

(1965) 07 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 119 and 893 of 1965

Maheshwari Devi Jute Mills

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 20-07-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1966) 17 STC 106

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : M.P. Mehrotra and J. Sarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—These two petitions are under Articles 226 and 227 of the Constitution. They seek to quash provisional assessment orders passed under the U. P. Sales Tax Act. Petition No. 119 of 1965 relates to the second quarter of the assessment year 1964-65 ending 30th June, 1964. Petition No. 893 of 1965 relates to the third quarter of the assessment year 1964-65. The facts of both the writ petitions are similar. The questions of law raised are identical. Both can, therefore, conveniently be decided together.

2. On 28th July, 1964, the petitioner filed a return for the quarter ending 30th June, 1964, showing a net taxable turnover of Rs. 5,74,708.54 p. The petitioner did not deposit Rs. 22,917.50 the admitted tax payable on this amount. It made an application for three months' time to pay the admitted sales tax. The Sales Tax Officer rejected the prayer for extension of time and directed the petitioner to deposit the admitted tax immediately failing which necessary action shall be taken. The petitioner did not deposit the admitted amount of the tax. Ultimately on 31st October, 1964, without any prior notice to the petitioner, the Sales Tax Officer passed a provisional assessment order purporting to be under Rule 41(3) of the rules framed under the U. P. Sales Tax Act for the quarter ending 30th

June, 1964. In this assessment order it was stated that as the petitioner has failed to deposit the admitted amount of tax, the return filed by him is not in order and as such is rejected. The Sales Tax Officer then proceeded to assess the petitioner to the best of his judgment on a turnover of Rs. 10,60,000. On this turnover the tax liability came to Rs. 42,200.

3. The petitioner was asked to deposit the same within 30 days of the receipt of the order. This order is sought to be quashed in Writ Petition No. 119 of 1965.

4. Similarly the petitioner filed a return for the third quarter ending 30th September, 1964, showing a taxable turnover of Rs. 5,54,101.73 p. on 28th October, 1964. The petitioner did not deposit the admitted tax which came to Rs. 22,067.78 p. He applied for extension of time which was refused. Ultimately the Sales Tax Officer passed a provisional assessment order on 6th January, 1965, to the best of his judgment. He assessed the petitioner on a turnover of Rs. 10,60,000 on the basis of which he directed the petitioner to deposit Rs. 42,200 as sales tax within 30 days of the receipt of the order and the enclosed demand notice. This assessment order is challenged in Writ Petition No. 893 of 1965.

5. Sri Jagdish Swarup, learned counsel for the petitioner, urged that the scheme of the U. P. Sales Tax Act clearly shows that sales tax is chargeable only on an yearly basis. The unit of the liability for assessment is the financial year. As such the provisions of Rule 41(3) of the rules which provide for provisional assessment for a month or a quarter of the assessment year are ultra vires the powers of the rule-making authority. The second submission was that in so far as Rule 41(3) does not provide for any notice prior to the passing of the best judgment assessment, it is contrary to Section 7(3) of the U. P. Sales Tax Act. In any event, it violates the principles of natural justice and is void on this ground.

6. In order to appreciate these contentions it is necessary to read the relevant provisions of the Act. Section 3 is the charging section. It provides that every dealer shall, for each assessment year, pay a tax on his turnover of such year which shall be determined in such manner as may be prescribed. The liability is for the assessment year and is to be determined with respect to the turnover of such year., Section 2(j) defines "assessment year" to mean the twelve months ending on 31st March, i.e., the financial year. Section 3-A entitled the State Government to declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales as may be specified. Section 3-AA mentions certain kinds of goods in respect of which sales tax is eligible only at the point of sale by a dealer to the consumer. Section 4 of the Act provides for exemption from tax on sale of certain articles such as water, milk, salt, newspapers, motor spirit and any other goods which the State Government may notify. u/s 4-A of the Act the State Government may if it is of the opinion that it is necessary so to do for increasing production of any goods, declare that the turn-r over in respect of such goods by the manufacturer thereof shall be exempted from sales tax or be liable to tax at such reduced rates as it may fix. u/s 5 the State Government has been authorised to allow rebates

up to full amount of tax in respect of any goods at any specified point in the series of sales of such goods.

7. The tax is thus payable in respect of such turnover as taxable that is to say, the turnover of the dealer after deducting therefrom the turnover in respect of goods and transactions referred to in Sections 3-A, 3-AA, 4, 4-A and 5 of the Act. Section 7 of the Act provides for the determination of the turnover and the assessment of tax. It is the machinery section. It reads as follows :

7. (1) Every dealer who is liable to pay tax under this Act shall submit such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed, but the assessing authority may in its discretion, for reasons- to be recorded, extend the date for the submission of the return by any person or class of persons.

(1-A) Before submitting the return under Sub-section (1) or along with such return the dealer shall deposit in such manner as may be prescribed, the amount of tax due on the turnover shown in such return.

(2) If the assessing authority, after such enquiry, as he considers necessary, is satisfied that any returns submitted under Sub-section (1) are correct and complete he shall assess the tax on the basis thereof.

(3) If no return is submitted by the dealer under Sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof :

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

8. Section 7-A deals with provisional assessment. It runs as follows :

7-A. (1) The State Government may require any dealer to submit a return of his turnover of a portion of the assessment year, and the assessing authority may, without prejudice to the provisions of Section 7, make provisional assessment in respect of such portion of the assessment year in accordance with the provisions of this Act in so far as they may be made applicable if the turnover of the dealer as determined by the assessing authority for such portion of the assessment year- is not less than such proportion of the amount, if any, specified in or notified under the first proviso to Sub-section (3) or Sub-section (3) of Section 3-D, as the case may be, as the period under assessment bears to twelve months.

(2) Where the assessing authority has made a provisional assessment under Sub-section (1) it shall not, by reason of such assessment, be precluded from redetermining the turnover and making the assessment for the whole year.

9. Of the rules, Rule 41 is relevant. It provides :

(1) Every dealer who is liable to pay tax under the Act shall, before the last day of July, October, January and April, submit to the Sales Tax Officer a return of his gross turnover for the quarters ending June 30, September 30, December 31 and March 31, respectively in Form IV :

Provided that a dealer to whom Sub-section (1) of Section 18 applies shall submit the return for the quarter in which business is discontinued within thirty days of the date of such discontinuance :

Provided further that every dealer to whom Sub-section (2) of Section 18 applies shall submit such return within 30 days of the expiry of each month during the year in which the business is commenced.

(2) Before submitting the return under Sub-section (1), the dealer shall deposit in the treasury the amount of tax calculated by him on the turnover shown in such return and shall submit the treasury chalan with the return, or submit with the return a cheque for the amount so calculated.

(3) If no return is submitted in respect of any quarter or month, as the case may be, within the period, or if the return is submitted without the treasury chalan or cheque, the Sales Tax Officer shall, after making such enquiry as he considers necessary, determine the turnover to the best of his judgment, provisionally assess the tax payable for the quarter or month as the case may be and serve upon the dealer a notice in Form XI; and the dealer shall pay the sum demanded within the time and in the manner specified in the notice.

(4) Deleted.

(5) Upon the expiry of the assessment year, the Sales Tax Officer shall, after such enquiry as he may deem necessary, determine the turnover of the assessment year and shall assess tax thereon.

(6) If the tax assessed differs from the total amount deposited or paid by cheque, the difference shall be realised or refunded by the Sales Tax Officer, as the case may be.

(7) Every return submitted u/s 18 shall be in Form IV;

(8) For the assessment year 1948-49 the return for the quarter ending June 30, shall be submitted by August 31, 1948.

(9) Deleted.

10. Section 3 clearly raises an yearly liability and the unit of taxation is the financial year. It does not contemplate a periodical assessment to tax. This section does not deal with the method of calculation of the tax or with the machinery for its quantification. That is dealt with under Sections 7 and 7-A. Section 7 requires submission of returns at such intervals as may be prescribed by the rules. It authorises the assessment of the tax after necessary enquiries. It also provides for the making of best judgment assessment if no return has been

filed by the dealer or where the return filed is incorrect or incomplete. The provisions of Section 7 are referable to the liability created u/s 3. It contemplates the making of a single assessment order with respect to the assessable unit, namely, the financial year. The assessment order that can be passed u/s 7 is the final assessment order. The learned standing counsel urged that Section 7 contemplates the passing of the provisional assessment orders as well. He emphasised that under Sub-section (2) of Section 7 the assessing authority can pass an assessment order in respect of any return submitted under Sub-section (1). Even if Section 7(2) provides for the making of more than one assessment order, or if it can be read as authorising the assessing authority to pass an assessment order in respect of each return submitted under Sub-section (1), each of such assessment orders shall be the final assessment order, because, there is no provision in any part of Section 7 to authorise the assessing authority to vary or change such an assessment order at the end of the year and to pass a consolidated order for the whole year. If Section 7 is read as authorising the passing of assessment orders for different portions of the assessment year, it will be modifying the scheme provided for in the charging section, namely, Section 3 that the tax is eligible on the turnover of the financial year. Section 7 is only a machinery section and must be interpreted so as to advance the object and scheme of the charging section. Section 7 cannot, therefore, be read so as to authorise the passing of any but one assessment order for each assessment year. Similarly the power conferred by Section 7(3) to pass a best judgment assessment also is referable to the unit of assessment mentioned in Section 3, namely, the assessment year. No best judgment assessment can be passed, under this subsection, for portions of the year. The requirements of Section 7 that a dealer shall submit returns periodically in the course of the assessment year and that he shall deposit the admitted amount of tax deals with the method of calculation and payment, and does not change the nature of the tax which remains an yearly tax.

11. The learned standing counsel submitted that the power to make a provisional assessment flows from the provisions of Section 7-A also. This section provides that the State Government may require a dealer to submit a return of a portion of the assessment year and the assessing authority may make a provisional assessment in respect of such portion of the assessment year. Section 7-A does not provide for the assessment of the tax finally but only provisionally. It reflects a desire on the part of the Legislature to secure payment of the tax by the dealer at the earliest. To the same end Rule 41 has been enacted. Section 7-A and Rule 41 providing as they do for tentative or provisional assessment for portions of the year, subject to a final assessment being made at the end of the year for the whole year, do not change the nature of the liability to tax. The power of provisional assessment conferred by Section 7-A is not in derogation of the power of assessment provided for by Section 7 but is subservient thereto. This is clear from the fact that the provisions of Section 7-A operate "without prejudice to the provisions of Section 7."

12. Learned counsel for the petitioner urged that Rule 41 of the rules is not referable to Section 7-A. u/s 7-A the State Government can "require" any dealer to submit a return for a portion of the assessment year. The phrase "may require any dealer" postulates a specific order in respect of an individual dealer. It does not contemplate the passing of a general order requiring all dealers to submit several returns for various portions of the assessment year. It is also urged that the phrase "in so far as they be made applicable" in this section means that the power to pass an assessment order can be exercised in accordance with such provisions of the Act which are specifically made applicable. None of these arguments appeals to me. Section 2(f) defines the word "prescribed" to mean prescribed by rules made under this Act. Therefore, wherever the word "prescribed" is used in the Act it will mean prescribed by the rules made under the Act. But this definition does not mean that rules cannot be made except where the word "prescribed" has been used in the Act. Section 24 authorises the State Government to make rules to carry out the purposes of this Act. Section 7-A entitles the State Government to "require" any dealer to submit a return. The word "require" does not convey the idea that the State Government must act by a special order. The State Government can pass a general order. The rules that are made by the State Government are in the nature of general orders passed by the State Government. The power "to require" u/s 7-A and the power to make rules u/s 24 have both been conferred on the State Government. In my opinion the State Government can validly frame a rule with respect to the filing of returns contemplated by Section 7-A. Similarly the phrase "any dealer" in the section does not prohibit the order or rule operating on several dealers or class of dealers at the same time. Rule 41 when it speaks of every dealer liable to pay tax under the Act, refers to each dealer, and is well within the provisions of Section 7-A. Section 7-A requires a dealer to submit "a return" of his turnover of a "portion of the assessment year". Under the General Clauses Act singular includes plural. Therefore, the State Government can require the submission of more than one return for more than one portion of the assessment year. This is what Rule 41 contemplates. It asks a dealer to submit a return for each quarter of the assessment year. With respect to the phrase "in so far as they may be made applicable", the section does not specify the authority which is to make the provisions of the Act applicable. This phrase is, therefore, susceptible to the interpretation that some external authority has to make an order applying particular provision of the Act to the proceedings u/s 7-A. A reasonable interpretation appears to be that the assessing authority shall, in the course of proceedings u/s 7-A, make use of such provisions of the Act as are inherently useful and applicable. Section 7-A, therefore, confers the powers of making provisional assessments for portions of the assessment year. Rule 41(3) when it provides for the making of a provisional assessment order cannot be said to be conferring any independent jurisdiction on the assessing authority which has not already been conferred by the Act.

13. Learned counsel for the petitioner has relied upon the decision of the High

Court of Punjab in *Mansa Ram Sushil Kumar v. The Assessing Authority, Ludhiana* [1964] 15 S.T.C. 857. In that case it was held that the Punjab General Sales Tax Act imposes an yearly tax and therefore the assessment has to be made only at the end of the year and cannot be made during the pendency of the year as and when a return is filed. Their Lordships noticed that there was no provision in the Act empowering the making of a provisional assessment before the end of the year. It appears that there is no provision in the Punjab Act comparable to Section 7-A of the U. P. Sales Tax Act. The provisions of the Punjab Act, therefore, materially differ from the U.P. Act. That case cannot, therefore, be treated as an authority for determining the same question under the U. P. Act. The decision of the Supreme Court in *Mathra Prashad and Sons Vs. State of Punjab*, is quite unhelpful. The Supreme Court was concerned with the question as to when would an exemption commence operation when there was no specific provision in the Act for it, and when the notification providing for the exemption also did not fix any date for the commencement of the exemption. Their Lordships reviewed the provisions of the Punjab Sales Tax Act and held that it provided for an yearly tax and hence in order to make the exemption operate evenly for all classes of dealers, namely, those who pay the tax quarterly or monthly or annually, the exemption must operate for the whole year. That case did not touch the problem whether the power to pass a provisional assessment order subject to a regular assessment being passed at the end of the year would change the nature of the tax from being an yearly charge. The provisional assessment order passed in this case cannot, therefore, be held to be invalid on this ground.

14. The next submission of the learned counsel was that Rule 41(3) was contrary to Section 7(3) inasmuch as it did not provide for a reasonable opportunity mentioned in Section 7(3) and was as such in conflict with it and void. As held above, Rule 41(3) is not referable to Section 7(3). Section 7(3) comes into play when the assessing authority proposes to pass the final order for the assessment year. As such it does not apply to assessment orders passed for portions of the year. Rule 41(3), therefore, cannot be tested on the anvil of Section 7(3).

15. But I am not satisfied that on its own terms Rule 41(3) excludes a reasonable opportunity of being heard before a best judgment assessment is passed by the Sales Tax Officer. In a case where a return is not filed or where the return is filed without depositing the admitted tax, Rule 41(3) requires that "the Sales Tax Officer shall after making such enquiry as he considers necessary determine the turnover to the best of his judgment ..." An enquiry is contemplated. Assessment proceedings are quasi-judicial in nature. The principles of natural justice are attracted to it. It is incumbent upon the Sales Tax Officer to comply with the principles of natural justice, there being nothing in this or any other rules or any other part of the Act dispensing with the compliance of such principles. One of the principles of natural justice is that no one should be condemned unheard. Before determining the turnover to the best of his judgment, it is incumbent upon the Sales Tax Officer to afford the assessee a

reasonable opportunity of being heard in the matter. It is not disputed that under Rule 41(3) the officer cannot pass an arbitrary order. He cannot pass it solely at his whim. In the instant case the petitioner did file a return showing his turnover for the relevant quarter. Even if the Sales Tax Officer rejected the return on the ground that the admitted tax had not been paid, it was open to him to have accepted the amount of the turnover mentioned in the return and if he was not inclined to do so, he ought to have given an opportunity to the assessee of being heard before determining the turnover. In this case the Sales Tax Officer rejected the return filed by the petitioner, but did not afford him any opportunity to be heard before passing the best judgment assessment, the chance offered to pay the tax being irrelevant. The impugned assessment order thus violates the principles of natural justice and is on that ground void and deserves to be quashed.

16. Learned counsel for the State has invited my attention to the case of Qamruddin v. Commissioner of Sales Tax, U.P. [1963] 14 S.T.C. 534 where a Bench of this Court interpreted the proviso to Section 7(3) and held that that proviso requires the assessing officer to give only one opportunity to the assessee of proving the correctness or completeness of the return before making the best judgment assessment. It was held that the only notice required by the statutory provision was to enable the assessee to prove the correctness or completeness of the return filed by him, and not a second notice to participate in the enquiry, if any, made by the officer before passing the best judgment assessment. Section 7(3) and its proviso were held to specifically provide for an opportunity of hearing only at one stage of the proceeding. When there is a specific statutory provision, the principles of natural justice are not attracted. Rule 41(3) does not speak of any opportunity of hearing at all. The ratio of Qamruddin's case [1963] 14 S.T.C. 534 will not be applicable. There being no specific exclusion of an opportunity of hearing, the principles of natural justice would be attracted.

17. The petitions succeed. The impugned assessment orders dated 31st October, 1964, and 6th January, 1965, in each of the cases are quashed. The parties shall under the circumstances bear their own costs.