
(1982) 02 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 320 of 1973

D.M. Oil and General Industries	Vs	APPELLANT
Authority-Cum-Additional Excise and Taxation Officer		RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11A

Citation : (1983) 52 STC 199

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Advocate : Baghirath Das and A.K. Jaiswal, for the Appellant;

Final Decision : Allowed

Judgement

A.S. Bains, J.—The petitioner-firm is engaged in the business of crushing oilseeds in its manufacturing establishment at Khanna. The petitioner-firm is required to file quarterly returns and for the assessment year 1967-68, all the quarterly returns were filed and tax paid in accordance with those returns. The assessment order was passed on 9th August, 1968, and all the liabilities under the said assessment had been discharged. The assessment order is annexure A to the petition.

2. A notice u/s 11A of the Punjab General Sales Tax Act (hereinafter called the Act) required the petitioner to appear before him on 30th November, 1970, on the ground that the Assessing Authority was in possession of definite information which has given the reasons to believe that the turnover of the petitioner has been under-assessed. It is this notice which is challenged by the petitioner-firm. Reliance is placed on an authority of this Court reported in OM Prakash Rajinder Kumar v. Excise and Taxation Commissioner, Punjab (printed at page 200 infra) 1973 RLR 275, wherein it is held as under :

If the revisional authority really intends to rely upon some additional information, then it was bound to disclose it to the petitioner before taking any action against

him. An opportunity to show cause against an action is not empty formality. It postulates that a person against whom action has to be taken should be made aware of the grounds on which action is being taken against him in advance so that he may prepare his case before presenting it to the authority concerned. This principle applies with greater vigour in a case in which the revisional authority takes suo motu action.... When suo motu notice is issued on the basis of some information whether it relates to a point of fact or a question of law, then the arguments have to be advanced on the point whether the authority concerned should take action or not. In such a case, an assessee has a right to be told in advance why the case was being reopened to his disadvantage.

3. On a reading of the aforesaid authority, it is plain that when the revisional authority intends to rely on some additional information for reopening the assessment, then it is bound to disclose the material to the petitioner before taking any action against him. In the instant case, the impugned notice annexure B does not disclose any material on the basis of which the case could be reopened for reassessment. The principle, as laid down in the aforesaid authority, is applicable to the case in hand. The impugned order is quashed and the writ petition is allowed, but there will be no order as to costs, as no reply has been filed by the respondents and also nobody has appeared on their behalf.