
(1984) 01 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 4 of 1977

Khushi Ram Raghunath Rai

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 11A, 23

Citation : (1986) 62 STC 291

Hon'ble Judges : S.S. Kang, J; M.R. Sharma, J

Bench : Division Bench

Advocate : Arun Nehra, for the Appellant; D.S. Brar, Assistant Advocate-General, for the Respondent

Judgement

M.R. Sharma, J.—The petitioner-firm is engaged in the business of resale of karyana and foodgrains, etc. It is registered as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act").

2. For the assessment year 1961-62 the petitioner filed quarterly returns and voluntarily paid a sum of Rs. 61,085.30 as tax along with the quarterly returns. The assessment was originally framed by Shri Sampuran Singh, Assessing Authority, Jullundur, on 6th March, 1963, who was acting as the Assessing Authority under the Act at the material time. The authority enhanced the gross turnover of the petitioner by Rs. 2,60,000, disallowed sale worth Rs. 22,634.05 made to Prem Nath Aggarwal, a registered dealer, and imposed a penalty of Rs. 1,322 on the petitioner u/s 10(7) of the Act. In this manner, an additional demand of Rs. 14,545.99 was created against the petitioner.

3. The petitioner went in revision against this order. The revising authority, namely, Shri Jagat Singh Malhotra, acting as Additional Assistant Excise and Taxation Commissioner, Punjab, vide his order dated 17th March, 1964, allowed the revision petition. The operative portion of the said order reads as under :

...In view of this, the case is remanded to the Assessing Authority for close

scrutiny of the duplicate set and to give a clear finding as to the nature of the transactions and rate chargeable out of suppressed turnover of Rs. 2,16,693.12.

...

In the interest of State-revenue, it is directed that the remanded case as observed above be taken up and decided within a month of the receipt of this order.

The petitioner should be informed.

4. After the case was remanded, the fresh assessment was made by Shri Hari Kishan, Assessing Authority, Jullundur, who vide his order dated 22nd October, 1966, fixed the gross turnover at Rs. 22,30,468.35 after making an addition of Rs. 1,34,002.12 in the gross turnover. Sales worth Rs. 6,17,678.30 made to registered dealers were allowed. Deductions from the taxable turnover to the extent of Rs. 12,43,287.84 were also allowed. In this manner, total tax liability of the petitioner was fixed at Rs. 55,429.40. After giving the petitioner credit of the advance tax, a refund of Rs. 10,201.89 was allowed to the dealer.

5. The petitioner went up in appeal, which was decided by Shri H. L. Wattal, Deputy Excise and Taxation Commissioner (Appeals), Jullundur Division, Jullundur, on 17th February, 1968. The said officer observed that even after remand a notice in form S.T. XIX had to be served upon the dealer before a reassessment could be framed u/s 11A of the Act. On this basis, he held that the assessment framed by the Assessing Authority was invalid, which was consequently quashed. The department went in revision against this order, which was also dismissed.

6. The petitioner made an application for refund of the tax on the ground that when the assessment itself had been quashed, it was entitled to receive back the entire tax paid by it. This prayer made by the assessee was rejected by the departmental authorities and on its prayer the following question of law has been referred to us for our opinion by the Sales Tax Tribunal, Punjab :

Whether, on the facts and circumstances of the case, order dated 17th March, 1964, passed in revision by Shri J. S. Malhotra, Additional Assistant Excise and Taxation Commissioner, Punjab, has the effect of setting aside the original assessment order dated 5th March, 1963, passed by Shri Sampuran Singh, Assessing Authority, Jullundur, as a whole and whether the remand assessment made by Shri Hari Kishan, Assessing Authority, Jullundur, vide his order dated 22nd October, 1966, is in substitution of the entire original assessment passed by Shri Sampuran Singh, Assessing Authority, Jullundur, vide his order dated 5th March, 1963 ?

7. We have heard the learned counsel for the parties.

8. The order dated 17th March, 1964, passed by the revising authority, as extracted above, indicates that he had remanded the case to the Assessing

Authority for going into certain matters. It implies that if on those matters the arguments raised by the assessee found favour with the Assessing Authority, the earlier order of assessment would have to be modified. In this view of the matter, it cannot be held that even after the remand the original order of assessment dated 5th March, 1963, passed by the Assessing Authority was kept intact. It is also a fact that when the fresh assessment was framed against the petitioner, there was an alteration of the tax liability as far as the petitioner is concerned. This change in the tax liability only comes about when the earlier order of assessment is substituted by the second order of assessment. No direct case arising under the Act on this point has been brought to our notice, but Mr. Nehra, the learned counsel for the assessee, has drawn our attention to a Division Bench judgment of this Court in *Gurcharan Singh v. State of Punjab* 1979 PLJ 274, which arose under the Punjab Security of Land Tenures Act. While considering the question of remand, the learned Chief Justice observed that after remand it would be open to the party concerned to raise all legal and factual objections before the authority concerned to decide the matter. The learned counsel has also placed reliance on *J. K. COTTON SPINNING and WEAVING MILLS CO. LTD. Vs. COMMISSIONER OF INCOME TAX U. P.*, . Therein, it was observed as under :

When an Income Tax Officer makes a fresh assessment in compliance with the Appellate Assistant Commissioner's directions, he is of course bound by the directions, but, subject to them, he has the same powers as he had originally when making an assessment u/s 23. The reassessment is nothing but a second assessment in substitution of the assessment made previously and set aside by the Appellate Assistant Commissioner on appeal. There are no restrictions at all on the powers of the Income Tax Officer when he proceeds to reassess the income; subject to the directions given in the Appellate Assistant Commissioner's order, he has to proceed as if he were making an assessment u/s 23 at the time when he proceeds to reassess. He is not bound or restricted by anything that had happened either when he made the original assessment or when the appeal was heard by the Appellate Assistant Commissioner; he is governed only by the findings of the Appellate Assistant Commissioner. He is not bound by his own findings arrived at in the original assessment; they do not operate as *res judicata* and undoubtedly have not the force of an order. The findings arrived at by the Appellate Assistant Commissioner and the directions given by him are binding on him, not as *res judicata*, but as orders to which he is subject. He is free to take into consideration any relevant material that came into existence for the first time after the original assessment order was made by him.

9. We are in respectful agreement with the view taken in the cases cited above.

10. For reasons aforementioned, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. The assessee shall have his costs, which are assessed at Rs. 100.