
(1965) 05 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2073 of 1964

Kishan Chand and Co.

APPELLANT

Vs

K.K. Opal, Excise and Taxation Officer (Enforcement)

RESPONDENT

Date of Decision : 25-05-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) 18 STC 50

Hon'ble Judges : R.S. Narula, J; Inder Dev Dua, J

Bench : Division Bench

Advocate : B.K. Jhingan and Bhagirath Dass, for the Appellant; D.S. Nehra, for A.G., for the Respondent

Judgement

Inder Dev Dua, J.—The petitioner in this case is a partnership concern with Shri Kishan Chand and Shri Ram Parkash as partners carrying on the business of sale and purchase of Banaspati oils. The firm is a registered dealer with the Assessing Authority, Amritsar. For the years 1961-62 and 1962-63, ending 31st March, 1962, and 31st March, 1963, respectively, the petitioner-firm filed monthly returns as required under the rules and paid u/s 10 of the Punjab General Sales Tax Act (hereinafter called the Act) the amount of sales tax in accordance with the returns. All the returns were filed with the Assessing Authority, Amritsar, which was the competent authority for assessing the petitioner-firm in accordance with the requisite notification, dated 30th March, 1949. Similarly, for the year 1963-64 ending 31st March, 1964, all the monthly returns were filed in time with the same Assessing Authority and the amount of tax was paid as required u/s 10 of the Act. Up to the year 1960-61, the Assessing Authority, Amritsar, assessed the petitioner-firm and for the said year the order was passed on 28th February, 1962, and the amount of tax assessed was paid. On 19th February, 1964, Shri S.K. Jain, the Excise and Taxation Officer, Finance Department, the Assessing Authority, Punjab, Chandigarh, sent notices in Form S.T. XIV for the years 1961-62 and 1962-63, under the Punjab General Sales Tax Act, as also under the Central Sales Tax Act. The petitioner-firm was required to

appear before the said Authority on 3rd March, 1964. Shri Jain, according to the averments, was seeking to exercise jurisdiction under a notification, dated 11th June, 1963, authorising him to make assessments for the entire State of Punjab. The Divisional Enforcement Officers, Excise and Taxation, were, by means of a notification, dated 25th January, 1963 (annexure "A" to the writ petition), authorised to assist the Excise and Taxation Commissioner and were further authorised to make an assessment under the Act within the entire State of Punjab. Shri K.K. Opal, Excise and Taxation Officer (Enforcement), Amritsar, is one of such officers. The notices issued by Shri Jain were challenged in this Court by means of a writ petition in Civil Writ No. 382 of 1964, in which the admitting Bench stayed proceedings before Shri Jain. Here, I may point out that the said writ petition has since been decided and is reported as *Kishan Chand and Company v. S.K. Jain* ILR (1965) P &h. 589 though when the present writ petition was filed arguments in the earlier one had been heard and orders reserved. On 10th August, 1964, the respondent Shri K.K. Opal required the petitioner-firm to produce certain books of account for the years 1961-62 and 1962-63 along with the declaration forms as also list of sales made to Messrs Amar Nath Shiv Kumar of Amritsar, warning the petitioner-firm that failure to produce the accounts and documents would justify an adverse inference and necessary legal action would be taken against the petitioner-firm. A memorandum, dated 9th September, 1964, also required the petitioner-firm to produce account books for the year 1963-64 along with the declaration forms and also evidence relating to actual delivery of goods during that year, again warning that failure to produce such documents would justify adverse inference. This, according to the averments in the writ petition, is in furtherance of the show cause notice u/s 10(7) of the Act.

2. It is these notices, which are the subject-matter of the present writ petition, and it is pleaded that when the matter was pending before Shri Jain for the assessment of the years 1961-62 and 1962-63, which was also the subject-matter of Civil Writ No. 382 of 1964, there was no justification nor any authority in law for issuing any notice to the petitioner-firm u/s 14 of the Act. It is only the Assessing Authority at Amritsar, who is competent to deal with the petitioner-firm and issue the notices. For the year 1963-64 as well, all the returns were filed before the Assessing Authority, Amritsar, which was the competent authority under the Act to deal with the petitioner-firm's case. It is argued that in the absence of an order of transfer, the impugned notice u/s 14 of the Act, which is annexure "B" to the writ petition, is bad. It is, of course, conceded by Shri Bhagirath Dass that Shri Opal does not lack inherent jurisdiction to deal with the matter.

3. On behalf of the respondent, Shri Nehra has, to begin with, submitted that in so far as notice u/s 10(7) of the Act (annexure "C" to the writ petition) is concerned, it is open to the petitioner to take the matter on revision to the Commissioner u/s 21(1) of the Act because the said officer can call for the record of any proceedings which are pending before, or have been disposed of by, any

Assessing or Appellate Authority for the purpose of satisfying himself as to the legality or propriety of the proceedings or of an order made therein. The counsel has in the alternative also submitted that the petitioner can in any case go to the officer who has issued notice and tell him that by virtue of the Bench decision of this Court he should not proceed with the case and that, in that event, the officer would try to secure the order of transfer from the proper quarters. In regard to the notice embodied in annexure "B" also, Shri Nehra has laid emphasis on the observation of the earlier Bench decision of this Court that inherent jurisdiction is not wanting in Shri Opal and that it is only a matter of the manner in which he is seized of the matter. He has drawn our attention to the judgment in the earlier case, *Kishan Chand and Co. v. S.K. Jain* ILR (1965) P &h. 589, at pp. 600 and 601 where it is expressly observed that the assessments made in such circumstances would not be struck down as invalid for want of inherent jurisdiction. This, indeed, as observed earlier, is not contested by Shri Bhagirath Dass. Shri Nehra has also drawn our attention to an unreported decision by a learned Single Judge of this Court in *Shri Maya Ram Bhatia v. Shri K.K. Upal*, C.W. 2198 of 1964 decided on 16th December, 1964, in which Shri K.K. Upal had issued a notice u/s 10(7) of the Act requiring the dealer to show cause why a penalty should not be imposed in terms of that Sub-section. According to that notice, the dealer was required to appear on 15th September, 1964. On 14th September, 1964, a telegram was sent by the dealer from Delhi for adjournment of the case. He returned to Amritsar by the night train and on 15th September, 1964, Shri Arjan Singh,, Assistant Excise and Taxation Officer visited the dealer's shop in the afternoon and found him there. On 15th September, 1964, an order was made imposing on the dealer a penalty for Rs. 25,000 and it was this order which was assailed in this Court under Article 226 of the Constitution. In the impugned order, suspicion was expressed about the correctness of the telegram and in order to verify the facts, a constable in plain clothes was sent to the dealer's shop to see if Shri Maya Ram Bhatia was present on 15th September, 1964. After confirming that Shri Maya Ram Bhatia was actually sitting in his shop in Islamabad along with his sons, a gazetted officer, Shri Arjan Singh, Assistant Excise and Taxation Officer, was deputed to confirm the facts and to examine the accounts. Shri Bhatia, however, failed to produce the accounts and his statement was recorded by the Assessing Authority. While the statement was being recorded, Shri Maya Ram insisted on the Assessing Authority to record that Shri Bhatia had just returned from Delhi. After noticing his behaviour, the Assessing Authority proceeded to observe that the dealer should have made all possible arrangements for his representation when called specially and when sufficient notice had been given for the purpose. The learned Single Judge, keeping in view the conduct of the dealer and also the fact that he had not exhausted the alternative remedies available to him under the Act, declined to exercise the extraordinary powers under Article 226 of the Constitution. For this course, he relied on a Bench decision of this Court in *Khem Chand Vijay Kumar v. Shri J.S. Malhotra* [1963] 14 S.T.C. 821. Shri Nehra has very strongly urged that this Court should adopt the same course and direct the petitioner to take the matter

to the departmental hierarchy under the statute and seek relief there and not rush to this Court in the first instance.

4. Shri Bhagirath Dass has on the contrary submitted that the decision in Maya Ram Bhatia's case proceeds on its own facts as indeed the final order had been passed in that case.

5. I may at the outset observe that on behalf of the respondent, the correctness of the reported Bench decision in the case of M/s. Kishan Chand and Co. ILR (1965) P &h. 589 has not been challenged. There it was, of course, made clear that we were dealing with that particular case when we observed that without a proper order transferring assessment proceedings completely from the file of the appropriate Assessing Authority actually seized of the assessment proceedings at Amritsar, to the record of the respondent at Chandigarh, on a proper consideration of both the exigencies of tax collection and inconvenience to be caused to the assessee, the action of the officer at Chandigarh operated to the serious prejudice of the assessee and that the Chandigarh Officer should accordingly be restrained from so acting. It is true that in the case before us, both the officers are at Amritsar, but it has not been made clear in this Court that the proceedings pending before the officer with whom the present petitioner has already filed his returns, have been completely transferred to the record of the present respondent. I am not unmindful of the difficulties of the revenue in making assessment and realising taxes from those dealers who do not frankly and honestly co-operate with the Assessing Authorities. I am, however, also conscious of genuine inconvenience to which a dealer may be put, when he is called upon to appear before one officer today and before another tomorrow in respect of the same assessment proceedings, even though both the officers may be possessed of inherent jurisdiction. Somewhat similar situation arose in C.W. No. 272 of 1964 which was decided along with the case of Kishan Chand and Co. v. S.K. Jain ILR (1965) P &h. 589 though in that case, the two officers had their respective headquarters at Amritsar and Chandigarh. On considering all the facts and circumstances of the present case, therefore, in my opinion, it would be more in consonance with the true dictates of justice and would also better accord with the rules of natural justice if the assessment proceedings are transferred in their entirety to the respondent and the petitioner is heard in support of any objection that he may have to such transfer. In so far as the notice u/s 14 is concerned, it is not disputed that this is a, preliminary step to the assessment being made and it is for this very purpose that production and inspection of accounts and documents is being sought. In regard to the notice u/s 10(7), however, the purpose seems to be to enquire into the fact whether the dealer has maintained false or incorrect accounts with a view to suppress his sales, purchases or stock of goods or has concealed any particulars of his sales or purchases or has furnished to or produced before any authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particulars, and then to impose a penalty, in addition to the tax to which he is assessed or is liable to be assessed, the amount being not

less than ten per cent. but not exceeding one and a half times such tax. Here again, the authority with whom the returns have already been filed and who will ultimately assess the dealer may also have to apply its mind to the falsity or incorrectness of the accounts from the point of view of Section 10(7), unless the object of both the impugned notices is to have the entire assessment proceedings practically transferred to the respondent. It would in the circumstances be also desirable that two different authorities should not apply their mind to the same question at different stages which may entail different conclusions without hearing the party affected.

6. In fairness to the respondent's counsel, I must state that Shri Nehra has very frankly submitted that after the previous decision, the department has been passing proper orders of transfer before the Excise and Taxation Officer (Enforcement) takes up a case in which a dealer has filed his returns with some other officer. In the case in hand, he has pointed out that the impugned notices were issued in August and September, 1964, which was two or three months prior to the actual decision by the Bench in *Kishan Chand and Company v. S.K. Jain* ILR (1965) P &h. 589. It seems that the department apparently thought that in the reported case, the present petitioner was mainly aggrieved by the demand for the production of his books at Chandigarh and that if he was to be required to produce the same at Amritsar, there would be no inconvenience to him and it is perhaps for this reason that the impugned notices in the present case were issued. Now the policy of the department, as suggested by Shri Nehra, is to pass orders of transfer in all pending assessments before a dealer is required to appear before another Assessing Authority. Shri Nehra, who has plainly stated that the petitioner-assessee was suspected by the department to be taking steps to evade legitimate taxes and that is why the impugned notices were issued, has also agreed that he would have proper orders of transfer made in these cases. It would in the circumstances serve the ends of justice if we direct the respondent to proceed further on these notices only after securing necessary orders of transfer, and we direct accordingly. In the circumstances of this case, there would be no order as to costs.

R. S. Narula, J.

7. I agree.