
(1962) 12 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1664 of 1961

Jugal Kishore Brij Mohan

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 12-12-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 14 STC 469

Hon'ble Judges : P.C. Pandit, J; I.D. Dua, J

Bench : Division Bench

Advocate : D.S. Nehra, for the Appellant; S.M. Sikri, General, L.D. Kaushal, D.A.G. and M.C. Sud, for the Respondent

Final Decision : Dismissed

Judgement

1. Messrs Jugal Kishore Brij Mohan claiming to be a dissolved partnership firm since 1958 have approached this Court under Article 226 of the Constitution through Shanti Sarup, said to be a member of the firm when it carried on sarafa business. This firm was registered as a dealer under the Punjab General Sales Tax Act, the registered number being JUL-III-8318. The business of the firm consisted of inter alia, sale and purchase of silver, gold bullion, scrap silver, scrap gold and old ornaments of silver and gold. The scrap silver and gold and the ornaments purchased by them were either resold in the same form or after removing alloy therefrom. According to the Punjab General Sales Tax Act of 1948, as it stood before the Amendment Act of 1958, only sales tax was payable on the articles actually sold by the petitioner-firm because gold and silver and ornaments etc. were not included in the list of tax-free goods contained in Schedule "B" of the Act. The petitioner filed quarterly returns and duly deposited sales tax due on the turnover of each quarter during the year 1958-59. The correctness of the amounts of sales tax deposited was, according to the petition, not disputed by the respondents. It may here be mentioned that the respondents before me are the State of Punjab, the Excise and Taxation Commissioner,

Patiala, the Deputy Excise and Taxation Commissioner, Jullundur and the Assessing Authority, Jullundur. On 19th April, 1958, the Punjab General Sales Tax (Amendment) Act No. 7 of 1958 was enforced amending certain provisions of the Act of 1948. The definitions of the words "dealer" and "turnover" were amended and the word "purchase" was also defined. The definition of the word "turnover" was extended to include the word "purchase" and the word "purchase" was defined to include acquisition of goods for use in the manufacture of goods for sale. In pursuance of the amended Act, the authorities sought to impose purchase tax in respect of the old ornaments and scrap purchased and resold after removing the alloy. One of the reliefs claimed in this petition relates to the purchase tax but at the time of arguments the learned counsel did not press this challenge on account of a Bench decision of this Court on 4th September, 1961. The petition then proceeds to state that the Assessing Authority assessed the petitioner's taxable turnover at Rs. 1,38,490-49 nP. and assessed it to sales tax amounting to Rs. 692-45 nP. Purchase tax was also imposed amounting to Rs. 3,602-43 nP. After allowing deduction for the amount deposited, a demand for Rs. 3,601-13 nP. was created. The assessee went up in appeal but the appellate authority (respondent No. 3) declined to entertain it without deposit of the tax. The assessee was directed on 15th December, 1961, to deposit the amount by 26th December, 1961. It is this order (annexure "D" to the petition) which has been described to be altogether illegal, unjust and based on misinterpretation. Similar proceedings started by the Assessing Authority have been described to be illegal because separate notices regarding the respective quarterly periods of 1958-59 were not issued and separate assessment orders regarding each quarter were not passed. It is also pleaded that the Assessing Authority had no jurisdiction to assess the petitioner for such quarterly returns of the year as were more than three years prior to the date of assessment.

2. In the written statement so far as relevant for the purposes of the actual point canvassed in the present proceedings, it is pleaded that it is not obligatory that the assessment proceedings must be completed within three years of the expiry of the period of assessment. This limitation is only contained in Section 11(4), (5) and (6) for the purpose of proceeding to assess to the best of the judgment of the Assessing Authority. It has also been urged that it is open to the petitioner to go up on appeal and then on revision against the impugned order of the Assessing Authority ; besides, they can approach the Financial Commissioner u/s 22 of the Punjab General Sales Tax Act. There being adequate, convenient and efficacious remedy it is not a fit case for the exercise of this Court's writ jurisdiction.

3. Now, annexures "A" and "B" do not concern us because they deal with the point which has not been argued by the learned counsel at the time of hearing. Annexure "C" is the assessment order dated 4th July, 1961, and it pertains to the year of assessment 1958-59. Both Jugal Kishore and Shanti Sarup, partners in the firm, were present and according to this order partnership was dissolved in January, 1959, the actual date shown being 19th January, 1959. Shri Jugal

Kishore left the partnership but Shri Shanti Sarup, the other partner, continued the same type of business in the same business premises. After the dissolution of the partnership, the dealer applied for cancellation of the registration certificate, but the Assessing Authority held that as Shanti Sarup was still conducting the business in the same premises so he (Shanti Sarup) should apply for an amendment of the registration certificate. The dealer, however, did not care to apply for amendment. The Assessing Authority, therefore, in order to avoid any leakage of Government revenue chose to assess for the period 1st April, 1958 to 31st December, 1958. The books for this period were thoroughly scrutinized and the assessment was made on that basis.

4. This case was heard along with a large number of other cases in which the question of limitation in regard to best judgment assessment arose, presumably because in this case also it was represented that it involved the same question. The learned counsel for the petitioner, without specifically advertng to the facts, addressed us supplementing the arguments of the counsel in the other cases. But as a matter of fact no such question arises in the assessment order in this case because the Assessing Authority has not proceeded to assess the assessee on best judgment basis. I, therefore, do not consider it necessary to consider the question as to how far the decision in *Madan Lal Arora Vs. Excise and Taxation Officer, Amritsar*, supports the contention that the assessment on best judgment basis must be finalised within three years from the date of the expiry of the assessment period.

5. So far as the challenge to the order of the Deputy Excise and Taxation Commissioner declining to grant the petitioner's prayer for exemption from deposit of tax is concerned, in my opinion, the order of the appellate authority is unassailable on writ side. The policy of the law is that the revenue must get the taxes irrespective of the fact that the assessment order is appealed against, but in a deserving case where an assessee is unable to pay the tax assessed and he satisfies the appellate authority of his inability, it may, for reasons to be recorded in writing, entertain the appeal without payment of the tax. In the case in hand the appellate authority has come to an express conclusion, after exhaustively dealing with the assessee's contentions, that the payment of the tax has been unnecessarily withheld and that there is absolutely no justification for deferring the payment any longer. This provision has been enacted by the Legislature because in a welfare State it is in the interest of the public that the tax found due must not be withheld from the State merely because the assessment order is appealed against. One of the reasons for this view is that a democratic welfare State gives back to the citizens in various forms quite as much as, if not more than, it demands from them.

6. Besides, normally speaking, parties must be left to have recourse to the procedure prescribed in the Punjab General Sales Tax Act for redress of their grievances and they should not be encouraged to treat proceedings under Article 226 of the Constitution as substitutes for the proceedings which are provided by

the taxing statute itself. See *The Punjab Woollen Textile Mills v. The Assessing Authority* 62 P.L.R. 322. *Jiwan Singh & Sons v. The Excise & Taxation Officer* 62 P.L.R. 562. This should be all the more so where the assessee has already approached the Appellate Tribunal.

7. For the reasons given above, this petition fails and is hereby dismissed with costs.