

(1964) 01 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1934 of 1963

Madan Mohan and Another	Vs	APPELLANT
The District Excise and Taxation Officer and Another		RESPONDENT

Date of Decision : 27-01-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 11A

Citation : (1964) 15 STC 648

Hon'ble Judges : Inder Dev Dua, J; H.R. Khanna, J

Bench : Division Bench

Advocate : G.C. Mittal, for the Appellant; D.S. Nehra, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Inder Dev Dua, J.—Madan Mohan and M/s. Mangat Rai Madan Mohan, through Madan Mohan, partner of the firm, have approached this Court under Article 226 of the Constitution for appropriate writs, orders or directions on the following allegations. M/s. Mangat Rai Madan Mohan, Kot Kapura, was a partnership concern consisting of two partners, namely Mangat Rai and Madan Mohan ; it came into existence under a deed of partnership on 1st April, 1959, and carried on the business of commission agents at Kot Kapura. For the year 1959-60, this firm was assessed under the Punjab General Sales Tax Act on the 24th March, 1961, and for the year 1960-61 on 29th July, 1961. The amounts assessed were duly paid. The firm was dissolved by a dissolution deed dated 31st May, 1962, with effect from the same day, and the assets and liabilities were divided between the partners, with the result that the firm came to an end on that very day. The partners of the dissolved firm did not do business of commission agency or any other business jointly as partners or otherwise after the date of the dissolution. On 3rd August, 1963, the firm through its partners received from the District Excise and Taxation Officer, Bhatinda, respondent No. 1, notice for reassessment of sales tax for the years 1959-60 and 1960-61 with a direction

to appear before him on 16th August, 1963. The, case was adjourned from time to time and on 23rd September, 1963, the petitioners filed an application that since the firm had been dissolved before the notice for reassessment was issued, the said notice was illegal. No order was passed on this application nor was any communicated to the petitioners and. the case was adjourned to 4th October, 1963, for reassessment. On 28th September, 1963, the petitioners sent an application through their Advocate to respondent No. 1 for stay of proceedings so as to enable them to approach this Court on the writ side and obtain a stay order. This prayer was not acceded to and the petitioners were informed that the assessment would be finalized on 4th October, 1963. On the last mentioned date, some accounts of the petitioners' firm were seen by respondent No. 1 but no order of assessment was made. On 15th October, 1963, the petitioners received a notice of demand dated 11th October, 1963, for the year 1959-60 but there was no information about the assessment for the year 1960-61. After narrating these facts, it is averred that the assessment orders and proceedings for the . years 1959-60 and 1960-61 are illegal, without jurisdiction and bad in law on the ground that no reassessment proceedings could legally start after the dissolution of the firm. Reliance in this connection has been placed on a Full Bench decision of this Court in Jullundur Vegetable Syndicate v. Punjab State 64 P.L.R. 351, and indeed this is the only point on which stress has been laid on behalf of the petitioners.

2. In the return which was filed on 20th November, 1963, reliance was placed on the amendment effected in the Punjab General Sales Tax Act and it was pleaded that since the case of the petitioners for the years 1959-60 and 1960-61 for the purpose of reassessment were pending before the Assessing Authority, the assessments were framed by him in the light of the provisions of the amended Act and the assessments had been actually made u/s 11A within the prescribed period of four years.

3. The petitioners placed on the record additional grounds dated 30th October, 1963, in which it was averred that the firm had been dissolved on 31st May, 1962, and the information of this dissolution was given to the Assessing Authority on 2nd June, 1962, and that in spite of this information having been brought to the notice of the Assessing Authority, the impugned orders were passed which are wholly illegal and in excess of jurisdiction. In the affidavit in reply sworn by the Excise and Taxation Commissioner on 28th November, 1963, it was pleaded that the Assessing Authority had definite information in his possession that part of the petitioners' turnover for the years 1959-60 and 1960-61 had escaped assessment. This had been detected by the Assessing Authority in the course of inspection of the petitioners' business premises on 19th May, 1962, when the petitioners were found in possession of "C" Forms (both portions original and duplicate) for the said two years. According to Section 11A of the Punjab General Sales Tax Act, the Assessing Authority possessing definite information of escaped assessment could frame reassessment. It was expressly denied that the petitioners had sent any intimation about the

dissolution of the firm on 2nd June, 1962. Such information was sent only on 3rd August, 1962, though they were required to do so under the law within 30 days of the date of the change in the constitution of the firm. As the petitioners' case for the years 1959-60 and 1960-61 for purpose of reassessment were pending before the Assessing Authority, the impugned assessment was in accordance with law.

4. The respondents have also produced the record of the ease and have drawn our attention to two notices of reassessment in Form S.T. XIX dated 26th May, 1962, sent by the Assessing Authority to M/s. Mangat Rai Madan Mohan, Kot Kapura, stating that in consequence of definite information in his possession, the Assessing Authority had reasons to believe that taxable turnover of the assessee's business assessable to sales tax for the year ending 31st March, 1960, had been under-assessed and that the Assessing Authority was proposing to reassess the said turnover. For this purpose, the presence of the firm was required on 7th June, 1962, to show cause why the contemplated action should not be taken. From the record we have also been shown the inspection note of the Assistant Excise and Taxation Officer dated 19th May, 1962, which quite clearly shows that "on inspection of the shop of M/s. Mangat Rai Madan Mohan, Kot Kapura, in the presence of Shri Madan Mohan, partner, the said officer accompanied by Shri R. L. Sehgal, Taxation Sub-Inspector, checked some of the entries from the books for the years 1959-60 to 1962-63 and found that in respect of certain exports the dealer had been keeping both parts of "C" Form received by him for the years 1959-60 and 1960-61 which created doubt whether or not the dealer had written such sales at the time of assessment. As the matter required thorough examination, the books for the years 1959-60 and 1960-61 were taken into possession, though books for the years 1961-62 and 1962-63 were signed at each written page and left with the dealer. We also find on the record a memorandum dated 23rd May, 1962, from the Assistant Excise and Taxation Officer addressed to the Taxation Sub-Inspector, Kot Kapura, asking the latter to collect the information of purchases and despatches during the years 1959-60, 1960-61 and 1961-62" in respect of, inter alia, M/s. Mangat Rai Madan Mohan.

5. This material seems to suggest that on the date on which the petitioner-firm purports to have dissolved itself, an enquiry into reassessment was already pending and indeed nearly 12 days earlier, the shop had been visited by the Assistant Excise and Taxation Officer in the company of the Taxation Sub-Inspector and damaging material discovered and some books taken possession of. The respondents' learned counsel has, in addition to supporting the validity of the assessment, also raised two preliminary objections. In the first instance, he has submitted that a joint petition relating to assessment for two years is not competent and in the second place he has contended that there is an equally effective and adequate alternative remedy by means of an appeal which should have been resorted to and this Court should not go into the merits of the controversy on writ side.

6. The petitioners' learned counsel has tried to meet these objections" by the submission that the grounds on which the assessments are challenged in regard to both the assessments are similar and, therefore, there is no legal bar to a joint petition relating to two years' assessment. In reply to the second objection, he has emphasized that if the impugned order is tainted with want of jurisdiction, then the mere existence of an alternative remedy is no bar and this Court should dispose of the petition on the merits.

7. In so far as the objection based on the ground of a joint petition assailing the assessment of more than one year is concerned, in my opinion, the writ petition having been admitted, it would not be proper and just to throw out the petition on this ground, particularly when the grounds of challenge are exactly similar.

8. Coming on to the objection based on the existence of an equally efficacious alternative remedy provided in the statutory machinery, it is no doubt true that the existence of such alternative remedy is not always a sufficient reason for refusing a party quick relief by a writ or order, prohibiting an authority acting without jurisdiction from continuing such action, or quashing an order in a clear-cut case, where threat to impose or realize the tax appears to be obviously without authority of law, and it is not necessary for the purpose of such determination to go into the facts. But too much interference through extraordinary remedies in the sphere of taxation ignoring the statutory machinery for redress of grievances has frequently been disapproved and it does not deserve to be encouraged as a substitute for the statutory remedies; such interference should ordinarily be confined to special circumstances in which the grave illegality of the tax or want of authority is apparent on the face of the record. The matter really depends on the discretion of the writ court-albeit judicial discretion guided by sense of justice and sound principles of law-exercisable on consideration of the facts and circumstances of each case, and it is inexpedient to lay down any rigid rule of law applicable to all cases.

9. Adverting, therefore, to the facts of the present case, the controversy centres round the question of fact, namely, whether or not the assessing authority issued notices to the petitioners on 26th May, 1962, as appears to be the case from the record produced by the respondents. The petitioners deny that the signatures on the notices as a token of service are of any one of the firm's employees or representatives. But the determination of this matter should more appropriately be determined by the departmental authorities and not by the writ court.

10. The second contention raised on behalf of the respondents is that the revision or reopening of assessment already made, on the ground that the assessee has been under-assessed on account of his having concealed certain transactions, is not hit by the ratio of the Full Bench decision of this Court in the case of Jullundur Vegetable Syndicate's case 64 P.L.R. 351. It may here be pointed out that it is not urged by the petitioners in the arguments before us, though in the writ petition it was undoubtedly pleaded, that the assessments are bad having been completed after the expiry of three years. Indeed, in view of the

recent Supreme Court decision by a Bench of five Judges in Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur, etc. [1963] 14 S.T.C. Nag 976, which has recently been followed in this Court by the Hon'ble Chief Justice and Harbans Singh, J. in Kushi Ram Behari Lal and Co. v. The Assessing Authority C.W. No. 413 of 1962, decided on 31st December, 1963; since reported at [1964] 15 S.T.C. 165, this position is hardly tenable. The Supreme Court had to consider the provisions of the C.P. and Berer Sales Tax Act. The following passage from the judgment of the Supreme Court has been reproduced by the Bench of this Court in the aforesaid case :-

Assessment proceedings must be held to be pending from the time the said proceedings are initiated until they are terminated by a final order of assessment. Proceedings duly initiated in time can be completed without time-limit.

11. In this connection, it is also desirable to bear in mind that power to tax and the effective exercise of that power are indispensable to the proper functioning of Government, in that, tax measures facilitate good social order ; in the case of a welfare State of socialistic pattern, its importance is somewhat greater. It is of course undeniable that the imposition of tax must be founded on clear, certain and unambiguous statutory provisions, but it is equally essential to keep in view the fact that evasion of lawful tax by dishonest means or by fraudulent shams, deserves to be effectively checked, for, successful fraud on, and illegal evasion of, revenue must tend to increase pro tanto the rate of tax on the shoulders of a great body of good and honest citizens, who do not desire to adopt such manoeuvres. Liability to be taxed, it may be pointed out, is, broadly speaking, capable of being divided into two stages. The first is the stage when the liability to be taxed is incurred ; the second stage comes when such liability is computed and the assessed tax recovered. In view of the problems and difficulties involved in the assessment and collection of taxes, the computation and recovery demands a workable approach, which should promote to achieve the object. Our tax laws, as is obvious, are largely based on the theory of self-assessment. This naturally calls for honesty from a great majority of taxpayers in order to make the assessment and collection of tax administratively feasible. These considerations seem to be relevant and deserve to be borne in mind in discovering the legislative intention in regard to the time-limit within which assessment proceedings may be considered to be required by law to be completed.

12. If, therefore, the proceedings for assessment were actually initiated prior to the giving of the notice of its dissolution by the assessee-firm, then the petitioners can scarcely be held entitled to take shelter behind the ratio of the Full Bench decision in Jullundur Vegetable Syndicate's case 64 P.L.R. 351. The question whether or not the proceedings were so initiated can thus, in my opinion, be more appropriately decided by the department in accordance with the statutory machinery and this Court should decline in its discretion to embark on

an investigation into the controversial facts on the writ side.

13. In fairness to the respondents' learned counsel, it may be mentioned that he also faintly suggested during the course of arguments that the Full Bench decision mentioned above failed to take into account certain important aspects and that, therefore, it may require re-examination. In my view, it is not necessary to go into that question in the present case because the construction placed on the ratio of the Full Bench decision by the Division Bench of this Court in Khushi Ram Behari Lal's case [1964] 15 S.T.C. 165 controls the case before us.

14. Shri Mittal has in the end submitted that his clients' appeal to the Appellate Tribunal would very likely be barred by time. It is true that this factor has sometimes been taken into account by Courts in considering whether or not to interfere on writ side. But in a case like the present, I do not think it is possible for this Court to convert itself into a tribunal of fact or of appeal in the present proceedings. In this connection, I must point out that whenever an aggrieved party decides to by-pass or ignore the statutory remedies provided by law and comes to this Court for redress of grievances under Article 226 of the Constitution, he runs a considerable risk, and if the ultimate decision goes against him, he has only to thank himself for the consequences. It can scarcely lie in his mouth to insist on his controversy being settled by this Court, merely because he may have been disabled from availing the statutory remedy on account of lapse of time due to his own deliberate and conscious act, when according to law this function should more appropriately be performed by the statutory Tribunal.

15. For the foregoing reasons, this petition fails and is hereby dismissed but without costs.

H.R. Khanna Khanna, J.

16. I agree.