
(1963) 03 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 168 of 1962

Firm Jagat Ram Om Parkash

APPELLANT

Vs

The Excise and Taxation Officer, Assessing Authority, Amritsar

RESPONDENT

Date of Decision : 27-03-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1963) 03 P&H CK 0002

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : Mr. Bhagirath Dass, for the Appellant; D.S. Nehra for Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—This is a petition under Articles 226 and 227 of the Constitution by firm Jagat Ram Om Parkash challenging Part B of the order passed by the Assessing Authority, Amritsar, dated 29th November, 1961. The impugned part of the order deals with the assessment under the provisions of the Punjab Textile and Sugar (Existing Stocks) Purchase Tax and Miscellaneous Provisions Act (Punjab Act No. 8 of 1958). According to the Petitioner's allegation, as contained in the writ petition, the Petitioner-firm deals with the purchase and sale of textile goods, namely, shawls etc, and is a registered dealer under the Punjab General Sales Tax Act, 1948, holding registration certificate No. AMR-III-1483. On 14th December, 1957, an Ordinance called the Punjab Textiles and Sugar (Existing Stocks) Purchase Tax and Miscellaneous Provisions Ordinance, 1957 (Punjab Ordinance No. 9 of 1957) was promulgated, and on the chargeable goods as defined therein a purchase-tax was levied on textiles. A return under this Ordinance relating to all the goods in stock immediately before its commencement was to be filed within a period of 15 days. This Ordinance was replaced by the Punjab Act No. 8 of 1958 which was enforced from the 18th of April, 1958. In compliance with the Ordinance, on 27th December, 1957, the

Petitioner made a request to the Assessing Authority-Respondent to extend the time for filing the return but this request was rejected sometime in the third week of January, 1958. On 28th January, 1958, the return of the existing stocks within the contemplation of the Ordinance was filed and on the basis of this return a sum of Rs. 46 69 N. P. was deposited on 28th March, 1958. According to the petition, this amount represented one-sixth of the two months' average of the tax assessed for the year 1956-57. It is next averred that no notice, as required by Sub-section (2) of Section 6 of the Ordinance, was ever issued to or received by the Petitioner-firm at any time before the date of the impugned order i. e. 29th November, 1961. The Assessing Authority has created a liability of Rs. 3,206 44 N. P. after deducting the sum of Rs. 46-69 N. P. already deposited and the last date of the payment of this tax was 4th February, 1962. According to the petition, the entire basis of the impugned order was the late filing of the return and the fact that the amount of tax deposited was short by 3 naye paise. It has been pleaded in para 6 of the writ petition that there are no provisions in Punjab Act No. 8 of 1958 for fixing two dates by which the application for composition has to be made: nor is there any provision fixing the date by which a deposit on the basis of two months' average of the tax assessed should be made. Finally it has been averred in this para that the Assessing Authority did not take into consideration the fact that after 13th December, 1958, he had no power to make an assessment except strictly on the basis of the return filed by the Petitioner.

2. It is then recited that the Petitioner preferred an appeal from the impugned order of the Assessing Authority, as provided by Section 14 of the Act, but such an appeal is not entertainable before the payment of the assessed tax. A notice of demand is stated to have been received by the Petitioner on 5th January, 1962, fixing 4th February, 1962, as the last date of payment. In case the Petitioner failed to pay the amount the same according to the averments is recoverable as arrears of land revenue. The remedy provided by statute is therefore described to be onerous because, though an appeal may be entertained, if sufficient cause for the non-payment of the tax is shown, the amount nevertheless can be recovered as arrears of land revenue.

3. It is in these circumstances that the present petition has been filed and the impugned Part B of the order Annexure A is attacked on the grounds:

(a) That no opportunity was granted to the Petitioner u/s 6 of the Act: nor was any notice issued to or received by the Petitioner to attend in person or to produce books of account in support of the return and that the assessment order COULD thus not be described to be an order u/s 6(1) of the Act.

(b) That after 13th December, 1958, the date mentioned in Section 8 of the Act, the Assessing Authority had no jurisdiction to proceed to assess any dealer who has been under assessed or who may have escaped assessment. The period for this purpose was only one year from the commencement of the Ordinance, as provided by Section 8 thereof, and this period ended on 13th December, 1958.

(c) That although no limitation is mentioned in Section 6 of the Act, the statutory scheme provides that after 13th December, 1958, no notice can be issued nor any proceedings taken which are of the nature of an assessment, or re-assessment other than an assessment u/s 6(1) of the Act, according to which a return as filed must be accepted to form the basis of the formal order of assessment, and

(d) that no proceedings after 13th December, 1958, could be taken by the Assessing Authority with the result that the entire demand is illegal and unwarranted.

4. In the return it has been categorically asserted in para 5 that statutory notice in form "PIB" was issued to the Petitioner on 6th June, 1958, requiring appearance with account books before the Assessing Authority on 19th June, 1958. Shri Amrit Pathak, legal representative of the Petitioner, actually appeared before the Assessing Authority on the said date and prayed for adjournment. The Petitioner's plea, as contained in para 5 of the writ petition, has in the circumstances been unequivocally controverted and described to be incorrect. In para 6 of the return it has again been categorically stated that the impugned assessment order was passed u/s 6 of Punjab Act No. 8 of 1958 under which no time limit has been prescribed. It has then been pleaded in para 7 that the Appellate Authority is entitled to hear the appeal without prior payment of tax if he is satisfied that the dealer was unable to pay the same and reference for this plea has been made to the proviso to Section 14(2)- of the Act. On feeling aggrieved by the order of the Appellate Authority, the Petitioner could also go up in revision to the Excise and Taxation Commissioner and again to the still higher authority, namely, the Financial Commissioner. There are thus adequate and equally efficacious remedies provided by the statute. In para 8 it has been pleaded that the order sheet pertaining to the assessment year 1957-58 clearly shows that several opportunities were given to the Petitioner and the assessment order was framed u/s 6 of the Act and not Section 8, as wrongly alleged by the Petitioner. The proceedings are also stated to have commenced on the 6th June, 1958, u/s 6 of the Act, and that no question of limitation could in the circumstances of the case possibly arise. Finally an objection has been raised that the Petitioner should have exhausted the legal remedies provided by the statute before approaching this Court for redress of the alleged grievances.

5. The learned Counsel for the parties at the Bar took me through the various provisions of the Ordinance and the Act in question. By virtue of Section 4 every dealer has within a period of 15 days from 14th December, 1957, to furnish to the Assessing Authority a return of the chargeable goods in the prescribed form and manner. Section 5 which provides for provisional payment of tax lays down that every dealer, who has furnished a return u/s 4, shall, within a period of three months from 14th December, 1957, deposit in a lump-sum the amount of tax due from him as calculated on the basis of his return and shall within 15 days of such deposit send to the Assessing Authority a receipt thereof showing the

payment of the tax. The Assessing Authority may, on sufficient cause being shown, also permit payment of the tax in such instalments and within such period as he may fix. Section 6, which provides for assessment, lays down in Sub-section (1) that if the Assessing Authority is satisfied without requiring the presence of the dealer or production by him of any evidence that the return furnished is correct, then complete assessment shall be made on the basis of such returns. By virtue of Sub-section (2) if the Assessing Authority is not so satisfied, he must serve on such dealer a notice requiring him on a date and place specified therein either to attend in person or to produce or cause to be produced evidence in support of the return. Sub-section (3) then provides for the assessment to be made after taking the evidence produced by the dealer and by considering such other evidence as the Assessing Authority may require. On failure to comply with the terms of the notice issued under Sub-section (2) the authority is empowered in Sub-section (4) to proceed to make best judgment assessment. Under Sub-section (5) also, on failure on the part of the dealer to furnish the return required by Section 4, the Assessing Authority is authorised, after giving reasonable opportunity of hearing, to proceed to assess to the best of his judgment the amount of tax, if any, due from the dealer. Section 8 is the next relevant provision which provides for reassessment of tax and rectification of mistakes. According to it, if in consequence of definite information the Assessing Authority discovers that any purchase of chargeable goods by a dealer has been under-assessed or has escaped assessment, the Assessing Authority may, not later than 13th December, 1988, and after giving a reasonable opportunity as prescribed, proceed to reassess the tax which has been under-assessed or has escaped assessment. Under Sub-section (2) of this section, rectification of clerical or arithmetical mistake apparent from the record can be made at any time within one year from the date of the order in question.

6. The Petitioner's learned Counsel has submitted that a Full Bench of the Bombay High Court has held in *Bisesar House v. State of Bombay and Ors.* (1958) 9 S.T.C. 654, that a notice under Sub-section (2) of Section 11 of the C. P. and Berar Sales Tax Act 1947 cannot be issued more than three years after the expiry of the period for which it is proposed to make the assessment. But an assessment under Sub-section (1) of Section 11 can be made more than three years after the expiry of such period. It has been submitted that the provisions of C. P. and Berar Sales Tax Act are, for all practical purposes, identical with the provisions of our Act, so far as the controversy in the case in hand is concerned, though the arrangement of sections is different. It has also been submitted that a learned Single Judge of this Court has in *Messrs Gurditta Mal v. Excise and Taxation Officer*, C.W. No. 487 of 1962 referred three questions to a Division Bench for authoritative decision because of their importance and also because of conflict of judicial opinion on the question of limitation in regard to assessment of the nature which is in controversy in the case in hand. between the Bombay High Court and the Madhya Pradesh High Court. On the basis of this contention I have been asked to either await the decision of the larger Bench or direct that this

case be also heard along with Civil Writ No. 487 of 1962.

7. On behalf of Respondent, Shri Nehra has emphasised that in the present case the assessment has been made u/s 6(1) of the Punjab Act 8 of 1958 and for such an assessment admittedly there is no period of limitation prescribed. I may also observe that it is not the Petitioner's case that an assessment u/s 6(1) of the Act has also to be made within any specified period. The only controversy on this point centres round the question whether the assessment in question is u/s 6(1) or Section 8 of the Act. Besides it has also been asserted on behalf of the Respondent that the statutory notice in form "PTB" was actually served on the Petitioner on 6th June, 1958, and that in pursuance of the said notice Shri Amrit Pathak actually appeared before the Assessing Authority and sought adjournment of the case. The return in this case was filed in this Court on 28th March, 1962 and stress has been laid by Shri Nehra on the absence of any affidavit in reply or any rejoinder to this return on behalf of the Petitioner controverting this assertion. On the basis of dispute on matters of facts, as just mentioned, it has been very strongly urged that this Court should not, and indeed has no jurisdiction to, go into the disputed questions of fact on writ side: the Court must leave the Petitioner to pursue the remedies available under the statute. It has been pointed out that admittedly an appeal has actually been preferred by the Petitioner and it is a fit case in which the Petitioner should be directed to pursue that remedy.

8. Shri Bhagirath Das has also submitted that under the Act the Commissioner is entitled to accept from dealer such lump-sum by way of composition of the tax payable as he may deem fit and permit payment thereof by instalments. He has in this connection drawn my attention to the impugned order where it is stated that before a dealer becomes entitled to composition of tax, he is required, among other things, to deposit on the basis of two months' average of the tax assessed for the year 1956-57 by 31st March 1958. In the case in hand admittedly the amount deposited was short by 3 naye paise of the amount required under the statute to be deposited. The counsel has however urged that merely because the amount deposited was short by just 3 naye paise, the Petitioner, in fairness and equity, should not have been made to suffer so as to incur a liability of nearly Rs. 3,000/-. This is highly unjust, says the counsel.

9. As against this submission, Shri Nehra has drawn my attention to the impugned order where it is stated that the tax return which should have been filed by 2nd January 1958 was filed as late as 28th January 1958. This delay, according to the counsel, also disentitled the Assessee to the claim of composition. It has further been stressed that in the writ petition no specific relief has been sought in respect of the refusal to allow composition and reference in para 6 of the petition to the difference of 3 naye paise between the actual deposit and the amount which should have been deposited as two months' average tax does not itself show that refusal to allow composition is being assailed in these proceedings and that this Court is being asked to direct the Assessing Authority to allow

composition. My attention has in this connection also been drawn to paras 8 and 12 of the writ petition. In any case, so contends Shri Nehra, these are matters which should appropriately be urged before the departmental hierarchy on appeal etc., and this Court on writ side should not entertain these grievances: as a matter of fact the contention goes further and questions the very power or jurisdiction of this Court in these proceedings to permit these pleas to be raised and to adjudicate on them.

10. I have devoted my most earnest attention to the arguments urged and to the facts and circumstances as disclosed in the writ petition and the return along with their enclosures. But before proceeding with their discussion, I consider it to be desirable to state the legal position in regard to the construction of taxing statutes, as I understand it. It is no doubt true that in a taxing Act one has to look merely at what is Clearly said and there is no room for any intendment. There is neither any equity about a tax nor is there any presumption and nothing should be read, and nothing deserves to be implied, in a taxing statute. One has only to look fairly at the language used. Unless a case falls within the four corners of the provisions of a taxing statute no tax can be imposed by inference or by analogy or by trying to probe into the legislative intent by considering the substance of the matter. As a matter of fact it is sometimes said that if the provision of a taxing statute is wanting in clarity so that no meaning is reasonably clear, the Court must ignore it, treating it as (c)f no effect. But this rule of construction, as I understand it, is inapplicable to all the provisions of a taxing statute. It can only be attracted while construing a provision which creates a charge for the tax, but would be inappropriate in its application to the machinery for calculating the tax or for collecting the same. The provisions in a taxing statute prescribing machinery for assessment call for a construction in accordance with the ordinary rules of interpreting statutes which require a probe into the legislative intent so as to make a charge levied effective. In (1940) 8 ITR 442 (Privy Council) Lord Normand, preparing the opinion of the Board, said:

The Section, although it is part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable, *ut res valeat potius quam pereat*.

The Supreme Court in *India United Mills Ltd. Vs. Commissioner of Excess Profits Tax, Bombay*, , while commenting on Section 15 of the Excess Profits Tax Act observed:

That section is, it should be emphasised, not a charging section, but a machinery section. and a machinery section should be so construed as to effectuate the charging sections.

This position would also seem to find support from *Allen v. Trehearne* 22 T.C. 15 at p. 26.

11. One other rule which I must also state at this stage is that the aggrieved

party in tax matters should normally seek relief from the hierarchy created by the statute itself and this Court should not encourage approach on the writ side save in exceptional cases where the imposition is clearly without jurisdiction or patently contrary to law and further there is nothing in the conduct of the Petitioner which would justify refusal of the discretionary relief under Article 226 of the Constitution. Normally speaking, it is not permissible to abandon resort to or by-pass the machinery provided for assessment of tax and for obtaining relief in respect of illegal or improper orders, and to permit aggrieved parties to invoke this Court's extraordinary jurisdiction. This position is well-settled in this Court: See inter alia *The Punjab Woollen Textile Mills, Chheharta v. The Assessing Authority, Sales Tax, Amritsar* (1960) 62 P.L.R. 322, *Messrs Jiwan Singh and Sons v. The Excise and Taxation Officer* (1960) 62 P.L.R. 562, *Messrs Avtar Singh Ranjit Singh v. Assessing Authority C.W. No. 1238 of 1961* decided on 12th December, 1962, and *Messrs New Model Industries v. The State of Punjab, etc. C.W. No. 1542 of 1961* decided on 14th. February, 1963.

12. It is in the light of the principle just enunciated which I consider to be the true criterion for construing the taxing statutes and for giving relief to the aggrieved Assessee on the writ side that the present controversy has to be considered.

13. In so far as the question relating to the refusal of the Assessing Authority to allow composition is concerned, it appears to me to be clear that no relief has been specifically claimed in respect of such refusal. However, even if by some stretch such a relief could be considered to have been claimed in the writ petition, I am unable to find any grave or serious error of law in this connection on the face of the record nor am I able to hold any resultant manifest injustice, for, if refusal to disallow composition is not contrary to law, then it cannot be described to be manifestly unjust. The argument based on refusal to allow composition must, therefore, be repelled.

14. In so far as the question whether the impugned assessment is u/s 6 or Section 8 of Punjab Act No. 8 of 1958 is concerned, again, it is not possible to uphold the Petitioner's contention from the face of the record. The proceedings for assessment have also been stated in the return to have started on 6th June, 1958, and in pursuance of the said notice legal representative of the Petitioner actually appeared before the Assessing Authority on 19th June and prayed for adjournment of the case. In this view of the matter, I am wholly unable to find the assessment in question to be vitiated by any patent error of law apparent on the face of the record.

15. It is also by now settled on high authority that disputed questions of fact are not adjudicated upon in writ proceedings and that these proceedings cannot be equated with appeals. Proceedings under Article 226 are after all of a summary nature and are therefore, normally speaking, not suitable for adjudicating upon controversial facts not patent on the face of the record.

16. This apart, admittedly, the Petitioner has preferred an appeal as provided by Section 14 of the Act. All that has been stated in the writ petition is that the appeal is not entertainable before the amount of tax levied is paid. On the basis of this circumstance alone it has been pleaded that the remedy provided in the Act is onerous ; it has, however, been conceded in para 7 of the petition that the appeal may be entertained if sufficient cause for the non-payment of the tax is shown, but it is averred that the amount is all the same recoverable as arrears of land revenue. Here the legal position does not seem to me to have been correctly appreciated. Sub-section (2) of Section 14 does not in terms prohibit the disposal of the appeal without payment of the tax assessed if the dealer satisfies the appellate Authority that he is unable to pay the same, as appears to be suggested Or assumed in para 7. It may be stated that it is not the Petitioner's case that he has approached the Appellate Authority for exemption from the prohibition contained in Section 14(2) and that even after holding the Petitioner to be unable to pay the tax and after entertaining the appeal on this holding, the tax is being realised and the disposal of the appeal postponed till after such realisation. I am wholly unable, on the averments in the writ petition, to hold that even if the Petitioner is found by the Appellate Authority to be unable to pay the tax the disposal of the appeal would be made conditional on realisation of the full amount of the tax imposed, and I have no doubt that if the Appellate Authority is satisfied about the Petitioner's inability to pay the tax assessed, it would not insist on realisation of the tax imposed as a condition precedent to the decision of the appeal on the merits.

17. The points raised in the present proceedings before me are not patent questions of law apparent on the face of the record going to the jurisdiction of the Assessing Authority or showing the assessment to be clearly unauthorised and contrary to the terms of the charging section ; they can, and, in my opinion, should, legitimately and more appropriately be raised on appeal in accordance with the statutory machinery provided for the purpose. In Messrs New Model Industries case, C W. No. 1542 of 1961 also Mehar Singh J. and myself declined to go on writ side into the questions of law which could appropriately be raised before the departmental authorities, by observing that, to quote the words of Mehar Singh J. "any and every error of law or a question of law on which the argument can be pressed is not necessarily a ground for not following the course provided in the Act but coming straight to this Court under Article 226." On the facts and circumstances of the case in hand I do not find any cogent ground justifying inference by this Court on writ side at this stage, for, there is neither any flagrant violation of law patent on the face of the record nor any grave miscarriage of justice. Without establishing inability to pay the tax there can be no plausible basis for invoking this Court's writ jurisdiction and if such inability is proved to the satisfaction of the departmental authorities then suitable and adequate relief can certainly be had from them.

18. I may here also observe that in Messrs Gurditta Mal v. Excise and Taxation Officer C.W. No. 487 of 1962, the aggrieved party had exhausted all the

remedies provided by the Act and had approached this Court as a final resort. That case, therefore, furnishes no precedent for deciding the controversy raised before me on the writ side and therefore it will serve no useful purpose to postpone the decision after the decision by the larger Bench in that case. As a matter of fact if the larger Bench decides the questions raised the decision can certainly be utilised by the present Petitioner before the departmental authorities and that indeed seems to me to be the more proper course to adopt.

19. For the foregoing reasons in my opinion the Petitioner must pursue the remedies provided by the statute and this Court should in its discretion decline to give relief on the extraordinary writ side, with the result that this petition fails and is hereby dismissed, but without costs.