

(2004) 02 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1289 of 1984

Kotah Rubber Industries Limited

APPELLANT

Vs

Assistant Excise and Taxation Commissioner (Inspection) and
Another

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21(1), 21(2)

Citation : (2005) 1 ILR (P&H) 447 : (2004) 137 STC 460

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : R.P. Sawhney and Ajay Saini, for the Appellant; Rita Kohli, Deputy Advocate-General, for the Respondent

Judgement

G.S. Singhvi, J.—This petition involves adjudication of the petitioner's challenge to notice, annexure P2, dated February 17, 1984 issued by the Assistant Excise and Taxation Commissioner (Inspection), Jullundur (hereinafter described as "the revisional authority") for taking suo motu action u/s 21(1) of the Punjab General Sales Tax Act, 1948 (for short, "the State Act").

2. The petitioner is engaged in the manufacture and sale of rubber transmission belting at Jullundur. It is registered as a dealer under the State Act as well as the Central Sales Tax Act, 1956 (for short, "the Central Act"). For the assessment year 1968-69, the Assessing Authority assessed the petitioner vide order dated May 7, 1971 and granted exemption to the tune of Rs. 2,01,899 by treating the goods manufactured by it as exempted from tax u/s 8(2-A) of the Central Act read with section 5(2)(a)(ii) of the State Act. The Assessing Authority relied on order dated February 29, " 1968 passed by Sales Tax Tribunal, Punjab (for short, "the Tribunal") in the case of Allied Rubber and Plastic Industries v. State of Punjab and held that rubber transmission belting is covered by item 30-B of Schedule B to the State Act. Similar exemption was granted to the petitioner for the assessment years 1969-70, 1970-71 and 1971-72.

3. In relation to the assessment years 1969-70 to 1971-72, the re-visional authority issued notices dated June 11, 1975 to the petitioner u/s 21(1) of the State Act proposing suo motu revision of the assessment in view of the judgment of the Tribunal in Appeal No. 118 of 1971-Brij Cycle Works, Kotkapura v. State of Punjab decided on January 8, 1973 in which it was held that rubber transmission belting is not covered by item 30-B of Schedule "B" to the State Act and was not entitled to exemption. In respect of the assessment year 1968-69, notice dated March 12, 1976, was issued by the revisional authority proposing suo motu revision of the assessment under the State Act. Separate notices dated June 11, 1975 were issued to the petitioner proposing revision of the assessment made under the Central Act in relation to the assessment years 1968-69 to 1971-72. The petitioner filed objection against the proposed revision of assessment under the Central Act by contending that the subsequent decision rendered by the Tribunal in the case of Brij Cycle Works v. State of Punjab (Appeal No. 118 of 1971 decided on January 8, 1973) could not be made basis for invoking section 21(1) of the State Act. The re-visional authority overruled this objection vide order dated January 25, 1984. By another order dated January 27, 1984, the revisional authority imposed tax on the petitioner under the Central Act at the rate of 10 per cent and ordered recovery of Rs. 20,190 in relation to the assessment year 1968-69. Similar orders were passed in relation to other assessment years. Revision Application Nos. 100 to 104 of 1983-84 filed by the petitioner were dismissed by the Tribunal vide order dated April 18,

4. The petitioner has questioned the legality of the impugned notice mainly on the ground that the revisional authority does not have the jurisdiction to initiate proceedings u/s 21(1) of the State Act simply because legal position had undergone change. It has averred that the remedy available to the department u/s 11-A of the State Act had become time-barred and, therefore, it was not open to the re-visional authority to exercise power u/s 21(1) of the State Act.

5. Shri R.P. Sawhney, Senior Advocate appearing for the petitioner, relied on the judgment of the division Bench in State of Haryana v. Free Wheels (India) Ltd. [1997] 107 STC 332 (P&H) and argued that suo motu power vested in the revisional authority u/s 21(1) of the State Act cannot be exercised after the remedy [u/s 11-A had become time-barred and in any case, the order passed by the Tribunal in the case Brij Cycle Works (Appeal No. 18 of 1971 decided on January 8, 1973) could not be made basis for suo motu revision of the assessment.

6. Ms. Rita Kohli, learned Deputy Advocate-General, argued that jurisdiction of the revisional authority u/s 21(1) of the State Act is not subject to the period of limitation prescribed in section 11-A of the State Act and, therefore, the impugned notice cannot be treated as time-barred. She then argued that the power u/s 21(1) of the State Act can be exercised in view of the changed legal position. Ms. Kohli pointed out that the judgment of the Tribunal in Brij Cycle Works v. State of Punjab (Appeal No. 118 of 1971 decided on January 8, 1973)

will be deemed to have been approved by this Court in *Laxmi Machinery Store v. State of Punjab* [1977] 39 STC 87 and, therefore, the revisional authority did not exceed its jurisdiction u/s 21(1) of the State Act. She also relied on the judgments of the single Bench in *The Asian Rubber and Plastic Industries Vs. The State of Punjab and Another*, and of the division Bench in *Luthra Rubber Industries Vs. State of Punjab and Another*, and argued that the proceedings initiated by the impugned notice cannot be declared as without jurisdiction.

7. I have thoughtfully considered the respective arguments. Section 21(1) of the State Act lays down that the Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit. Sub-section (2) of the section 21 lays down that the State Government may, by notification, confer on any officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may specified in such notification.

8. The question whether rubber transmission belting is exempt from levy of sales tax under the State Act was considered by a division Bench of this Court in *Laxmi Machinery Store v. State of Punjab* [1977] 39 STC 87. While approving the view taken by the Tribunal that the same is not covered by entry 30-B or 30-C of Schedule B to the State Act, the division Bench observed :

"We may assume that "rubber transmission belting" is manufactured in a "processing factory". There is also no doubt that it is manufactured with cloth as a base. The question is whether it comes within the description of "similar other products". The word "similar" apparently refers to the expression, "canvas cloth and tarpaulins", which precede the expression "similar other products". In order to be classified as a product similar to canvas cloth and tarpaulins, it must be of the same nature as canvas cloth and tarpaulins. The very different use to which canvas cloth and tarpaulins on the one hand and rubber transmission belting on the other are put clearly indicates that they cannot be considered similar in nature. That was the view which was taken by the Sales Tax Tribunal, Punjab, and we agree with that view."

9. In *The Asian Rubber and Plastic Industries Vs. The State of Punjab and Another*, a learned single Judge considered the question whether the revisional authority had the jurisdiction to revise the assessment by invoking section 21(1) of the State Act. It was argued on behalf of the assessee that mere change in the legal position did not empower the revisional authority to exercise suo motu revisional power u/s 21(1) of the State Act. While rejecting the plea of the assessee, the learned single Judge observed:

"The assessee engaged in the manufacture and sale of transmission rubber belting at the time of assessment for the years 1968-69, 1969-70 and 1970-71,

relying on a judgment of the Sales Tax Tribunal, claimed that the sale of transmission rubber belting was exempt under the Punjab General Sales Tax Act, 1948. The claim was accepted by the Assessing Authority who finalised the assessment accordingly. Subsequently, the internal audit pointed out that the Assessing Authority had wrongly granted exemption from tax of the sales of transmission rubber belting in view of the judgment of the High Court in the case of Laxmi Machinery Store Vs. State of Punjab, which was rendered after about 7 years from the assessment year 1970-71. Thereupon the Assistant Excise and Taxation Commissioner in exercise of his suo motu revisional powers u/s 21(1) of the Act issued notices to the assessee indicating his intention to reopen the assessment. The assessee filed a writ petition and contended that since information in the form of decision of the High Court was made available to the authority, section 11-A of the Act providing for reassessment would only be applicable because the word "information" occurred only in that section and not in section 21 and also that the Assistant Excise and Taxation Commissioner-cum-Revising Authority had no jurisdiction to revise orders of the Assessing Authority since both had concurrent jurisdiction over the whole district :

Held, (i) that only because the expression "information" occurred in section 11-A of the Act and that word had been interpreted to include the correct state of law, it would not follow that the provisions of section 11-A were automatically attracted to the case. Section 21(1) of the Act gave plenary powers of revision to the Commissioner of Sales Tax and there was no period of limitation prescribed for the exercise of the power. The period of limitation of five years as prescribed for making reassessment u/s 11-A of the Act was not applicable to the cases in which the re-visional authority while deciding the revision did not rely upon any material which was not present before the Assessing Authority at the time of decision of the case. Therefore, the Assistant Excise and Taxation Commissioner had full authority to issue notice to the assessee for reopening the assessment u/s 21(1) of the Act and reconsider the decision of the Assessing Authority. The provisions of section 11-A of the Act were not at all attracted to the case."

10. The aforesaid view of the learned single Judge was approved by the division Bench in Luthra Rubber Industries Vs. State of Punjab and Another, The facts of that case were that the petitioner, who was engaged in the manufacture of rubber transmission belting, was registered as dealer under the State Act, as also under the Central Act. The Assessing Authority relied on order dated February 29, 1968 passed in Allied Rubber and Plastic Industries v. State of Punjab and held that the goods manufactured by the petitioner were not taxable under the State Act. Subsequently, the Tribunal held that rubber transmission belting was not tax-free and was exigible to tax. This view was approved by the division Bench of the High Court in Laxmi Machinery Store Vs. State of Punjab, . Thereupon, proceedings u/s 21(1) of the State Act were initiated by the Deputy Excise and Taxation Commissioner. The revising authority rejected the preliminary objection of the petitioner that the judgments of the Tribunal and the High Court amounted to fresh and definite information within the meaning of

section 11-A of the State Act and, therefore, the proceedings against it could be taken under that section and not u/s 21 of the State Act. The division Bench upheld the order of the revising authority and observed:

"The revisional authority is entitled to call for the record of any Case decided by the Assessing Authority or any appellate authority in order to see whether the order passed is proper or legal. Similarly, he can call for the record of any proceedings pending before any Assessing Authority or appellate authority in order to determine the legality or propriety of the proceedings. But, before he decides to exercise this power, he must come to the conclusion that the order or the proceedings suffer from the vice of impropriety or illegality and for this conclusion he has to confine himself to the record which is called for by him and which was before the lower authority, as the lower authority can be presumed to have applied his mind only to that record. He cannot take into consideration any fresh material in order to come to this conclusion. After having come to that conclusion, he will be entitled to scrutinise the proceedings and the order passed in order -to determine the correct turnover which should have been assessed to tax on the basis of that record. He cannot, however, bring to tax, in the purported exercise of revisional powers, any turnover which had not been disclosed to the Assessing Authority by the dealer or which was not discovered by him during the course of assessment and which has come to the notice of the revising authority after the expiry of three years following the close of the year to which the turnover proposed to be taxed relates. That is the function of the Assessing Authority under, section 11-A of the Act and cannot be exercised by the revising authority. But, if any enquiry is to be made or some evidence has to be examined in respect of the turnover which was the subject-matter of the proceedings before the Assessing Authority or the appellate authority the revising authority will be at liberty to make such further enquiry or to take such further evidence as he considers fit to determine the legality or propriety of the order already passed. For example, and not meaning it to be exhaustive, he can determine whether the deductions or exemptions were correctly allowed or the tax was levied at the rate prescribed. The bogus nature or the falsity of the deductions or exemptions allowed can also be gone into. To emphasise, such further enquiry or evidence must be germane to the turnover already on the record and not to the turnover which is sought to be brought in for the first time as a result of some information obtained from somewhere.

Mr. R.N. Narula, learned counsel for the petitioner, contended that the aforesaid decision of the learned single Judge deserves reconsideration, as it does not lay down a correct law, but he has not been able to cite any relevant authority on the point, on the basis of which, a contrary view could be taken. The reasoning of the learned Judge in the *The Asian Rubber and Plastic Industries Vs. The State of Punjab and Another*, is unassailable and we are in full agreement with the same."

11. In *State of A.P. v. Lalitha Oil Mills* [1978] 42 STC 169, a division Bench of the

Andhra Pradesh High Court interpreted section 20(1) of the Andhra Pradesh General Sales Tax Act, 1957, which is in pari materia to section 21(1) of the State Act in the backdrop of the fact that Deputy Commissioner had invoked revisional power under that section and disallowed the exemption granted by the assessing authority on the ground that the judgment of the High Court relied upon by the assessee had been overruled by the Supreme Court. While upholding the order of the revisional authority, the division Bench of the High Court held as under :

"That u/s 20 of the Act what the Deputy Commissioner was concerned with was the legality of the order passed by the Commercial Tax Officer. He was not concerned with the question whether the exemption was rightly granted at the date when the assessing authority passed the order. He had to apply the law as it stood at the date when he chose to exercise his revisional authority and if, on that date, it was found that the correct law that was applicable was the one laid down by the Supreme Court, then it would be open to him to revise the assessment in accordance with the law as laid down by the Supreme Court. The Deputy Commissioner was therefore right in exercising his jurisdiction u/s 20(2) of the Act."

12. In *Hari Chand Rattan Chandel & Co. v. Deputy Excise and Taxation Commissioner (Additional)*, Punjab [1969] 24 STC 258, a Full Bench of this Court examined the scope of sections 11-A and 21(1) of the State Act and held that there is no period of limitation prescribed in the State Act or the Rules framed thereunder within which the revising authority can exercise its power u/s 21(1) nor can any such period of limitation be read as implicit on the basis of section 11-A of the State Act.

13. By applying the ratio of the above noted judgments to the fact of this case, I am inclined to agree with Ms. Kohli that the impugned notice is not ultra vires to section 21(1) of the State Act.

14. The judgment of the division Bench in *State of Haryana v. Free Wheels (India) Ltd.* [1997] 107 STC 332 (P&H), which is later in point of time, does support the argument of Shri Sawhney but that by itself cannot be made basis for granting relief to the petitioner because the earlier judgment of the division Bench in *Luthra Rubber Industries Vs. State of Punjab and Another*, which is directly on the point, was not considered in the later case. In my view, the conflicting views expressed by the division Benches in *Luthra Rubber Industries Vs. State of Punjab and Another*, and *State of Haryana v. Free Wheels (India) Ltd.* [1997] 107 STC 332 (P&H) on the scope of section 21(1) of the State Act deserves to be resolved by a larger Bench.

15. Hence, I direct that the file of this case be placed before honourable the Chief Justice for constituting Bench of three or more Judges for deciding the following question of law :

"Whether the Commissioner or the officer to whom the power of the

Commissioner is delegated by the State Government under B section 21(2) of the Punjab General Sales Tax Act, 1948 can exercise power u/s 21(1) thereof if the judgment on which the order of assessment is based is overruled or set aside by the superior court or a contrary opinion is expressed by the higher adjudicating judicial/ quasi-judicial authority ?"