(1971) 01 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 475 of 1967

S. Sant Singh — APPELLANT

Vs

The Assessing Authority and Others — RESPONDENT

Date of Decision : 06-01-1971

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 10, 13

Citation : (1971) 28 STC 567

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; M.R. Sharma, Senior A.G., for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—The petitioner carries on the business of sale and purchase of vegetable ghee at Amritsar under the name and style of Sant Singh Kanwarjit Singh. He is registered as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act). He was required to file monthly returns of his sale turnover in accordance with the rules framed under the Act and for the year 1963-64, monthly returns were filed in accordance with which the petitioner paid Rs. 1,158.81 as sales tax. A notice was issued to him in form S.T. XIV on 15th April, 1966, requiring him to appear before the Assessing Authority on 11th May, 1966. On that date, the petitioner showed his inability to produce the account books on the ground that they had been taken away by the District Excise and Taxation Officer, who had raided his premises on 11th August, 1965, along with the Assistant Excise and Taxation Officer and Sub-Inspector of the Excise and Taxation Office, etc. On the basis of that raid, a criminal case had been filed in the Court of the Chief Judicial Magistrate, Amritsar, on 13th August, 1965. The petitioner, therefore, applied for adjournment which was refused. The Assessing Authority kept the case in abeyance for collection of necessary data for framing assessment on best judgment basis. Thereafter he issued a notice to the petitioner to appear before him on 29th September, 1966. On that date Shri S.K. Bhatia appeared for the petitioner with an application for adjournment on the ground that the petitioner was out of station. The case was adjourned to 3rd October, 1966, on which date Shri S. K. Bhatia again put in an application for adjournment on the ground that the account books and other documents were with Shri D. P. Gupta, Excise and Taxation Officer. This application was again rejected because the Assessing Authority felt that the petitioner was interested in delaying the passing of the assessment order. Thereafter the Assessing Authority passed the impugned order on 2nd November, 1966, the operative part of which reads as under:

A registered dealer is under statutory obligation to maintain correct and complete accounts of his sales and purchases u/s 13(1) of the Punjab General Sales Tax Act, 1948. Non-production of the same can lead to an adverse inference by the Assessing Authority. In compiling the figures for best judgment assessment, element of guess-work has to be employed but this factor is reduced to the minimum as I can work out an honest estimate of his turnover from the monthly return filed by him, coupled with the local enquiries got conducted in this case. The dealer has made sales and purchases not only in Amritsar but also his business activities have been in other important districts like Ludhiana and Jullundur, etc. I have gathered to the best of my knowledge that his daily average sales ranged during the year of assessment from Rs. 2,000.00 to Rs. 2,500.00. Taking this factor into consideration, the monthly out-turn of this party can quite reasonably be worked out to Rs. 60,000. Accordingly I determine the taxable turnover for the year of assessment at Rs. 7,20,000 of which assessment is computed as below :

Turnover taxable Rs. 3,60,000 Tax Rs. 25,200 at 7 per cent. i.e. from 1st April, 1963, to 28th September, 1963.

Turnover taxable Rs. 3,60,000 Tax Rs. 21,600 at 6 per cent. i.e. from 29th September, 1963, to 31st March, 1964.

Total tax due comes to Rs. 46,800 against which the dealer has deposited Rs. 207.00 u/s 10(4) of the Act. Issue T.D.N. and challan for the remaining balance of Rs. 46,593.

2. The petitioner then filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) and along with the memorandum of appeal filed an application for exemption from payment of the sales tax levied against him. That application was refused. A revision against that order of refusal was also rejected. The petitioner then filed the present petition in this Court challenging the order of assessment.

3. Written statement has been filed by Shri N. L. Murgai, Excise and Taxation Officer, on behalf of the respondents.

4. This petition deserves to succeed on the short ground that the material

collected by the Assessing Authority by local enquiries was never brought to the notice of the petitioner. If he was of the opinion that the petitioner was withholding his books ,of account and not cooperating in the making of the assessment order, he should have at least placed before him all the material that he had collected on the basis of which he wanted to make the best judgment assessment or this material could have been conveyed to him in the notice asking him to rebut the same if he could. It has been well-settled by their Lordships of the Supreme Court that even for the purposes of making a best judgment assessment the material and the basis of that assessment should be disclosed to the assessee who should be afforded an opportunity to rebut the same, if he can. This is the requirement of the principles of natural justice and before a party is burdened with any amount of tax a fair opportunity has to be afforded to him to dispel the doubts or the information that has been gathered at his back. The Assessing Authority evidently ignored these basic principles although they have been reiterated from time to time by all the courts. I am, therefore, of the opinion that the order of the Assessing Authority passed on 2nd November, 1966, a copy of which is annexure ''A'' to the writ petition, deserves to be quashed.

5. For the reasons given above, I accept this writ petition and quash the impugned order of the Assessing Authority dated 2nd November, 1966, a copy of which is annexure ''A'' to the writ petition. It will be open to the Assessing Authority to pass a fresh order in the light of the observations made above and in accordance with the provisions of law. In the circumstances, I leave the parties to bear their own costs.