

(1997) 01 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4055 of 1981

Fine Surgical Dressing Manufacturing Co.	APPELLANT
Vs	
The State of Punjab	RESPONDENT

Date of Decision : 30-01-1997

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21(1)

Citation : (1997) 116 PLR 398

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Alok Jain, for the Appellant; Harbhagwan Singh, A.G. and M.C. Berry, DAG, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—In this writ petition, the petitioner is challenging the notice issued by the Assistant Excise and Taxation Commissioner, Bhatinda, reopening the assessment for the year 1967-68 on the ground that the view taken earlier was erroneous.

2. The facts leading to the filing of the writ petition may briefly be stated as follows:

3. The petitioner is a firm manufacturing surgical cotton: It filed its Sale Tax Return for the year 1967-68. By an order dated 10.2.1969 the assessment was completed and the surgical cotton was assessed on par with ordinary cotton for the purpose of levying the sales tax. In subsequent assessment year i.e. for the year 1972-73 the Sales Tax Tribunal vide its order dated 20.4.1976 took the view that the surgical cotton is different from ordinary cotton and, therefore, it has to be assessed separately and the sales tax has to be levied accordingly. On the basis of the order of the Sales Tax Appellate Tribunal, the Assistant excise and Taxation Commissioner issued a notice to the petitioner on 11.8.1981 suo moto in exercise of his revisional power u/s 21(1) of the Punjab General Sales Tax Act,

1948. This notice is now under challenge in this writ petition.

4. The only point that was canvassed by the learned counsel for the petitioner is that after lapse of nearly 13 years, the assessment which has become final, cannot be reopened in exercise of the revisional powers u/s 21(1) of the Punjab General Sales Tax Act, 1948.

5. The learned Deputy Advocate General, Punjab, contended that the statute does not prescribe any time-limit for exercising the revisional jurisdiction by the Assistant Excise and Taxation Commissioner and, therefore, the notice re-opening the assessment cannot be found fault with on the ground of delay.

6. No doubt true the Act does not prescribe any limitation for re-opening the assessment orders, but it does not mean that the party must be kept in uncertain state of affairs. It is the fundamental principle of law that once a finality has been reached in a proceeding, the same cannot be unsettled after elapse of a long time. Though no specific limitation is prescribe for exercising the revisional power u/s 21(1) of the Punjab General Sales Tax Act, the said power has to be exercised within a reasonable period, of course, reasonable period will depend on facts of each and every case. Simply because there is a change in the trend of judicial decision, the matters, which have become final, cannot be re-opened. This view of mine finds support from a decision of the Apex court in S.B. Gurbaksh Singh v. Union of India and Ors. (1976)37 S.T.C. 425, wherein it was observed as follows:-

" Apropos the fourth and last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo moto after an unduly long delay, on the facts of this case, it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time-limit has been prescribed for it. It may well be that for an exercise of the suo moto power of revision also, the revisional authority has to initiate the proceedings within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."

7. Thus it is clear that even according to the apex Court, any unreasonable delay in exercise of the revisional power vitiates the proceedings. On the facts of this case, there is a delay of 13 years. It cannot be said that the exercise of the revisional power after lapse of 13 years is within a reasonable time. Reasonable time will never extend to a long period of 13 years. In this view of the matter, I am of the view that the order of the Assistant Excise and Taxation Commissioner, Bathinda, invoking his revisional power suo Moto for re-opening the assessment

order for the assessment year 1967-68 is liable to be quashed.

8. Resultantly, the writ petition is allowed and the impugned order is hereby set aside. There will be no order as to costs.