**(1980) 07 P&H CK 0019**

**In the Punjab And Haryana At Chandigarh**

**Case No :** General Sales Tax Reference No. 1 of 1975

Datu Ram Kanhaya Lal APPELLANT

Vs

The State of Punjab and Others RESPONDENT

**Date of Decision :** 08-07-1980

**Acts Referred:**
Punjab General Sales Tax Act, 1948 — Section 11A, 22

**Citation :** (1981) 48 STC 173

**Hon'ble Judges :** M.R. Sharma, J;B.S. Dhillon, J

**Bench :** Division Bench

**Advocate :** R.C. Dogra, for the Appellant; D.N. Rampal, for Advocate-General, for the Respondent

## Judgement

M.R. Sharma, J.—As common questions of law arise out of these four G. S. T. References Nos. 1 to 4 of 1975, they are being disposed of by one judgment.

2. G.S.T. Reference No. 1 of 1975 arises out of the following facts:

The assessee was engaged in the business of karyana goods, vegetable oils and foodgrains. It came to the notice of the Assessing Authority under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the "Act"), that the turnover of the business of the assessee had been under-assessed for the year 1963-64. The proceedings were initiated u/s 11A of the Act and notice in form XIX was served on the assessee on 23rd December, 1968. The assessee appeared before the Assessing Authority and raised the following three objections :

(1) The Additional Excise and Taxation Officer was not competent to deal with the cases since a proper order was not passed by the Excise and Taxation Officer, in-charge of the district, transferring the proceedings relating to the various years to him ;

(2) The appellant-firm stood dissolved and the registration certificate was cancelled with effect from 1st April, 1967. Reassessment proceedings could,

therefore, not legally be taken in hand ; and

(3) The reassessment proceedings for the years 1963-64 and 1964-65 were not initiated within a period of three years following the close of the year in question. It was thus not open to the Assessing Authority to frame reassessments for these two years.

3. The Assessing Authority decided all these objections against the assessee-firm and framed the reassessment. The appeals filed by the assessee before the Deputy Excise and Taxation Commissioner and the Sales Tax Tribunal were dismissed. The assessee''s attempt to have some questions of law referred to us u/s 22(1) of the Act also failed. The assessee then approached this Court with a prayer that questions of law arising out of the order passed by the Sales Tax Tribunal be ordered to be referred to us for our opinion. His prayer was allowed and this Court directed the Tribunal to refer the following two questions of law for our opinion:

(1) Whether the Additional Excise and Taxation Officer was not competent to deal with the cases since a proper order was not passed by the Excise and Taxation Officer, in-charge of the district, or the Commissioner transferring the proceedings relating to the various years to him ?

(2) Whether the reassessment proceedings for the year 1963-64 were not initiated within the period of limitation and thus it was not open to the Assessing Authority to frame reassessment for the year ?

4. The argument on the first question was disposed of by the Assessing Authority with these observations:

His first objection is with regard to the point of jurisdiction. The learned counsel for the dealer invited my attention to Rule 38(1) of the Punjab General Sales Tax Rules, 1949, that in the absence of the order of the Excise and Taxation Officer, in-charge of the district, I, in the capacity of the Additional Excise and Taxation Officer, Sangrur, and the Assessing Authority, Sangrur, was not competent to proceed with the assessment or reassessment of the case which was on the file of an Assistant Excise and Taxation Officer. This objection is not valid. The reason is that on receipt of a complaint against this dealer on 21st November, 1968, to the effect that the dealer had made large scale purchases from various dealers, the Excise and Taxation Officer, Sangrur, in-charge of the district, vide his order dated 21st November, 1968, directed me to make enquiries into the complaint and report to him. These enquiries were got conducted and report was made on 20th December, 1968, confidentially to the Excise and Taxation Officer, in-charge of the district, with the data of purchases got collected by me. The purchases from various dealers had far exceeded by themselves shown by the dealer as referred to in paragraph 1 above (sic). The Excise and Taxation Officer, in-charge of the district, vide his order dated 20th December, 1968, on the confidential report submitted by me, desired to proceed with the case. Undoubtedly, the case was transferred from the file of the Assistant Excise and Taxation Officer to the file of the Additional Excise and Taxation Officer on 20th December, 1968, by the Excise and Taxation Officer under Rule 39 ibid. Hence I have legally acted to proceed with the reassessment case.

5. The learned counsel for the assessee has submitted that the District Excise and Taxation Officer should have passed an order of transfer after notice to the assessee before the Additional District Excise and Taxation Officer could assume jurisdiction in the matter. We are unable to accept this contention. There is no magic in the use of the word "transfer". The ordinary rule is that the case should be heard and disposed of by the authority in whose area or jurisdiction the assessee resides, and if such a case is to be entrusted to another authority of co-ordinate jurisdiction, it must be so done under order of the superior authority which is competent to distribute the work in the district. When the District Excise and Taxation Officer made a note on the reports submitted by the Additional Excise and Taxation Officer to the effect that he should proceed with the case, the latter officer came to be vested with the jurisdiction to dispose it off finally. The first question referred to us is, therefore, decided against the assessee and in favour of the revenue.

6. The learned counsel for the assessee has submitted that the Sales Tax Tribunal deriving jurisdiction from the Act could not declare a rule framed under it to be void on the ground that it was inconsistent with the substantive provisions of the Act. We are unable to agree with him on this point either. Section 11A(1) of the Act reads-as under :

11A(1). (1) If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been under-assessed, or escaped assessment in any year, the Asseesing Authority may, at any time within five years following the close of the year for which the turnover is proposed to be reassessed, and after giving the dealer a reasonable opportunity, in the prescribed manner of being heard, proceed to reassess the tax payable on the turnover which has been under-assessed or has escaped assessment.

7. A plain reading of this section shows that when a turnover has been underassessed or escaped assessment in any year, the competent authority can take notice of it and make an order of reassessment. It appears that at the time when this section was brought on the statute book the Rules framed under the Act were not amended to bring them in line with this section. That rule continued to lay down that notice for reassessment should be served upon the assessee within a period of three years only. The Tribunal took notice of this situation and preferred to follow the substantive provisions of the statute instead of rigidly following Rule 63. He was perfectly justified in doing so.

8. The learned counsel for the assessee has submitted that Rule 63 should be so interpreted as to be consistent with Section 11A of the Act and that can be done by holding that notice for reassessment be given within three years as laid down

 

in Rule 63 and the assessment proceedings be concluded within five years as laid down in Section 11A of the Act. This argument, if accepted, would run counter to the observations made by their Lordships of the Supreme Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, In that case it was held that once a proper notice for reassessment was issued within five years, the reassessment proceedings will be completed any time thereafter. We, therefore, answer the second question also against the assessee and in favour of the revenue.

9. The two questions referred to us in G. S. T. R. No. 2 of 1976 relating to the assessment year 1964-65 are similarly worded. They are also answered against the assessee and in favour of the revenue.

10. G.S.T.R. No. 3 of 1975 relates to the assessment year 1965-66 and G. S. T. R. No. 4 of 1975 relates to the assessment year 1966-67. In these two references only the first question relating to the jurisdiction of the Additional Excise and Taxation Officer has been referred to us. This question is accordingly answered against the assessee and in favour of the revenue.

11. The aforesaid four petitions are disposed of with no order as costs.

B.S. Dhillon, J.

12. I agree.

 