
(1965) 10 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1756 of 1965

Kishan Chand and Co.

APPELLANT

Vs

N.L. Murgai, Excise and Taxation Officer

RESPONDENT

Date of Decision : 26-10-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 10, 11, 20, 21

Citation : (1966) 18 STC 110

Hon'ble Judges : S.B. Capoor, J; Inder Dev Dua, J

Bench : Division Bench

Advocate : Bhagirath Dass, for the Appellant; M.R. Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Capoor and Inder Dev Dua, JJ.—This petition under Articles 226 and 227 of the Constitution was admitted to a Division Bench on 23rd August, 1965, and notice was issued by the Motion Bench for 13th September, 1965.

2. The petitioner-firm was duly registered under the Indian Partnership Act and is a registered dealer under the Punjab General Sales Tax Act (hereinafter described as the Act). The firm deals in vegetable ghee and hydrogenated oils. The petitioner had to file monthly returns under the Act and for the 12 months of the year 1961-62, all the returns were filed with the Assessing Authority at Amritsar, the amount of tax also having been paid in accordance with the returns as provided in Section 10 of the Act. The Excise and Taxation Officer (Finance Department), Chandigarh, Shri S.K. Jain, issued notice u/s 11(2) of the Act for the year 1961-62, but the petitioner-firm challenged that officer's jurisdiction to do so because the Assessing Authority at Amritsar was the competent authority to assess the petitioner-firm. This Court was accordingly approached in C.W. No. 382 of 1964, which was disposed of by a Bench of this Court on 17th November, 1964. That judgment has since been reported as *Kishan Chand & Go. v. S.K. Jain* (1965) 67 P.L.R. 465. I may point out that an application for leave to appeal

presented by the respondent has since been disallowed. According to the writ petition, after the Bench decision in the earlier proceedings, the Joint Excise and Taxation Commissioner, Punjab, informed the petitioner firm as per notice dated 23rd March, 1965, that the assessment proceedings would be taken up and finalised by Shri D. P. Gupta, Excise and Taxation Officer, Amritsar, instead of the Excise and Taxation Officer (Finance Department) as ordered by the said Commissioner on 6th March, 1965. The assessment proceedings as a result of this information, according to the writ petition, stood transferred to Mr. D.P. Gupta and no other Assessing Authority or officer is empowered to exercise jurisdiction or authority to deal with the matter or take any action or issue notice for assessment proceeding dealing with the matter which was disposed of in C.W. No. 382 of 1964. The petitioner-firm was served with a notice dated 10th June, 1965, by Shri N.L. Murgai, Excise and Taxation Officer, Amritsar, in Form S.T. XIV, requiring appearance on 25th June, 1965, for showing the account books for the year 1961-62 ending 31st March, 1962. On 25th June, 1962, the petitioner appeared before the respondent and filed an application questioning his jurisdiction on two grounds, namely, (i) that Mr. D. P. Gupta is the authority to deal with the case on account of the transfer order passed by the Joint Excise and Taxation Commissioner dated 6th March, 1965, and (ii) that the matter as to whether Shri S.K. Jain was competent to deal with the assessment was still sub judice in view of the S.C.A. No. 18 of 1965 pending in the High Court. This application was rejected by the respondent on 25th June, 1965. After rejection of the petitioner's application questioning the respondent's jurisdiction the petitioner filed another application on the same day, seeking opportunity to produce the account books of the firm. The above application was also disallowed and the respondent closed the petitioner's case without giving any further date. The said respondent, so proceeds the averment in the writ petition, did not frame any assessment, nor has he taken the petitioner into confidence as to what he proposed to do in the matter except saying that he was fully competent to frame the assessment and that he would do so and proceed on best judgment basis. It is in these circumstances that the present petition under Articles 226 and 227 of the Constitution has been presented and the challenge is based on the ground that the respondent has no jurisdiction either to issue the impugned notice or to frame any assessment against the petitioner. A writ in the nature of a certiorari is sought for quashing the impugned notice and also a writ in the nature of prohibition restraining the respondent from making any assessment.

3. In the written statement presented by the respondent, it is pleaded that he is fully competent to make the assessment of the petitioner-firm, because he is the appropriate Assessing Authority under the provisions of the Act. The alleged "transfer order" is to the effect that the Excise and Taxation Officer (Finance Department) is not to frame assessment but the Excise and Taxation Officer, Amritsar, is to do so. As Shri D.P. Gupta, Excise and Taxation Officer, is an administrative head of the Excise and Taxation Department at Amritsar, the use of his name is only to symbolise all the Assessing Authorities of the district under

his control who are equally competent to frame assessment of the petitioner-firm. The respondent having concurrent powers with Shri D.P. Gupta, Excise and Taxation Officer, Amritsar, is fully competent to frame the assessment in question. The proceedings initiated by the respondent have not operated prejudicially to the petitioner's interest. It has further been pleaded .that the petitioner-firm had submitted the return for the year 1961-62 to this respondent and as such he is the competent authority to frame assessment and issue notice of assessment. In view of these averments, it is also pleaded that there is no question of transfer of the petitioner-firm's case from the file of Shri D.P. Gupta, Excise and Taxation Officer, Amritsar, to that of the respondent. The petitioner's application was rejected by the Assessing Authority because the intention of the petitioner-firm was clearly to cause delay in the assessment of an old case and as such to derive benefit of limitation under the provisions of law. The petitioner-firm was taken into full confidence and the interim order was passed on best judgment basis in the petitioner's presence because he had failed to produce the account books. This plea in the written statement clearly controverts the assertion in the writ petition that the respondent did not frame any assessment nor took the petitioner into confidence as to what is proposed to be done in the matter. It has further been pleaded in paragraph 17 of the written statement that the petitioner can go up in appeal or revision under Sections 20 and 21 of the Act, as the case may be, before seeking redress through writ proceedings. As a result of the arguments addressed at the Bar on 11th October, 1965, the respondent was permitted to put in a supplementary affidavit which was produced before us on 18th October, 1965. An advance copy of this affidavit was given to the petitioner's learned counsel, but he did not consider it necessary to file any counter-affidavit. According to Shri N.L. Murgai's supplementary affidavit, returns were filed by the petitioner-firm for the year 1961-62 before Shri U.S. Naurath, the then Excise and Taxation Officer, Amritsar, who was succeeded by Shri Ajmer Singh Sandhu, Excise and Taxation Officer, and then by the deponent (Shri N.L. Murgai). The assessment for the year 1961-62 of the petitioner as such falls within the jurisdiction of the respondent, Shri N.L. Murgai. Shri D.P. Gupta, Excise and Taxation Officer, in charge of the district of Amritsar, has no particular circle or zone like that of Shri Murgai. It has further been explained that besides Shri D.P. Gupta, who is in charge of the entire excise and taxation work in the district of Amritsar, there are two other Excise and Taxation Officers who are normally in charge of sales tax assessment work, and the entire city of Amritsar for sales tax assessment is divided between the two.

4. The point raised on behalf of the petitioner by the learned counsel is that once the proceedings have been formally transferred by the Joint Excise and Taxation Commissioner as per annexure "A" dated 23rd March, 1965, to the file of Shri D.P. Gupta, Excise and Taxation Officer, Amritsar, from that of the Excise and Taxation Officer (Finance Department), Chandigarh, no other officer except Shri D.P. Gupta can proceed with the assessment proceedings, without another formal order of transfer by the Joint Excise and Taxation Commissioner ; and in support

of this submission, reliance has been placed on the earlier Bench decision of this Court in C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521.

5. On behalf of the respondent, however, it has been very strongly urged. that the reported decision does not lay down that in such circumstances Shri D.P. Gupta alone has the jurisdiction to proceed with the assessment. It has further been urged that Shri D.P. Gupta is only a sort of a distributing officer and all that annexure "A" was intended to convey to the petitioner was that the assessment proceedings would be held in Amritsar and not at Chandigarh, in pursuance of and in compliance with the observations of this Court in C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521. The jurisdiction of the respondent, Shri N.L. Murgai, has been conferred by the statute and that jurisdiction has not been and Cannot be taken away as a result of annexure "A" which informs the petitioner-firm that the assessment proceedings would be taken up and finalised by Shri D.P. Gupta, Excise and Taxation Officer, Amritsar, instead of the Excise and Taxation Officer (Finance Department), Chandigarh.

6. In my opinion, the submission on behalf of the petitioner that Shri N.L. Murgai has no jurisdiction to proceed with the assessment is wholly misconceived and is not supported by the earlier Bench decision of this Court in C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521, as the following observations would indicate :-

We do not mean, and of course we do not hold, that an assessment made by the respondent in respect of a dealer whose place of business is at Amritsar would be open to be struck down as invalid for want of inherent jurisdiction, and this, not even if the assessment proceedings had properly been commenced before the Assessing Authority functioning at Amritsar, nor do we hold that an irregular manner of seizing of an assessment proceeding would by itself attract jurisdictional infirmity necessarily vitiating the final assessment order.

6. These observations have, I may point out in fairness to the petitioner's learned counsel, not been found fault with or adversely commented upon at the Bar before us. Indeed, according to the learned counsel, these observations represent the correct legal position. He has, however, endeavoured to take the present case out of the effect of these observations by pointing out that after the aforesaid transfer order passed by the Joint Excise and Taxation Commissioner, the respondent must be deemed to have lost, or been divested of, the inherent jurisdiction possessed by him. This submission is not easy to sustain because the inherent jurisdiction conferred by the statute cannot, without express words or necessary intendment, be lost merely because at one stage the assessment proceedings have been directed to be finalised by one of the two officers, both of whom are invested with the similar inherent jurisdiction. It is noteworthy that our attention has not been drawn to any statutory provision, nor to any principle of law, in support of the suggested deprivation or loss of the respondent's

inherent jurisdiction; and indeed, support for the submission has been attempted to be sought solely from the ratio of the decision in C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521. This decision, as shown earlier, does not lend any support to the petitioner's submission ; on the contrary it seems, if anything, to go against this submission.

7. In the light of the Supreme Court decision in Bidi Supply Co. Vs. The Union of India (UOI) and Others, and Pannalal Binjraj Vs. Union of india (UOI), the Bench deciding C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521 felt inclined to take the view that prima facie the statutory scheme of the Act and the Rules made thereunder contemplate the assessment proceedings to be held at the dealer's place of business, though the place of proceedings for assessment does not go to the jurisdiction of the Assessing Authority. On a proper consideration and balancing of exigencies of tax collection and convenience of the assessee, the assessment proceedings may appropriately be held at a place other than the assessee's place of business. It would not be out of place at this stage to point out that in another Bench decision of this Court in writ proceedings initiated by the present petitioner, Kishan Chand & Co. v. K.K. Opal, C.W. No. 2073 of 1964 decided on 25th May, 1965 it was observed that the decision in C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521 had proceeded on its own peculiar facts and circumstances. Thus said the Court on that occasion :

There (in C.W. No. 382 of 1964 Reported as Kishan Chand & Co. v. S.K. Jain [1965] 16 S.T.C. 521) 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.

8. The Court in that case also realised the difficulties faced by the revenue in making assessments and realising taxes from those dealers who do not honestly co-operate with the Assessing Authorities. To this I may also add that every dishonest evasion of legitimate tax is likely to result, in a welfare State like ours, in a corresponding unfair increase in the burden of tax on honest taxpayers.

9. The legal position, as I see in the final analysis, is that each case has to be considered on its own facts by properly balancing and weighing the interests of both the assessee and the revenue. In the case in. hand, the respondent is functioning at Amritsar and indeed is the successor of the officer before whom the returns were submitted by the petitioner-firm. He does possess inherent jurisdiction to assess the petitioner under the Act. On behalf of the petitioner-firm, no attempt has been made to show what manifest injustice or improper

hardship has been done to the firm by being required to produce the books before the respondent, and indeed nothing cogent has been stated in this respect at the Bar. Consideration of fairness and just treatment, therefore, cannot be appealed to or usefully pressed on behalf of the petitioner.

10. It is complained in an oblique manner that no adjournment was granted to the petitioner to produce the books of account after rejecting the challenge to the jurisdiction of the respondent. In my opinion, if there is any infirmity in the order of assessment on account of an illegal or an improper refusal to give to the petitioner proper and reasonable opportunity in accordance with law, then the statutory machinery contains ample provision for redress of legitimate grievance from the departmental hierarchy. Resort to this Court on writ side is clearly misconceived for such a purpose, particularly at the present stage which is apparently calculated to obstruct and delay the assessment, which is already sufficiently belated. The averment in the written statement that the petitioner-firm is attempting to delay the assessment in order to take benefit of expiry of limitation provided by law, may legitimately be kept in view and it certainly cannot be ruled out of consideration in this connection.

11. As a result of the foregoing discussion, there is neither any jurisdictional nor any other similar grave legal infirmity disclosed on the record ; nor is there any manifest injustice done to the petitioner in consequence thereof, which would justify interference by this Court on writ side. The petition accordingly fails and is dismissed with costs.