

(1969) 12 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal No. 2159 of 1966

State of Punjab

APPELLANT

Vs

Sant Singh Kanwarjit Singh

RESPONDENT

Date of Decision : 04-12-1969

Acts Referred:

Citation : AIR 1970 SC 744 : (1970) 1 SCC 101 : (1970) 3 SCR 311 : (1970) 25 STC 525

Hon'ble Judges : K. S. Hegde, J;J. C. Shah, J

Bench : Division Bench

Advocate : V.C. Mahajan and R.N. Sachthey, for the Appellant; Sobhag Mal Jain and B.P. Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

J.C. Shah, J.—Sant Singh Kanwarjit Singh--hereinafter called the assessee is registered as a dealer under the Punjab General Sales-tax Act, 1948. The assessee filed returns of the turnover of its business for the quarters ending 30th June, 1962 and 30th September, 1962, but without appending thereto the list of sales to registered dealers as required by rule 30 framed under the Act. The Sales-tax Officer proceeded to make "exparte assessments" for the two quarters.

2. The assessee then moved a petition in the High Court of Punjab for a writ quashing the orders of assessment. A single Judge following the Judgment of the Punjab High Court in *Mansa Ram Sushil Kumar v. The Assessing Authority, Ludhiana*,⁽¹⁾ quashed the orders of assessment. An appeal by the State of Punjab was summarily dismissed by a Division Bench of the High Court.

3. The scheme of levy and assessment of tax under the Act may be briefly noticed. Every dealer whose gross turnover during the year proceeding commencement to the Act exceeded the taxable turnover is liable to pay tax on all sales effected after the quarter after the commencement of the Act. Tax is to be levied on the taxable turnover at such rates as the State Government may

direct. Tax is payable under the Act in the manner provided and at such intervals as may be prescribed. Section [10(1)]. A registered dealer furnishing a return has to pay the amount of tax due according to the return into the Government Treasury.

4. The assessing authority may without requiring the presence of the registered dealer or production by him of any evidence hold that the returns furnished are correct and complete, and proceed to assess the amount of tax due from the dealer on the basis of these returns; if the assessing authority is not satisfied with the return he may require the registered dealer to remain present in person or by pleader and to produce evidence on which he may rely upon in support of the return. The Assessing authority may after hearing the evidence as the dealer may produce and such other evidence as the Assessing authority may require, assess the amount of tax due from the dealer.

5. The scheme is plain. A registered dealer must file return of the turnover in the manner prescribed and at such (sic)vals as may be prescribed. The dealer while submitting the return has also to pay tax according to the return. The Assessing Officer may accept the return or he may call upon the tax payer to explain the turnover, and support it by evidence.

6. Under the Act sales-tax is a yearly tax, but the provisions relating to assessment contemplate assessments for periods shorter than a complete year, and for that purpose the tax payers are required by the Act to submit periodical returns of their turnover and to pay tax due thereon.

7. In *Mansa Ram Sushil Kumar v. The Assessing Authority Ludhiana* (1964) 168 T.C. 857, a Division Bench of the Punjab High Court held that the tax imposed under the Punjab General Sales Tax Act may be assessed only at the end of the year and not during the pendency of the year as and when the return is filed, and in the absence of machinery in the Act for making Assessment for a period shorter than the year of assessment, the order of assessment of tax for a quarter before the expiry of the assessment year is illegal. In reaching that conclusion the High Court relied upon the judgment of this Court in *M/s. Mathura Prasad & Sons v. State of Punjab* [1962] Supp.1 S.C.R. 913 But in *Mathura Prashad's case* [1962] Supp.1 S.C.R.913 this Court considered whether an exemption granted by the State Government during the course of the year was applicable to the whole or only a part of the year of assessment. this Court held (Mr. Justice Kapur dissenting) that the exemption operated for the entire financial year. The Court observed that the tax was a yearly tax levied on the taxable turnover of a dealer for the year; it was collected in some cases quarterly, some cases yearly; and proceeded to hold that whenever the exemption came in, in the year for which the tax was payable, it exempted sales throughout the year unless notification fixed the date of commencement of the tax. In our judgment the principle of that case has no bearing on the question arising in this case. The Court in *Mathura Prasad's case* [1962] Supp.1 S.C.R.913 merely emphasised that the tax was an annual tax but that did not imply that assessment of tax quarterly was illegal.

Adjustment may possibly have to be made when the assessment of the final quarter is made, but the taxing authorities are not debarred from determining and assessing the quarterly turnover of tax. Mansa Ram's case [1964] 15 S.T.C.857 has since been over-ruled by a full Bench of the Punjab High Court in M/s. Om Parkash Rajinder Kumar v. K.K. Opal I.L.R.(1967) P&H 155 The Court in that case held that Sales-tax may be assessed u/s 11 of the Act on the basis of quarterly returns submitted by the dealer pursuant to the notice served on him u/s 10(3) before the close of the relevant financial year.

8. In our judgment the High Court was right in holding in M/s. Om Parkash Rajinder Kumar's case I.L.R.(1967) Punj.& Har.155 that the assessment proceeding under the Punjab General Sale tax may be started even before the expiry of the year where provision is made for submission of periodical returns, and that such assessments are not provisional.

9. The appeal is allowed and the order passed by the High Court set aside and the petition is dismissed. There will be no order to cost throughout.