

(1962) 04 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 168 of 1961

Nathu Ram Nohar Chand

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 23-04-1962

Acts Referred:

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

Citation : (1963) 14 STC 311

Hon'ble Judges : P.D. Sharma, J; Mehar Singh, J

Bench : Division Bench

Advocate : D.S. Nehra, for the Appellant; A.M. Suri, for A.G., for the Respondent

Final Decision : Allowed

Judgement

Mehar Singh, J.—This is a petition under Article 226 of the Constitution by firm Nathu Ram Nohar Chand of Dhuri against four respondents, namely, the State of Punjab, the Excise and Taxation Commissioner, Punjab, the Assessing Authority (the Excise and Taxation Officer), and the Assistant Excise and Taxation Officer, Barnala in Sangrur district, respectively 1 to 4, for a writ, direction or order quashing the notice dated March 9 and 10, 1959, by respondent 3 to the petitioner-firm u/s 11(2) of the Pepsu General Sales Tax Ordinance, 2006 Bk (Pepsu Ordinance No. 33 of 2006 Bk).

2. The petitioner-firm carries on kiriyana business at Dhuri. It filed the quarterly sales tax returns u/s 11 of Pepsu Ordinance No. 33 of 2006 Bk for the period 1st April, 1955, to 31st March, 1956. It also made a deposit of Rs. 2,126.76 nP. as sales tax according to the returns made. The last quarter of the year for which it filed returns ended on 31st March, 1956.

3. On March 9 and 10, 1959, respondent 3 issued notice in Form S.T. XIV, copy annexure A, to the petitioner-firm calling upon it to appear before him on a given date and time and to produce its accounts and documents as given in the notice

for the purpose of assessment for the period already referred to above informing the petitioner-firm that it could produce any evidence in support of its case, and to shocause why penalty not exceeding one and a half-times the amount of the tax be not imposed on it u/s 11(2) of the said Ordinance, and in the event of its failing to comply with the notice saying that respondent 3 shall proceed to best judgment assessment. To this notice the petitioner-firm on 7th January, 1960, gave a reply, copy annexure B, in which it took the stand that the notice having been issued two years after the expiry of the assessment year ending on 31st March, 1956, was invalid and under the lano assessment proceedings could be taken against it.

4. According to Sub-section (1) of Section 11 of Pepsu Ordinance No. 33 of 2006 Bk., if no returns are filed by a registered dealer or if the Assessing Authority is not satisfied that the returns filed are correct or complete, the Assessing Authority can within two years "after the expiry of such period", after giving the dealer a reasonable opportunity of being heard, shall proceed to best judgment assessment. On 2nd April, 1957, was gazetted the Punjab General Sales Tax (Extension) Act, 1957 (Punjab Act No. 4 of 1957), which confirmed the provisions of the Punjab General Sales Tax (Extension) Ordinance, 1957 (Punjab Ordinance No. 2 of 1957), which repealed Pepsu Ordinance No. 33 of 2006 Bk. and applied the Punjab General Sales Tax Act, 1948 (Punjab Act No. 46 of 1948), to the former Pepsu area. This Ordinance was published in the Gazette of 6th February, 1957. The period of two years is provided in Sub-section (1) of Section 11 of the Pepsu Ordinance No. 33 of 2006 Bk. Taking two years from 31st March, 1956, that period ended on 31st March, 1958. If according to Rule 19 of the Pepsu Rules, which rule requires filing of the return within thirty days of each quarter, an allowance of further 30 days is to be made, the period of two years then ended on 30th April, 1958. It will be seen that Punjab Ordinance No. 2 of 1956 as also Punjab Act No. 4 of 1957 came into force sometime before the expiry of that date and so Punjab Act No. 46 of 1948 was in force when the notice was given by respondent 3 to the petitioner-firm.

5. Now, the first four Sub-sections of Section 11 of Punjab Act No. 46 of 1948 are relevant here and the same are:

11. (1) If the Assessing Authority is satisfied without requiring the presence of registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him on a date and at place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(4) If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under Sub- Section (2), the Assessing Authority shall within three years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

6. Sub-section (4) of this section increases the period from two to three years within which the Assessing Authority can proceed to best judgment assessment and the period of three years is to be counted from the end of the period with regard to which a return has been furnished. So that this period of three years, according to this provision counts from 31st March, 1956, and three years complete on 31st March, 1959. Notice under Sub-section (2) of this section, which is comparable to Sub-section (1) of Section 11 of the Pepsu Ordinance No. 33 of 2006 Bk., was issued by respondent 3 to the petitioner-firm sometime before that date.

7. One of the arguments on the side of the petitioner-firm has been that the notice was not issued to it within the statutory period but as the notice is within the period that is no given in Sub-section (4) of Section 11 of Punjab Act No. 46 of 1948, so this argument on this aspect of the case has not been pressed.

8. Only one other matter has been argued in this case. Of course, the facts have not been denied by the respondents in the return. The argument of the petitioner-firm is that its case comes under Sub-section (4) and not under Sub-section (3) of Section 11 of Punjab Act No. 46 of 1948 and thus in vie of the decision of their Lordships in *Madan Lal Arora v. Excise and "Taxation Officer, Amritsar* [1961] 12 S.T.C. 387(PUNJ) the proceedings in assessment against it must be quashed. The assessment order was actually made on 13th December, 1960. It is obvious that if Sub-section (4) applies to the case of the petitioner-firm, it is a case to which their Lordships' decision as referred to above applied and the notice issued to it and the assessment order made against it have to be quashed, but if Sub-section (3) applies that may not be the result. The Assessing Authority issues notice of the type issued to the petitioner-firm, under Sub-section (2) of Section 11 of Punjab Act No. 46 of 1948. Then according to Sub-section (3) of this Section if the dealer produces evidence or the Assessing Authority requires production of some evidence, after the evidence has been taken the Assessing Authority shall proceed to assess the dealer to the tax due under the Act. This means that on receipt of notice under Sub-section (2), the dealer appears before the Assessing Authority and questions the issue of the notice and enters into the controversy to establish the correctness of his return. This he does by production of evidence on his own account, and the Assessing Authority may call some other evidence to satisfy itself. After this is done, the Assessing Authority proceeds to assess the tax on the amount due from the

dealer. Sub-section (4) of this section says that on a notice under Sub-section (2) if the dealer fails to comply with its terms, the Assessing Authority shall proceed to best judgment assessment within three years of the expiry of such period which has reference to "in respect of a period" appearing earlier in this Sub-section which period is the quarter for which return is made and the last date of that quarter will be taken as the date from which the period of three years will be counted. What needs emphasis is that the dealer must fail to comply with the terms of the notice as issued under Sub-section (2), and it is only when he does that this Sub-section is attracted and the Assessing Authority can within the period stated proceed to best judgment assessment. If this Sub-section applies, the last return being for the quarter ending 31st March, 1956, best judgment assessment could only be made on or before 31st March, 1959. Notice under Sub-section (2) was of course issued on March 9 and 10, 1959, but the assessment order is of 13th December, 1960, which is a date Subsequent to 31st March, 1959. No assessment could be made on the petitioner-firm according to the Supreme Court case already cited after the expiry of three years from 31st March, 1956.

9. The question then that turns for decision is really one not of labut of fact and that is whether the petitioner-firm failed to comply with the terms of notice under Sub-section (2) or it proceeded to justify its return by evidence according to Sub-section (3). The answer to this is simply to be found from one document and nothing else. That document is the reply of the petitioner-firm to the notice under Sub-section (2) of Section 11 and copy of that is annexurc B. In paragraph 2 of this letter the petitioner-firm says that the notice is invalid as no notice in Form S.T. XIV has been served and under no Act or Ordinance has it been served. In paragraph 4 it says that no proceedings could be started in the case after the expiry of two years from the period in which the return was made. This is again repeated in subsequent paras of the same letter and what is stated is that the proceedings of the Assessing Authority are bad in laand barred by time and with- out jurisdiction. This was to raise technical objections to the proceedings against the assessee-firm. In any other respect the petitioner-firm failed to comply with the terms of the notice and did not within the scope of Sub-section (3) appear to enter into the controversy in support of the return made by it. It led no evidence nor did it ask for an opportunity to lead evidence. The Assessing Authority called for no evidence. All that the petitioner-firm did was to point out that the action taken by the respondents was without jurisdiction and contrary to law. It is a different matter whether in this stand the petitioner- firm was or was not justified; the fact remains that it pointed this out to the Assessing Authority, but otherwise ignored the notice. The sub- stance of the matter on the facts then is that the petitioner-firm as dealer failed to comply with the terms of the notice issued to it under Sub-section (2) and it is Sub-section (4) of Section 11 that is attracted to its case, with the result that the assessment having been made three years after the quarter ending on 31st March, 1956, it cannot be maintained and has to be quashed.

10. In the result, this petition is accepted, the assessment made against the petitioner-firm is quashed. Respondent I will bear costs of the petitioner in this petition.

P.D. Sharma, J.

11. I agree.