(1967) 04 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2352 of 1964

Jai Gopal and Company APPELLANT

Vs

The Assessing Authority RESPONDENT

Date of Decision : 03-04-1967

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 7(4), 7(6)(a)

Citation : (1968) 1 ILR (P&H) 142 : (1968) 21 STC 492

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : T.S. Munjral, for the Appellant; Man Mohan Singh, for the Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—Messrs Jai Gopal and Company of Katra Mit Singh, Amritsar, were registered dealers under the Punjab General Sales Tax Act (46 of 1948) (hereinafter called the Act). They filed returns for the first three quarters of the financial year 1953-64, ending 3lst December, 1963. Before the expiry of the last quarter a notice dated 19th February, 1964, was issued to the petitioner-firm by the Assessing Authority, Amritsar, (respondent), in Form S.T. XIV for production of up-to-date account books for the whole of the year 1963-64 including the quarter which had not yet expired along with a notice to show cause as to why the registration certificate of the petitioner-firm should* not be cancelled under Sub-section (4) of Section 7 of the Act. The account books were produced by the petitioner-firm but it did not file any return in the prescribed form for the period ending 31st March, 1964. A return for the first fourteen days of January, 1964, is now admitted by counsel to have been filed with the Assessing Authority under orders from him. During the course of the proceedings, the petitioner-firm surrendered its registration certificate along with its application dated 3rd March, 1964 (said to have been received in the office of the Assessing Authority on 11th March, 1964), wherein it was stated that it had discontinued business with effect from 2nd March, 1964; Copy of the application has not been produced by the respondent. But it is added in paragraph 12 of the return that the petitioner-firm had also stated that no other "purchases" had been effected by the petitioner-firm after 14th January, 1964. It was admittedly not stated in the said application that no "sales" were effected between 14th January, 1964, and 2nd March, 1964. On the other hand it has been definitely averred in paragraph 12 of the writ petition that the petitioner firm carried on business of sales even after 19th February, 1964.

2. By order dated 9th July, 1964, the Assessing Authority cancelled the registration certificate of the petitioner-firm u/s 7(6)(a) of the Act with effect from 11th March, 1964, on its own application. He disallowed a substantial part of the exemptions claimed by the petitioner-firm on various grounds, with which I need not deal in this judgment, and proceeded to assess the petitioner-firm for the whole of the financial year 1963-64. The said order was impugned in this writ petition on three grounds, namely,

(i) that the assessment proceedings before the expiry of the whole of the financial year were not authorised by the Act and were, therefore, illegal;

(ii) that substantial part of the exemption claimed by the petitioner-firm u/s 5(2)(a)(ii) of the Act had been, illegally disallowed by the Assessing Authority; and

(iii) that the assessment proceedings for the fourth/quarter of 1963-64 were in any case wholly without jurisdiction.

3. The first attack, on the impugned order was based on a Division Bench judgment of this Court in Mansa Ram Sushil Kumar v. Assessing Authority, Ludhiana [1964] 15 S.T.C. 857. Counsel concedes that the said judgment having been overruled by a subsequent Full Bench judgment of this Court in Om Parkash Rajinder Kumar v. K. K. Opal ILR (1967) Punj. 115 he cannot successfully sustain the said attack so far as this Court is concerned. In, the Full Bench judgment it has been held that sales tax can be assessed u/s 11. of the Act on the basis of quarterly returns submitted by a dealer and that it is not necessary that assessment proceedings should be taken up only afer the expiry of the whole assessment year. In this view of the matter, the first contention is not pressed by Mr. Munjral.

4. In the view I am Baking of the third argument of the learned counsel for the petitioner, it is not necessary to deal with his arguments relating to the order disallowing exemptions being without jurisdiction as based on extraneous considerations and not justified by the provisions of Section 5(2)(a)(ii) of the Act and Rule 26 of the rules framed thereunder. Counsel has relied in this connection on my judgment in A. D. M. Stores and Anr. v. Commissioner of Sales Tax, Delhi and Ors. [1966] 18 S.T.C. 305. Mr. Manmohan Singh, on the other hand, has submitted that there is a Single Bench judgment to the contrary in the case of Jhangi Mall Nathu Mall and Sons. Learned counsel has not, however, been able to give the citation of the case nor referred to any copy of the judgment therein. It

will be for the Assessing Authority to deal with this matter in the first instance.

5. I, however, find great force in the argument of Mr. Tirath Singh Munjral on the third count. Rule 20 of the Punjab General Sales Tax Rules, 1949, lays down that every registered dealer (with the exception of some categories in which the petitioner-firm admittedly does not fall) has to furnish returns in the prescribed form quarterly within thirty days from the expiry of each quarter. No order under Rule 23 prescribing a shorter period for furnishing the returns having been passed in this case it was the right of the petitioner-firm to wait till the last of the thirty days allowed to it after the expiry of each relevant quarter for submitting the prescribed returns. The petitioner-firm could not in law be compelled to file a return relating to a broken part of the quarter. It is not the case of the respondent that any special order fixing shorter period had been passed by the Assessing Authority for reasons recorded by him. In the absence of any returns for the period 1st January, 1964, to 31st March, 1964, or 2nd March, 1964, in this case, assessment proceedings for that period could not have been taken up by the Assessing Authority before the expiry of thirty days from the last day of the quarter. The notice dated 19th February, 1964, in so far as it related to the fourth quarter of 1963-64 and the assessment proceedings commenced during that time relating to the said quarter are, therefore, wholly illegal and without jurisdiction. Here the impugned order does not show as to how much demand has been created for the period ending 31st December, 1963, and how much for the last quarter; it is impossible to sustain any part of the order.

6. I, therefore, allow this writ petition and set aside the impugned order of the Assessing Authority dated 9th July, 1964, and direct that the petitioner-firm would be reassessed for the year 1963-64 in accordance with law. The question of exemptions to which the petitioner-firm may or may not be entitled u/s 5(2)(a)(ii) of the Act read with Rule 26 of the rules framed thereunder shall also be considered and decided by the Assessing Authority on merits afresh. In the circumstances of the case there is no order as to costs.