
(1964) 05 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 229 of 1963

Mansa Ram Sushil Kumar

APPELLANT

Vs

The Assessing Authority

RESPONDENT

Date of Decision : 01-05-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 141

Punjab General Sales Tax Act, 1948 — Section 10, 11, 11A, 12, 4

Citation : (1964) 15 STC 857

Hon'ble Judges : Gurdev Singh, J;A.N. Grover, J

Bench : Division Bench

Advocate : Bhagirath Dass and B.K. Jhingan, for the Appellant; T.S. Munjral, for the Respondent

Final Decision : Allowed

Judgement

A.N. Grover, J.—This is a petition under Articles 226 and 227 of the Constitution by which the order dated 22nd January, 1963, of assessment of sales tax for two quarters ending 30th June, 1962, and 30th September, 1962, have been challenged.

2. The petitioner is the sole proprietor of a firm known as Mansa Ram Sushil Kumar and is engaged in the business of selling oil at Ludhiana. This firm is registered under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act), and also under the Central Sales Tax Act, 1956. It appears that the petitioner-firm has to file quarterly returns and for the two quarters ending 30th June, 1962, and 30th September, 1962, it filed the returns and paid the amount of tax in accordance with the returns which were filed as required u/s 10 of the Act. On 11th December, 1962, the respondent issued a statutory notice u/s 11 in Form S.T. XIV. The petitioner appeared before the respondent on 31st December, 1962, and produced the declaration form as required under the Act in Form S.T. XXII. By the impugned order the respondent did not accept the contention of the

petitioner that sales had been made to registered dealers and created a liability of Rs. 35,185-59 nP. It is unnecessary to state the other facts because the only question which is to be decided is whether the respondent had the power and the jurisdiction to make the order of assessment for the two quarters mentioned before prior to the expiry of the assessment year which admittedly was to end on 31st March, 1963.

3. The petition has been referred by my learned brother Gurdev Singh, J., to a Division Bench in view of a decision by D.K. Mahajan, J., in *Tara Chand Lajpat Rai v. The Excise and Taxation Officer* Civil Writ No. 1123 of 1962 in which it has been held that the department could make the assessment on the quarterly or monthly returns when filed and once the assessment is made, the tax can be recovered. My learned brother Gurdev Singh, J., however, felt doubtful about the correctness of such a view owing to the decision and the observations made in *Mathra Prashad and Sons Vs. State of Punjab*, in which the entire scheme of the Act was discussed by their Lordships.

4. It will be futile to refer to the relevant provisions of the Act because of their detailed examination in the majority judgment of the Supreme Court in *Mathra Prashad and Sons Vs. State of Punjab*, . There, the appellants were a firm of general merchants which sold, among other goods, manufactured tobacco as defined in the Punjab Tobacco Vend Fees Act, 1954, which came into force in the State of Punjab from 1st April, 1954. The firm was also a registered dealer u/s 7 of the Act and till the end of March, 1954, was paying sales tax on manufactured tobacco also. It paid sales tax for the next quarter ending 30th June, 1954, as well. On 27th September, 1954, the Government issued a notification by which the schedule of exemptions u/s 6 of the Act was amended by the inclusion of item 51 which was " manufactured tobacco as defined in the Punjab Tobacco Vend Fees Act, 1954." Certain Press Notes were also issued by the State Government prior to the notification of 27th September, 1954, which need not be mentioned. The question which was raised before their Lordships was whether the exemptions contained in the notification issued on 27th September, 1954, had effect from that, date or from the beginning of the financial year. The arguments canvassed by the appellants and the respondents were noticed. The appellants emphasised the words " gross turnover during the year " in Section 4(1) and the words "taxable turnover every year of a dealer " in Section 5(1) and argued that the tax was to be computed yearwise and the exemption must, therefore, operate for the whole of the year in which it was made irrespective of the date on which the notification was issued. The respondents, on the other hand, emphasised the words "" gross turnover during any period " and " his turnover during that period " occurring in Section 5 and contended that the tax was not yearwise but accrued, so to speak, from day to day or at least from period to period within a year and the exemption thus operated not from the whole of the year but for the period within which it was granted, and referred in aid of this argument, to Sections 6 and 10. As regards Rules 20 and 23 of the Punjab General Sales Tax Rules, 1949, the contention of the appellants was that

they merely provided for making of returns at prescribed intervals and the collection of tax was for a period falling between those intervals, but the tax was the tax appropriate to the whole year's result. The respondents contended that the effect of Section 10 and the two rules was that the tax due for the period of the return was separate from any other tax for any other period. According to them, each period must be viewed separately and not as part of a year. The conclusion of their Lordships must be set out in their own words :-

There is no doubt that the tax is a yearly tax. It was payable, in the first instance, by a dealer whose gross turnover during the financial year immediately preceding 1st May, 1949, was above the taxable quantum. The tax is to be levied on the taxable turnover of a dealer every year. The difference between gross turnover and taxable turnover is this, that to arrive at the taxable turnover of any period some deductions have to be made for the same period. This clearly shows that the tax is for a year. The method of collection allow collection of tax at intervals ; in some cases, the tax is collected at the end of the year ; in some others, the tax is collected quarterly and in still other cases, even monthly.

5. It was further observed that the nature of the tax, as disclosed in Sections 4 and 5, was decisive. In Section 5 the tax was made leviable "on the taxable turnover every year of a dealer". The divisions of the year and the taxable turnover into different parts were to make easy the collection of tax, and form part of the machinery sections. Kapur, J., who delivered the dissenting judgment, was of the view that u/s 10 a dealer could be required to furnish his return at such intervals as might be prescribed and when he made a return, it must necessarily be of the goods on which during that period sales tax was exigible. u/s 11 the assessment of the tax either on the acceptance of the return or after production of such evidence as might be required was to be made. From the provisions of Section 11 it did not appear that returns, were to be scrutinised at the end of the year like in Income Tax cases and assessment made on the income of the year preceding the assessment year. The assessment was to be made in regard to each return whenever according to the rules the return had to be and was made. It is abundantly clear that the principal point of difference between the majority and the minority decisions is whether, owing to the provisions contained in Sections 10 and Hand the various rules, the tax was to be levied on the taxable turnover of a dealer every year or whether the tax was leviable quarterly or monthly as the Assessing Authority may decide. In the majority judgment, no doubt was left that the tax was for a whole year and the division of the year and the taxable turnover into different parts was meant to make easy the collection of tax; whereas according to the minority decision the tax was leviable in regard to each return whenever made according to the rules, i.e., quarterly or monthly.

6. In the present case the sole objection of Mr. Bhagirath Dass, counsel for the petitioner, is that although the petitioner had to submit a return every quarter and he had to pay into the Government Treasury or the Reserve Bank of India,

the full amount of tax due from him under the Act according to such return but the assessment of the tax could be made only after the expiry of the financial year and the Assessing Authority could not proceed to make an assessment order with regard to the return furnished for each quarter. In this connection the provisions of Section 11 are relevant but they do not furnish any guidance with regard to the point in controversy, namely, whether the Assessing Authority could make the assessment orders with regard to each return when filed. There is a good deal of force in the submission of Mr. Bhagirath Dass that in view of the majority decision in *Mathra Prashad and Sons Vs. State of Punjab*, the Assessing Authority has to make the assessment for a whole year and has to take into account any exemptions or deductions to which the assessee becomes entitled at any time during that year. If that be so, it is not possible to see how the Assessing Authority could make any final orders before the expiry of the year in question and proceed to make assessment with regard to each quarter as was done in the present case. Section 11A further indicates that according to the provisions of the Act it was never contemplated that an assessment order could be made with regard to a return for each period. This section provides for an eventuality when it is discovered that the turnover of the business of a dealer has been under-assessed, or escaped assessment in any year. The Assessing Authority is empowered within three years following the close of the year for which the turnover is proposed to be reassessed to proceed to reassess the tax payable on the turnover which has been under-assessed or has escaped assessment after giving the dealer a reasonable opportunity, in the prescribed manner of being heard. If an assessment can be made u/s 11 for each period, e.g., on the quarterly return as in the present case, it is not possible to see from which point of time the period of limitation prescribed in Section 11A will be calculated. It is also noteworthy that there is no provision in the Act similar to Section 22-B of the Income Tax Act, 1922, and Section 141 of the Income Tax Act, 1961, empowering the making of a provisional assessment before the end of the year. According to the majority judgment in *Mathra Prashad and Sons Vs. State of Punjab*, the filing of periodical returns and the payment of tax according to those returns is only a method of collecting the tax, be it quarterly or monthly. It appears, therefore, that there is no machinery in the Act by which the assessment can be made every time a return for a period is filed.

7. It is true that Section 11 contains language which may lend support to the view that the Assessing Authority can make an assessment with regard to each period for which the return is furnished. Similarly, Rule 33 of the Rules seems to indicate that a notice can be served in Form S.T. XIV upon a dealer for assessing him for a period or periods but the language of this rule is only consistent with the provisions of Section 11. It has been pointed out by the learned counsel for the respondent that if full effect is to be given to the plain language employed in Section 11, no serious difficulty will arise even if during the assessment year the dealer becomes entitled to any exemption or deduction, the benefit of which has to be given to him in respect of the whole year. He can in that eventuality claim a

refund u/s 12 of the Act, read with Rules 48 to 55. It cannot, however, be forgotten that all the provisions contained in the Act have to be read together . and, so read, it would seem that what is truly contemplated is that while making the assessment after the expiry of the assessment year the Assessing Authority shall proceed to assess the amount of tax due from a dealer on the basis of the periodical returns which have been filed. If the other view commended by the learned counsel for the respondent is to be adopted, it will mean following the minority decision of Kapur, J., in Mathra Prashad and Sons Vs. State of Punjab, who relied on the language of Section 11 a good deal for holding that sales tax was not a yearly tax like the Income Tax, which course is not permissible.

8. If the matter were *res Integra*, it may have been arguable that owing to the provisions of Section 11, read with the relevant rules, the Assessing Authority can make the assessment for each period for which the return is furnished but the majority judgment of the Supreme Court settles the matter so far as the nature of the tax and its incidence is concerned. If sales tax is a yearly tax, then the assessment has to be made at the end of the year and cannot be made during the pendency of the year as and when a return is filed in the absence of any clear and explicit provisions to that effect.

9. For the reasons given above, the petition is allowed and the order of assessment made by the respondent on 22nd January, 1963, is hereby quashed, it being open to that authority to make a proper order of assessment on the expiry of the assessment year. No other relief need be granted. In the circumstances, the parties are left to bear their own costs.

Gurdev Singh, J.

10. I agree.