
(1985) 02 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3388 of 1984

Luthra Rubber Industries

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 27-02-1985

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11A, 21, 5

Citation : (1985) 59 STC 198

Hon'ble Judges : P.C. Jain, Acting C.J.; I.S. Tiwana, J

Bench : Division Bench

Advocate : R.N. Narula and P.S. Saini, for the Appellant; D.S. Brar, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.C. Jain, Ag. C.J.—This judgment of ours would dispose of this and other connected petitions (i. e., C.W.P. Nos. 3389, 3390, 3391, 3392, 3393, 3394, 3395 and 1947 of 1984) as common question of law arises in all these petitions. In order to appreciate the controversy, certain salient features from this petition may be noticed :

The petitioner is a registered dealer both under the Punjab General Sales Tax Act and the Central Sales Tax Act (hereinafter referred to as Punjab Act and Central Act respectively) in the manufacture and sale of transmission rubber beltings. The petitioner filed its returns in accordance with law for the assessment year 1967-68 (Central). The transmission rubber beltings both under the Punjab and the Central Acts were held not to be taxable by the Assessing Authorities in view of the judgment of the Sales Tax Tribunal in Allied Rubber and Plastic Industries, Jullundur v. State of Punjab dated 29th February, 1968. However, tax under the second proviso to Section 5(2)(a)(ii) was levied on the raw material purchased for the manufacture of transmission rubber beltings as the raw material was purchased on the strength of the registration certificate. The tax as determined under the second proviso was deposited by the petitioner. Copy of the order

passed by the Assessing Authority is attached with the petition as annexure P-1.

2. It is further averred in the petition that some of the Assessing Authorities in District Bhatinda took a view different from the one which was prevailing in the past and held that transmission rubber beltings were not exempted under items 30, 30-B and 30-C of Schedule B of the Act and imposed tax on the sales so made by the assessee. Feeling aggrieved from the orders of the Assessing Authorities, the matter was taken up before the Sales Tax Tribunal, Punjab, Chandigarh and the Presiding Officer of the Sales Tax Tribunal in cases of M/s. Brij Cycle Works, M/s: Laxmi Machinery Stores and M/s. Jain Hind Mills held that the said item was not tax-free and was exigible to tax, vide its order dated 8th January, 1973.

3. Dissatisfied from the order of the Sales Tax Tribunal, the matter was agitated before this Court, but the assessee did not succeed and a Division Bench of this Court in *Laxmi Machinery Store v. State of Punjab* [1977] 39 STC 87 maintained the order of the Tribunal and held that the transmission rubber beltings were taxable and did not enjoy exemption under entry 30-B or 30-C of the Act.

4. It is further pleaded in the petition that after the rendering of the judgment by the Sales Tax Tribunal on 8th January, 1973 proceedings u/s 21(1) of the Punjab Act were initiated by the Deputy Excise and Taxation Commissioner (I), Patiala for the assessment years 1967-68 to 1971-72 under the Punjab Act and for the assessment years 1967-68 to 1969-70 and 1971-72 under the Central Act. Before the revising authority the petitioner raised a preliminary objections that the suo motu proceedings have been initiated against the petitioner on the basis of the judgment of the Sales Tax Tribunal in M/s. Brij Cycle Works, which was affirmed by this Court in *Laxmi Machinery Store's* case [1977] 39 STC 87 that the said judgment would amount to fresh and definite information within the meaning of Section 11A of the Punjab Act ; that the proceedings against the petitioner could at best be taken under the said section and not u/s 21 of the Punjab Act, which section only empowers the Commissioner to determine the legality and propriety of the orders passed on the basis of the record available with the Assessing Authority and that the revising authority could not, in exercise of the revisional powers, revise the order of an Assessing Authority on the basis of a fresh material or a definite information coming in its possession later on. Another objection that was raised before the revising authority was that the proceedings u/s 21(1) of the Punjab Act could not be initiated by the Deputy Excise and Taxation Commissioner (Inspection), Punjab, Patiala. On consideration of the entire matter, the Assistant Excise and Taxation Commissioner (Inspection-I), Jullundur (respondent No. 2), did not find any merit in the objections raised before him and consequently, rejected the same, vide his order dated 9th April, 1984 (copy attached with the petition as annexure P-3). Feeling aggrieved from the order of respondent No. 2, the petitioner preferred C. W.P. No. 1947 of 1984, but before that writ petition could be disposed of, respondent No. 2 passed a final order disallowing the exemption of sales of transmission rubber beltings,

vide its order dated 27th April, 1984 (copy attached with the petition as annexure P-4). The petitioner through this petition has challenged the legality and propriety of the orders of respondent No. 2, dated 9th April, 1984 and 27th April, 1984.

5. Though several points have been raised in the petition, but before us Mr. R.N. Narula had raised only one contention, viz., that the judgment delivered by the Tribunal in M/s. Brij Cycle Works and which has been affirmed by this Court in Laxmi Machinery Store [1977] 39 STC 87 was a definite information coming into possession of the revising authority, with the result that on the basis of the said information, respondent No. 2 had no jurisdiction or authority u/s 21(1) of the Punjab Act to revise the order passed by the Assessing Authority.

6. On the other hand, Mr. D.S. Brar, learned Assistant Advocate-General, submitted that the decision of the Tribunal or this Court cannot be termed or treated "an information" as envisaged u/s 11A, which may have come to the notice of the revising authority subsequently and that the matter was being decided on the basis of the material already available, i. e., which was present before the Assessing Authority.

7. After giving our thoughtful consideration to the entire matter, we find no merit in the contention of the learned Counsel for the petitioner.

8. The point in issue is not *res integra*, as it had arisen earlier in *Asian Rubber and Plastic Industries v. State of Punjab* [1982] 50 STC 383 wherein a similar contention had been raised and was repelled. The relevant observations read as under :

Mr. Sarwal has further contended that since in the present case information in the form of a decision of this Court was made available to the authorities, Section 11A of the Act will be applicable because the word "information" occurs in Section 11A of the Act and not Section 21 of the Act. To say the least this argument of the learned Counsel is far-fetched. Only because the word "information" occurs in Section 11A of the Act and this word has been interpreted to include the correct state of law it will not follow that the provisions of Section 11A are automatically attracted to the case. The Assessing Authority had decided the cases of the petitioner for the three years and on the authority of a judgment of the State Sales Tax Tribunal, had held that transmission rubber belting was not taxable, He had considered all the evidence and other material on the file. The revisional authority has not acted on any outside information. It has not taken into account any material which was not available to the Assessing Authority. The judgment of this Court does not provide any factual material, which was not on the file of the Assessing Authority. The State Sales Tax Tribunal had interpreted an entry in the Act in one way and held the sale of transmission rubber belting to be exempt from tax under the Act. However, this Court while deciding *Laxmi Machinery Store's* case [1977] 39 STC 87 interpreted this very statutory provision and held that transmission rubber belting is taxable. Now the

audit section has only brought the true legal position to the notice of the revisional authority. They have not put in new facts before the authority. The decision of this Court will relate back to the time of enactment of the provisions in the Act. It will be deemed to be the state of law even when the assessment orders were passed. Section 21(1) of the Act gives plenary powers of revision to the Commissioner. There is no period of limitation prescribed for the exercise of this power. Exercising revisional powers, respondent No. 2 could reopen the cases of the petitioner beyond the period of five years which is the limitation for the Assessing Authority to review his own order. The period of limitation as prescribed by Section 11A of the Act is not applicable to the cases in which the revisional authority while deciding the revision does not rely upon any material which was not present before the Assessing Authority at the time of decision of the case. If the revisional authority relies upon or takes into account some material which was not present before the Assessing Authority, then according to a Full Bench decision of this Court in *Hari Chand Rattan Chand & Co. v. Deputy Excise and Taxation Commissioner {Additional}, Punjab* [1969] 24 STC 258 (FB) the Assessing Authority can exercise its suo motu powers only within a period prescribed u/s 11A of the Act. The relevant observations of their Lordships are as under:

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 u/s 11A 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 emphasize, 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.

9. 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 Asian Rubber and Plastic Industries" case [1982] 50 STC 383 is unassailable and we are in full agreement with the same.

10. In this view of the matter, we hold that the proceedings have rightly been initiated u/s 21(1) of the Punjab Act against the petitioner.

11. No other point arises for consideration.

12. For the reasons recorded above, these petitions fail and are dismissed, but in the circumstance of the case, we make no order as to costs.