. It was held that before an order of assessment

could be made, it is the duty of the Assessing Authority to find out whether the assessee is a dealer under the Act as also under the Central Sales Tax Act and the date of liability for the payment of tax was equally to be determined. It was also held that each year of assessment is a separate unit of assessment and that the material for a subsequent year could not be utilised for the assessment of an earlier year. The Assessing Authority, Faridabad, again assessed the petitioner for the year 1962-63 and vide order dated 26th June, 1968, created a demand of Rs. 2,341.96 under the Act and of Rs. 26,730.39 under the Central Sales Tax Act. The petitioner filed an appeal against the order of the Assessing Authority dated 26th June, 1968, which was accepted by the Deputy Excise and Taxation Commissioner (Appeal), Rohtak, vide order dated 28th July, 1971. The assessment order was set aside and the appellate authority remanded the case to the Assessing Authority with the direction to give a finding as to whether the petitioner was a dealer and also to fix the date of liability. The Assessing Authority, Faridabad, vide order dated 22nd January, 1974 (annexure P4), held the petitioner to be a dealer under the Act and also determined the date of liability as 12th April, 1961. The petitioner raised objections against the Order (P4), which were dismissed by the Assessing Authority vide order dated 22nd February, 1974 (annexure P6). The petitioner has assailed the notices (P2 and P3) as also the order of the Assessing Authority dated 22nd February, 1974 (P6), in the present writ.

2. Mr. A. N. Sud, Excise and Taxation Officer-cum-Assessing Authority, Faridabad, in his affidavit, placed on the file, has averred that the petitioner after filing the present writ, filed an appeal against the order of the Assessing Authority dated 22nd February, 1974 (wrongly dated 22nd January, 1974) and the Deputy Excise and Taxation Commissioner (Appeal) vide order dated 1st July, 1974, set aside the same on the ground that Mr. M. L. Kapoor, who had made the assessment, had not been duly vested with the powers of the Assessing Authority and thus was not competent to pass the order. The learned counsel for the petitioner has stated in his arguments that the order of the Assessing Authority dated 22nd February, 1974 (P6), has since been set aside by the Deputy Excise and Taxation Commissioner (Appeal) and as such this writ stands rendered infructuous qua the same.

3. The learned counsel for the petitioner has argued that the Assessing Authority could issue notices u/s 11(6) of the Act after coming into possession of some information which satisfied him that any dealer had been liable to pay tax under the Act, in respect of any period, but had failed to apply for registration. The argument proceeds that in the instant case the Assessing Authority did not come into possession of any such information before issuing notices P2 and P3 to the petitioner, with the result that they are liable to be quashed.

4. Section 11(6) of the Act reads:

If upon information which has come into possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of

any period but has failed to apply for registration the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in cases where such dealer has wilfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

5. The relevant part of the impugned notice (P2), which is in form S. T. XIV, reads :

(c) I am satisfied on information which has come into my possession that you have been liable to pay tax under the Punjab General Sales Tax Act, 1948, in respect of the period commencing on 1-4-1960 and ending with 31-3-1961, 1961-62, 1962-63, 1963-64 but that you have wilfully failed to apply for registration u/s 7 of the said Act, and it appears to me to be necessary to make an assessment under Sub-section (6) of Section 11 of the said Act in respect of the above-mentioned periods and all subsequent periods.

6. In the corresponding para of notice P3, which is also in form S. T. XIV, the only difference is about the year, where it is given as 1st April, 1964 to 31st March, 1965. The notice (P2) was issued on 3rd March, 1965, and the notice (P3) was issued on 20th February, 1970. These notices were thus within the period of five years prescribed u/s 11(6) of the Act. It is clearly stated in these notices that the Assessing Authority had come into possession of the information which satisfied him that the petitioner was liable to pay tax under the Act in respect of the period mentioned therein and that the petitioner had wilfully failed to apply for registration. The petitioner has averred in the petition that at the time the notices (P2 and P3) were issued, there was no information in possession of the Assessing Authority and that it was for the first time on 22nd January, 1974, that the Assessing Authority came to the conclusion that the petitioner was a dealer and that his liability starts from 12th April, 1961. Mr. M. L. Kapoor, Excise and Taxation Officer, Faridabad, has controverted the averment of the petitioner on this point. The averment of Mr. Kapoor is that the Assessing Authority had in his possession information that the petitioner was liable to pay tax but had wilfully failed to apply for registration. In view of the averment made in the written statement and the assertion made in the impugned notices there is hardly any scope to infer that the Assessing Authority had issued the impugned notices (P2 and P3) without information in terms of Section 11(6) of the Act.

7. The learned counsel for the petitioner has argued that the Assessing Authority for the first time determined the date of liability of the petitioner as 12th April, 1961 vide order dated 22nd January, 1974 (P4). Under these circumstances it is obvious that the Assessing Authority had no information in terms of Section 11(6) of the Act in March, 1965, entitling him to issue the impugned notices (P2 and P3) on 3rd March, 1965, and 20th February, 1970, respectively. This

contention is without any merit and in fact is hardly relevant. The Assessing Authority after having issued a notice u/s 11(6) of the Act is not bound to limit the enquiry for the purpose of assessment of a particular year to the information having come into his possession before issuing the notice. Section 11 of the Act is a machinery provision and not a taxing one. Sub-section (6) thereof enables the Assessing Authority to set the machinery into motion when he opines that a dealer is liable to pay tax under the Act in respect of a period but has failed to apply for registration. It is understood that he would form such an opinion on the basis of some information which may come to him through any source. It is implicit in the notice issued by the Assessing Authority u/s 11(6) of the Act that he has received some information and has formed an opinion in terms thereof. A conscious formation of an opinion in terms of Section 11(6) of the Act can only result in issuing a notice thereunder. Such an opinion can only be formed on the basis of some information, complete or otherwise, having come into his possession through any source. The learned counsel for the petitioner conceded (and rightly) that the petitioner cannot challenge the impugned notice on the ground of insufficiency of information. The discretion in the matter of formation of opinion in terms of Section 11(6) of the Act, on the basis of information, is to be exercised by the Assessing Authority and it is not open to judicial review in writ proceedings. The contention of the learned counsel for the petitioner that the impugned notices (P2 and P3) were issued without any information and without formation of an opinion in terms of Section 11(6) of the Act, therefore, cannot be upheld.

8. The learned counsel for the petitioner has contended that the High Court exercising jurisdiction under Article 226 of the Constitution of India has power to ascertain whether the Assessing Authority had in his possession any information as required u/s 11(6) of the Act, and if found that the Assessing Authority had no such information, can quash the notices issued thereunder. Reliance has been placed on Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, . This contention is neither here nor there. It has been held in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, , that "the High Court exercising jurisdiction under Article 226 of the Constitution has power to set aside a notice issued u/s 147(b) of the Income Tax Act, 1961, if the condition precedent to the exercise of the jurisdiction does not exist. The court may, in exercise of its powers, ascertain whether the Income Tax Officer had in his possession any information ; the court may also determine whether from the information the Income Tax Officer may have reason to believe the income chargeable to tax has escaped assessment. But the jurisdiction of the court extends no further. Whether on the information in his possession he should commence proceedings for assessment or reassessment, must be decided by the Income Tax Officer and not by the High Court". It has been held above that the Assessing Authority had in his possession information before the impugned notices u/s 11(6) of the Act were issued. The ratio of Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, can hardly be invoked in the instant

case. This is apart from the fact that the scheme, scope and wording of Section 147(b) of the Income Tax Act are vitally different from those of Section 11(6) of the Act.

9. The impugned notice (P2) was issued on 3rd March, 1965, and was received by the petitioner on 6th March, 1965. Notice (P3) was issued on 20th February, 1970. The learned counsel for the respondent has argued that no cause of action accrued to the petitioner after he received the notices (P2 and P3). In other words, the petitioner cannot assail the notices (P2 and P3) per se. The petitioner can only assail the order passed by the sales tax authorities against him (like P6) after issuing the impugned notices (P2 and P3). The argument proceeds that assuming that the petitioner can assail the impugned notices (P2 and P3) per se, the writ petition is liable to be dismissed on the ground of laches on his part inasmuch as it was filed in 1974. I am impressed by this contention. In my opinion the impugned notices per se cannot be assailed by the petitioner. These notices cannot be treated as adverse, orders passed by the sales tax authorities against the petitioner. After issuing the impugned notices, the sales tax authorities could pass an order against the petitioner or could drop the proceedings against him. It is understood that in the latter case the petitioner will not be an aggrieved person. He will be an aggrieved person only if the sales tax authorities pass an order against him. This apart, the petitioner did not assail the impugned notices (P2 and P3) in the previous Civil Writ Petition No. 2544 of 1966, which was decided on 3rd December, 1970 (Atul Glass Industries Vs. The State of Haryana and Others, , and further the challenge to the impugned notices by the petitioner in the present writ is highly belated.

10. In the result, the writ fails and is dismissed with no order as to costs.