

(1966) 07 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 382-D of 1958

Hari Mal Dharam Vir and Another

APPELLANT

Vs

R.N. Gupta, Sales Tax Officer and Another

RESPONDENT

Date of Decision : 20-07-1966

Acts Referred:

Citation : (1967) 20 STC 15

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : Yogeshwar Dayal, for the Appellant; S.N. Shankar, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kapur, J.—The impugned assessments relate to three quarters of the assessment year 1956-57. For the first two quarters ending 30th June, 1956, and 30th September, 1956, the petitioners filed returns of their turnover and deposited Rs. 2,855 and Rs. 5,810, being the tax due in accordance with the said returns. A notice dated 2nd June, 1958, was issued by the Sales Tax Officer u/s 11 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, requiring the petitioners to appear before him on 12th September, 1958, along with certain accounts and documents. It appears that the Sales Tax Officer felt that the said notice had not been issued in accordance with Section 11(1) of the said Act and he, therefore, vacated the same and proceeded to accept the returns filed by the petitioners for the first and second quarters as well as the amounts of tax deposited by them. This order was made on 16th September, 1958, and is one of the orders impugned by this writ petition. The argument of Mr. Yogeshwar Dayal, the learned counsel for the petitioners, is that u/s 11(1) of the said Act the Sales Tax Officer could proceed to assess only within 18 months of the expiry of each quarter and not thereafter. There is no merit in this contention. The scheme of the said Act appears to be that every registered dealer is required by Section 10 to furnish returns by such date and to such authority as may be prescribed. Sub-

section (3) of Section 10 requires a registered dealer to pay the full amount of tax due by him according to such returns before filing the same. Notice u/s 11(1) is to be issued only if no returns are furnished by a registered dealer by the prescribed date or if the concerned authority is not satisfied that the returns furnished are correct and complete. It is in that event that the Commissioner is required to proceed to assess to the best of his judgment the amount of the tax due from the dealer within eighteen months. Rule 32 of the Delhi Sales Tax Rules, 1951, provides that when it appears to the Assessing Authority to be necessary to make an assessment u/s 11 it must serve a notice in Form S.T. XIV upon the dealer. It follows that the limitation of 18 months comes in only where the authorities have to make best judgment assessment. If, on the other hand, best judgment assessment is not to be made, there is no requirement to take any steps within 18 months, though, in that case, the revenue will be obliged to accept the returns filed by the registered dealer and tax as due on the basis of the said returns. This is precisely what seems to have been done in this case. The Assessing Authority having decided that notice u/s 11(1) of the said Act had not been issued in accordance therewith, it proceeded to accept the returns and the tax deposited, and, in my opinion, rightly. No exception can, therefore, be taken to the order dated 16th September, 1958.

2. The next order impugned is the order of assessment with respect to the third quarter (1st October, 1956 to 13th December, 1956). The perusal of the assessment order shows that the Sales Tax Officer took recourse to Rule 28 of the Delhi Sales Tax Rules, 1951, for determining the taxable turnover. In *S.B. Gurbaksh Singh v. Sales Tax Officer* Civil Writ No. 540-D of 1959 decided on 29th April, 1966, I have already declared Rule 28 to be ultra vires. On the assumption that that decision is correct, Mr. Shankar, the learned counsel for the respondents, does not seriously dispute that this assessment order will have to be quashed. In the circumstances, I quash the order dated 29th September, 1958, with respect to the third quarter mentioned above. It would, however, be open to the Assessing Authority to make a fresh assessment with respect to this period if, and to the extent, permissible by law.

3. The petition is allowed to the extent indicated above with no order as to costs.