(1960) 03 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1344 of 1959

Bishan Das Girdhari Lal APPELLANT

Vs

The Excise and Taxation Officer (Assessing Authority) RESPONDENT

Date of Decision : 11-03-1960

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 10, 11

Citation : (1960) 11 STC 440

Hon'ble Judges : Gosain, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; B.D. Mehra, for The Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Gosain, J.—This is a petition under Articles 226 and 227 of the Constitution of India seeking to have a writ of certiorari quashing the notices, annexures ''A'', ''B'' and ''C to the said petition and further seeking to have a writ in the nature of prohibition restraining the respondent from making a best judgment assessment of sales tax for the financial years ending 31st March, 1955 and 31st March, 1956.

2. The petitioners Messrs Bishan Das Girdhari Lal are carrying on the business of cloth merchants at Jullundur and are registered dealers under the Sales Tax Act. They filed their returns u/s 10 of the Sales Tax Act and deposited the tax due according to the said returns. On the 31st May, 1956, notice, annexure ''A'', was issued to them by the Assessing Authority calling upon them to attend in person or by an agent on the 6th June, 1956 and produce accounts for the years 1954-55 and 1955-56. It appears that the cases for the two years in question remained pending with the Assessing Authority and on the 29th January, 1959, the said authority issued another notice, annexure ''B'', calling upon the petitioners to attend in person or by agent on the 14th February, 1959 and to

produce account books for the year 1955-56. Both these notices are in the same printed form and the last paragraph of both of them states :-

In the event of your failure to comply with this notice, I shall proceed to assess u/s 11 of the East Punjab General Sales Tax Act, 1948, to the best of my judgment and without further reference to you.

3. On the 27th of November, 1959, the Assessing Authority served a third notice on the petitioners (annexure ''C'') the relevant portion of which reads as under :-

You are hereby informed that your sales tax cases for the years 1954-55 and 1955"56 has been fixed for 14th December, 1959. You should please appear before me on the said date at 11 a.m. along with your account books for the years 1954-55 and 1955-56.

4. The petitioners allege that the Assessing Authority is not legally entitled to make the best judgment assessment u/s 11(4) of the Act after the expiry of three years from the last date of the year regarding which the assessment has to be made. The case of the petitioners is that for the year 1954-55 they could not be assessed u/s 11(4) on any date after the 31st March, 1958 and in respect of the year 1955-56 they could not be assessed under the said section after the 31st March, 1959.

5. This petition is opposed by the Excise and Taxation Officer, Jullundur, on whose behalf it is urged that the petitioners cannot seek extraordinary remedies in the circumstances of this case and there is no bar to an assessment being completed after the period of three years specified in Section 11(4) of the Act.

6. After hearing the learned counsel, I am of the opinion that in the circumstances of the present case the petitioners should be left to avail of the ordinary remedies given by the Act itself and that they are not entitled to have any remedies by way of certiorari or prohibition. The assessment u/s 11(4) has not yet been made against them. There is no illegality in any of the'' notices issued by the Assessing Authority. Under Sub-section (2) of Section 11 the Assessing Authority was entitled to say that he was not satisfied with the return filed by the petitioners and that they should appear before him along with their account books, so that the assessment case could be proceeded with. Annexure ''B'' is a similar notice and in annexure ''C'' there is no mention of any intention of the Assessing Authority to proceed to assess according to his best judgment. The learned counsel for the petitioners was not able to convince me that any of the notices in any way offended any provision of law or that the Assessing Authority had no jurisdiction to issue the said notices. His petition to this Court seems to be premature and misconceived. He appears to be feeling apprehensive that action would be taken against his clients u/s 11(4) of the Act and that best judgment assessment would be made against them. There is, however, nothing on the record to show that any such step would actually be taken. Nothing has as yet been done by the Assessing Authority which should cause the petitioners to rush to this Court for obtaining extraordinary remedies. The Assessing Authority

is proceeding under the law and if and when any assessment is made against the petitioners, they would certainly have their ordinary remedies under the Act itself (see in this connection Indian Iron and Indian Iron and Steel Company Ltd. Vs. The Officer on Special Duty (Central Circle), F. Mangat Ram Hazari Mal Kuthiala Vs. The State of Punjab and Another, and an unreported judgment of Khosla, C.J. and Tek Chand, J., in Civil Writ No. 1052 of 1959 decided on the 14th January, 1960). In these circumstances, it is wholly unnecessary to decide whether or not the Assessing Authority could make the final assessment order u/s 11(4) of the Act after the expiry of three years from the end of the financial year to which the assessment relates. Prima facie there does not appear to be any bar and to me it appears that the proceedings should only be initiated within the said period of three years and that it is not necessary that they must finish within that period.

7. I, however, express no final opinion on the matter and dismiss this petition on the short ground that the petitioners are, in the circumstances of this case, not entitled to the extraordinary legal remedies sought for by them and that their petition is, in any case, premature.

8. The respondent will have his costs. Counsel fee Rs. 100.

