

(1961) 02 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 486 of 1960

Chaman Lal and Bros. (Private) Ltd.

APPELLANT

Vs

The Punjab State and Others

RESPONDENT

Date of Decision : 09-02-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 21

Citation : (1961) 12 STC 643

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : B.R. Tuli, for the Appellant; H.S. Doabia, Deputy Advocate-General, for the Respondent

Judgement

Dua, J.—This is a petition under Article 226 of the Constitution filed by Chaman Lal and Brothers (Private), Limited, Coal Merchants, of Jullundur, praying for writ of certiorari, mandamus or any other appropriate writ, direction or order calling for the records of the petitioner's assessment case for the year 1953-54, and quashing the order of the Financial Commissioner, Revenue, dated 5th February, 1960, as also the orders of the Excise and Taxation Commissioner, the Deputy Excise and Taxation Commissioner, and of the Assessing Authority; it is further prayed that the respondents be directed to refund the amount of sales tax paid by the petitioner.

2. The allegations as contained in the petition are that the petitioner is a private company registered under the Indian Companies Act with its registered office at Delhi and " a branch office at Jullundur. Shri Chaman Lal is the managing director thereof. The petitioner is alleged to be carrying on the business of coal agents at Delhi and in the Punjab, the business consisting of their acting as agents for the depot-holders and other consumers who are given permits for the purchase of coal. The petitioner-company obtains a letter of authority from such consumers to the effect that the company is the authorized agent of that consumer for the

supply of coal, and that it is empowered fully to select coals from available collieries and effect supplies from the same. The authority also contains a provision that the collieries selected by the petitioner on behalf of the consumers as suppliers of coal would carry full consent and approval of the consumer, and that the petitioner is also authorized to pay the cost of the coal, sign the respective documents and correspond with the Deputy Coal Commissioner (D), Calcutta. Such letters of authority, according to the petitioner, are addressed to the Deputy Coal Commissioner (D), 1, Council House Street, Calcutta. The petition then proceeds to state that the coal is a controlled commodity, and a permit for its import into the Punjab State is issued by the Punjab Fuel Control Officer to depot-holders or other consumers of coal. As soon as an individual gets this permit, he contacts coal agents, like the petitioner, whom he authorizes to import the coal on his behalf and conduct the necessary formalities in the office of the Deputy Coal Commissioner (Distribution), Calcutta, and the collieries. The petition then states the procedure which, according to the petitioner, is followed. Without going into further details, it may be stated that, in substance the petitioner's allegation is that the petitioner does not sell coal so secured by it on behalf of the depot-holders and other consumers who secure coal through the petitioner's agency. It is on the basis of this contention that the petitioner claims the assessment in question to be wholly unauthorized and illegal.

3. In paragraph 7 of the petition, it is pleaded that the order of the Excise and Taxation Commissioner, Punjab, dated 30th March, 1958, which was passed on a revision petition filed by the petitioner against the order of the Deputy Excise and Taxation Commissioner, Jullundur, who had, in turn, confirmed the order of the Assessing Authority against the petitioner, was assailed by means of a revision filed before the Financial Commissioner, Revenue, Punjab, u/s 21(3) of the East Punjab General Sales Tax Act. The Financial Commissioner, by his order, dated 5th February, 1960, communicated to the petitioner's counsel on 19th February, 1960, and to the petitioner's manager at Jullundur on 22nd February, 1960, rejected the revision petition as time-barred. This order is assailed by the petitioner on the ground that no period of limitation for such a revision has been prescribed by law ; it is neither contained in the East Punjab General Sales Tax Act, 1948, nor in the statutory rules framed thereunder. The learned Financial Commissioner has, according to the petitioner, acted unlawfully and has, indeed, refused to exercise jurisdiction vested in him by rejecting the petition as barred by time. The order of the learned Financial Commissioner is based on the ground that the order of the Excise and Taxation Commissioner impugned before him had been communicated to the petitioner under postal certificate on 8th April 1958, and that the revision petition with the financial Commissioner, having been filed beyond 90 days, which is the normal period of limitation for revision, was out of time. The petitioner further avers that an affidavit was produced on his behalf before the learned Financial Commissioner in which it was expressly stated that no intimation about the order of the Excise and Taxation Commissioner had ever been received by him, and that an application for the

grant of a copy of the order impugned before the Financial Commissioner had been made on 11th June, 1958, and a copy obtained on 5th July, 1958. The learned Financial Commissioner, however, refused to entertain that affidavit, and without deciding the points raised on revision on the merits, although the arguments on the merits were heard by him, rejected the revision on the erroneous ground that it was barred by time. It is next pleaded that the Punjab Coal Merchants Association, Jullundur, having taken up the matter with regard to the non-liability of coal-agents to pay sales tax under the East Punjab General Sales Tax Act with the Excise and Taxation Commissioner, a representation was made to him on 4th February, 1958. The said representaion having been sent up to the Punjab Government, after some correspondence the Punjab Coal Merchants Association received a letter from the Deputy Secretary, Revenue, dated 22nd March, 1959, to the effect that the coal-agents not being covered by the term "dealer" were not to be held liable to pay sales tax. A copy of this letter is annexed as annexure "H" with the writ petition. On receipt of this letter, the Punjab Coal Merchants Association is said to have written a letter to the Excise and Taxation Commissioner, Punjab, on 16th April, 1959, requesting him to instruct the district officers to cancel the registration certificates issued to the coal merchants in the State, and the Excise and Taxation Commissioner, by his letter, dated 30th April, 1959, informed the Punjab Coal Merchants Association that necessary instructions in the matter had already been issued to the local officers of the department concerned. This correspondence is contained in the annual report of the Punjab Coal Merchants Association for the year 1958-59, which is attached as annexure "I" to the writ petition.

4. In the reply filed on behalf of the respondents, the allegations with respect to the correspondence of the Punjab Coal Merchants Association with the Excise and Taxation Commissioner, as contained in para. 8 of the writ petition, have been admitted, but it is pleaded that such instructions cannot be considered to constitute law. It is also admitted in the writ petition that no time limit for filing a revision u/s 21(3) of the Punjab General Sales Tax Act has been prescribed ; it is, however, stated that on the analogy of the Land Revenue Act, the Financial Commissioner, Punjab, has fixed 90 days for entertain ing such revision petitions, and this practice has been stated to be in vogue since long.

5. After going through the written statement, I felt that the respondents had not cared to give any specific reply as to whether or not the petitioner had been communicated the result of the revision filed with the Excise and Taxation Commissioner, though the petitioner had expressly sworn that no intimation with respect to the orders passed on 30th March, 1958, had been communicated to him. I, therefore, called upon the learned Additional Advocate-General to produce before this Court the relevant records so that I may be in a position to form an opinion as to whether or not the petitioner had been duly informed of the order of the Excise and Taxation Commissioner, dated 30th March, 1958, as has been assumed by the learned Financial Commissioner. From the record it appeared that the memorandum containing the information intended to be

conveyed to the petitioner under postal certificate still existed on the record in duplicate, suggesting thereby that the communicate had somehow not been despatched at all, as contemplated ; postal certificate is also not forthcoming on the record. On 16th January, 1961, to which date I had adjourned the case on 11th January, 1961, a letter from Shri S. N. Bhanot, Excise and Taxation Commissioner, Punjab, addressed to the Advocate-General, Punjab, was also produced in this Court by the learned Additional Advocate-General, in which it is expressly stated that as both the copies of the memorandum marked at A in the file are available, it appears that this memorandum was not issued at all to the dealer. On the basis of this letter, it is conceded by the learned Additional Advocate-General and, in my opinion rightly and fairly, that the learned Financial Commissioner was under a misapprehension that the petitioner had been duly intimated under postal certificate about the decision of the Excise and Taxation Commissioner, Punjab, dated 30th March, 1958. In this context the allegation that the Financial Commissioner refused to entertain the petitioner's affidavit also assumes importance. This, in my opinion, is enough to vitiate that order. I am conscious that under Article 226 it is not open to this Court to pass any order remanding a case to a Tribunal, but Article 227 of the Constitution does confer such a power as is now well settled by the highest authority in this Republic.

6. In this connection, it must be borne in mind that procedural regulations as well as the procedural practice must be so construed as to advance and further the cause of justice. I quite see that it is open to the Financial Commissioner to prescribe a rule of practice for exercising his revisional jurisdiction, but where the statute or the statutory rules do not lay down any fixed period of limitation, the rules of practice must not and, in my opinion, cannot, from the very nature of things be rigid. In the instant case, the learned Financial Commissioner had not considered it fit to dismiss the revision in limine on grounds of undue delay and laches and indeed he actually heard the arguments on the merits as well; he, however, does not seem to have scrutinised the record with the thoroughness, which the case called for, with the result that he remained under an impression, which impression (as has now been conclusively shown and has indeed been conceded by the counsel for the respondents) was not justified by the true factual position as disclosed on the record. Statutes conferring a right of appeal or a revision must be construed in furtherance of justice and the provision limiting the time for bringing an appeal or revision must be liberally interpreted, so that the party pursuing such remedy allowed to him by law is not non-suited on mere technicalities; this is all the more so, where the period of limitation is not prescribed by a legislative authority (primary or delegated) but is fixed merely as a matter of practice by the Tribunal itself under its inherent powers of regulating its procedure. An interpretation of procedural regulation, which ensures that a case will be considered on merits, is to be highly preferred, and mere technicalities should never be permitted to impede the trial of a cause. Such an interpretation is all the more desirable when a quasi judicial tribunal deals with statutes providing for remedies to the taxpayers, because, in a State

like ours, it is essential that taxpayers should secure adjudication of an assessment or judicial review of assessment provided by law without impediments created by bare technicalities of procedure. Legislation designating the method of enforcing and establishing substantive rights, as a general rule, is enacted not for an end in itself but to provide a better way of accomplishing the end. Judiciary is, therefore, generous in the treatment of statutes relating to procedure, for procedure must subserve and not govern, it being only a channel to administer the law.

7. It is in the background of these basic principles that I am constrained to set aside the order of the learned Financial Commissioner by virtue of the powers conferred on this Court under Article 227 of the Constitution and direct that the revision filed by the petitioner should be heard on the merits, according to law and in the light of the observations made above.

8. Before finally parting with the case, I cannot help observing that the respondents did not create a happy impression on this Court by contesting this petition after having come to know positively that the order of the learned Financial Commissioner is based on an unfortunate misapprehension as to an actual fact having a material bearing on the merits of this petition. Such an attitude is wholly inconsistent with the fundamental principles on which our form of democracy is based.

9. For the reasons given above, I set aside the impugned order of the Financial Commissioner, in the terms stated above, under Article 227 of the Constitution, and direct him to hear and dispose of the revision filed by the petitioner, in accordance with law. The petitioner is entitled to costs of these proceedings.