(1964) 10 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1208 of 1963

Ram Dhari Mall Raj Kumar APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 28-10-1964

Acts Referred:

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

Citation : (1965) 16 STC 173

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : G.C. Mittal and N.C. Jain, for the Appellant; J.N. Kaushal, Advocate-General and M.R. Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—The petitioner-firm of Ram Dhari Mall Raj Kumar of Hissar has challenged in this petition under Article 226 of the Constitution of India the proceedings taken by the Assessing Authority for reassessment of sales tax in relation to the financial year 1958-59.

2. On the basis of the turnover shown in the return, the petitioner-firm was assessed to sales tax by the Assessing Authority, Hissar, and the liability imposed was of Rs. 6,978-55 P. This amount was duly paid by the petitioner-firm.

3. As a result of complaints made against this assessment, a notice in Form (S.T. XIX) was issued by the Assessing Authority to the petitioner-firm on 9th of March, 1961. This notice was served on the petitioner-firm on 13th of March, 1961. The books of account were examined and a "best judgment assessment" was made by the Assessing Authority on 26th of June, 1961, calling upon the petitioner to pay an additional sum of Rs. 1,371-93 P. Aggrieved by this order, the petitioner-firm filed an appeal in which the assessment was challenged on the ground that adequate opportunity was not afforded to it for presenting its case. This appeal was allowed on 17th of April, 1963. Fresh notice was issued

thereafter and it is now contended by Mr. Mittal, the learned Counsel for the petitioner, that the proceedings for reassessment on the basis of "best judgment" having been taken three years after the 31st of March, 1959, they are hit by the provisions of Sub-section (4) of Section 11 and Section 11A of the Punjab General Sales Tax Act, 1948. Sub-section (4) of Section 11 is to this effect:--

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.

4. Sub-section (1) of Section 11A is to this effect:--

If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been under-assessed, or escaped assessment in any year, the Assessing Authority may, at any time within three years following the close of the year for which the turnover is proposed to be reassessed, and after giving the dealer a reasonable opportunity, in the prescribed manner of being heard, proceed to reassess the tax payable on the turnover which has been under-assessed or has escaped assessment.

5. The phrase "proceed to assess" has been construed in a Full Bench of this Court in Jagat Ram Om Parkash v. The Excise & Taxation Officer, Assessing Authority, Amritsar, Civil Writ No. 169 of 1964, decided on 9th of October, 1964. The Full Bench was asked to resolve two conflicting views, one which considered that the time started from the issue of notice and the other when the final order of assessment on the basis of "best judgment" had been completed. The answer of the Full Bench is contained in the penultimate paragraph of the judgment of Dua, J., who, speaking for the Court, thus observed:

In my opinion, whenever a question arises as to whether or not an Assessing Authority has proceeded to assess to the best of his judgment, it is for that authority to show that it has so proceeded within the period prescribed by the statute. As to at what point of time, he did actually proceed to so assess would have to be determined on the facts and circumstances of each case in its own setting as it is not possible to lay down any definite and clear-cut test applicable to all cases. There must, however, be some definite act or step taken from which it can be clearly ascertained that from that point of time the Assessing Authority has proceeded to assess to the best of his judgment and the starting point of this process must be within the period of three years as provided in Section 11(4) of the Punjab Act.

6. Admittedly, the principle enunciated for the construction of Section 11(4) applies also to the case of reassessment u/s 11A. Notice in this case for opening the assessment was served on the petitioner-firm on 13th of March, 1961. The period of three years expired for the last quarter of the assessment year 1958-59 on 31st of March, 1963, and for the first quarter on 30th of June, 1961. The

notice which was served on the petitioner-firm was clearly within three years. The service of notice however, is not enough; something more has to be done to justify the reopening of assessment. In the present instance the Assessing Authority had undoubtedly proceeded to assess before the expiry of the period of three years, the order of reassessment having actually been made on 26th of June, 1961. There can be no manner of doubt that if the matters had rested there, the Assessing Authority had clearly proceeded to assess within the period of limitation.

7. In a very forceful argument Mr. Mittal, however, contends that the judgment of 26th of June, 1961, having been set aside in appeal, the petitioner is entitled to reckon the period of three years a fresh from the issue of the second notice. In my opinion, this is not a legitimate argument and I do not find it possible to accept it. The requirement of the statute, according to the Full Bench, is that the Assessing Authority should proceed to assess within a period of three years from the close of the assessment year, or the different quarters relevant thereto. It is well to observe that the appeal against the order on "best judgment basis" was preferred not on the score of limitation but on the ground that the petitioner had not been provided with adequate opportunity to present its case. The order of 26th of June, 1961, did not stand obliterated by the appeal being allowed and it cannot be controverted that the Assessing Authority had actually proceeded to assess and the subsequent order passed by the appellate authority only resulted in the issue of a fresh notice. The proceedings for reassessment had actually started within a period of three years and the issue of a second notice was merely a continuation of the proceedings for reassessment which had actually commenced with a notice which had been served on the petitioner on 13th of March, 1961.

8. In my judgment, this Court cannot declare the proceedings to be invalid on the ground of limitation and according to the decision of the Full Bench of this Court, I would hold that the Assessing Authority had proceeded with the assessment within the requisite period of limitation.

9. This petition fails and is dismissed. In the circumstances, I would make no order as to costs.