

(1981) 06 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4561 of 1979

The Asian Rubber and Plastic Industries	APPELLANT
Vs	
The State of Punjab and Another	RESPONDENT

Date of Decision : 04-06-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 11A, 21

Citation : (1982) 50 STC 383

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : S.K. Sarwal and S.P. Jain, for the Appellant; S.L. Ahluwalia, for Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Sukhdev Singh Kang, J.—This is a petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari quashing orders, annexures P4 to P7.

2. Briefly stated the facts are that the petitioner Messrs. Asian Rubber and Plastic Industries was a partnership concern at the relevant time and was engaged in the manufacture and sale of transmission rubber belting at Amritsar. At the time of assessment for the years 1968-69, 1969-70 and 1970-71, the petitioner claimed that the sale of transmission rubber belting was tax-free under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter called "the Act"), as also under the Central Sales Tax Act, 1956 (hereinafter called "the Central Act"). It produced evidence in support of the contentions and relied upon a judgment of the Punjab Sales Tax Tribunal in the case of Allied Rubber Industries, Jullundur, wherein the Tribunal held that in case the canvas contents were more than 60 per cent and additional excise duty was leviable on the product, then it is exempt from levy of tax under the Act and consequently under the Central Act. The Assessing Authority vide orders dated 25th November, 1971,

13th January, 1972, and 22nd February, 1972, for the years 1968-69, 1969-70 and 1970-71, respectively, finalised the assessment and held that the sale of transmission rubber belting was not taxable under the Act and consequently under the Central Act.

3. The internal audit pointed out that the Assessing Authorities while framing the assessment of the petitioner for the abovementioned years had wrongly granted exemption from tax of the sales of the transmission rubber belting in view of the judgment of this Court in the case of *Laxmi Machinery Store v. State of Punjab* [1977] 39 STC 87. Respondent No. 2, in exercise of powers under Section 21(1) of the Act, issued notices to the petitioner indicating his intention to reopen the assessment for the years 1968-69, 1969-70 and 1970-71. This action was taken suo motu. The petitioner appeared before respondent No. 2 and sought adjournments. On 12th November, 1979, the petitioner moved an application for a short adjournment because his counsel was busy in some other court. The respondent did not adjourn the case and finalised the assessment for the year 1968-69. The cases for the latter two years were, however, not decided. The petitioner filed a revision petition taking grounds on merits. Respondent No. 2 had been conferred powers to exercise jurisdiction u/s 21(1) of the Act in relation to the orders passed by the Assessing Authorities within his jurisdiction. A notification regarding the same is attached as exhibit P8 to the petition. Respondent No. 2 is an Assessing Authority for Amritsar District and orders annexures P1, P2 and P3 were passed by the Assessing Authority, Amritsar. However, the Assessing Authority and respondent No. 2 had concurrent jurisdiction over the whole of the district. The Assessing Authority is not in any way subordinate to respondent No. 2.

4. The notices which are attached as annexures P4, P5 and P6, issued by respondent No. 2" for suo motu revising the assessment have disclosed the following reason for taking action :

Under-assessment of tax under both the Acts on the sale of rubber belting.

5. The legislature has provided a specific procedure to deal with cases of underassessment. u/s 11A of the Act, the Assessing Authority, on receipt of information that there has been an under-assessment or escaped assessment in respect of a dealer in any year, can reopen the assessment within five years from the close of the year for which the turnover is proposed to be reassessed. In the present case, the last assessment was for the year 1970-71 but the action is sought to be taken in 1979, i. e., after lapse of eight years.

6. Section 21 provides for filing revision petition. It confers powers on the Commissioner to revise any order passed by the Assessing Authority if it is illegal or improper. He can do so on the application of a party or suo motu. In the present case, respondent No. 2 had derived inspiration from a judgment of this Court in the case of *Laxmi Machinery Store* [1977] 39 STC 87, which was delivered after about seven years and the same was not before the Assessing

Authority while framing the original assessments. The action was not taken suo motu, but was on the information supplied by some outside agency.

7. The State filed a return and controverted the major pleas raised by the petitioner. It was contended that rubber belting is not a fabric and it is not a tax-free item. The internal audit note did not give any information about suppression of sales and stocks. It only pointed out that the order was against law. Full opportunity was given to the petitioner to present its case but despite repeated adjournments being given nobody turned up. The counsel appeared on 16th July, 1979, and made a request for adjournment. The request was allowed. The case was adjourned to 8th August, 1979. It was again adjourned to 27th August, 1979, on the request of the learned counsel. On that day neither the learned counsel nor the dealer appeared, yet the case was adjourned to 17th September, 1979, as requested by an employee of the petitioner. Nobody appeared on that date. The case was adjourned to 8th October, 1979. None appeared on that date also. A fresh notice was issued for 29th October, 1979. On that date again a request was made for adjournment on the plea that his freshly engaged counsel was not free. Since the authority did not take the request to be genuine, the case was not adjourned. In the present case, the assessment was made by Shri R. N. Sant, who was posted as an Excise and Taxation Officer. The powers u/s 21(1) of the Act were conferred upon the Excise and Taxation Commissioners. So, the " Assessing Authority was not an officer of the same status as respondent No. 2, who is an Excise and Taxation Commissioner. Since no additional information had been received regarding suppression of sales or stocks, the case did not attract the provisions of Section 11A of the Act. No material, which was not present before the Assessing Authority was taken into account or was sought to be taken into account by respondent No. 2. The sale of rubber transmission belting is taxable, as has been held by this Court in the case of Laxmi Machinery Store [1977] 39 STC 87.

8. Before advertng to the arguments of the learned counsel for the parties, it will be useful to notice a few statutory provisions :

Section 11A. Reassessment of tax.-(1) 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 five 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.

(2) An Assesing Authority or any such authority as may be prescribed, may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify any clerical or arithmetical mistake apparent from the record.

Section 21. Revision.-(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any officer powers of the Commissioner under Sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) A Tribunal, on application made to it against an order of the Commissioner under Sub-section (1) within ninety days from the date of communication of the order, may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

9. Mr. Sarwal, the learned counsel for the petitioner, has argued that the Assessing Authority had decided the case according to the interpretation of law by the highest departmental authorities at that time. The fact that the High Court had taken a different view and had held transmission rubber belting to be taxable and that this fact had been brought to the notice of the revisional authority, respondent No. 2, leads to an irresistible conclusion that the case fell within the ambit of Section 11A of the Act. He has argued that in *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, their Lordships of the Supreme Court have held that the word "information" in Section 34(1)(b) of the Income Tax Act included information as to the true and correct state of law and so would cover information as to relevant judicial decisions.

10. Mr. Sarwal has further contended that since in the present case information in the form of a decision of this Court was made available to the authorities, Section 11A of the Act will be applicable because the word "information" occurs in Section 11A of the Act and not Section 21 of the Act. To say the least this argument of the learned counsel is far-fetched. Only because the word "information" occurs in Section 11A of the Act and this word has been interpreted to include the correct state of law it will not follow that the provisions of Section 11A are automatically attracted to the case. The Assessing Authority had decided the cases of the petitioner for the three years and on the authority of a judgment of the State Sales Tax Tribunal, had held that transmission rubber belting was not taxable. He had considered all the evidence and other material on the file. The revisional authority has not acted on any outside information. It has not taken into account any material which was not available to the Assessing Authority. The judgment of this Court does not provide any factual material, which was not on the file of the Assessing Authority. The State Sales Tax Tribunal had interpreted an entry in the Act in one way and held the sale of transmission rubber belting to

be exempt from tax under the Act. However, this Court while deciding Laxmi Machinery Store's case [1977] 39 STC 87 interpreted this very statutory provision and held that transmission rubber belting is taxable. Now the audit Section has only brought the true legal position to the notice of the revisional authority. They have not put in new facts before the authority. The decision of this Court will relate back to the time of enactment of the provisions in the Act. It will be deemed to be the state of law even when the assessment orders were passed. Section 21(1) of the Act gives plenary powers of revision to the Commissioner. There is no period of limitation prescribed for the exercise of this power. Exercising revisional powers, respondent No. 2 could reopen the cases of the petitioner beyond the period of five years which is the limitation for the Assessing Authority to review his own order. The period of limitation as prescribed by Section 11A of the Act is not applicable to the cases in which the revisional authority while deciding the revision does not rely upon any material which was not present before the Assessing Authority at the time of decision of the case. If the revisional authority relies upon or takes into account some material which was not present before the Assessing Authority, then according to a Full Bench decision of this Court in Hari Chand Rattan Chand and Co. v. Deputy Excise and Taxation Commissioner (Additional), Punjab [1969] 24 STC 258, the Assessing Authority can exercise its suo motu powers only within a period prescribed u/s 11A of the Act. The relevant observations of their Lordships are as under :

...The revisional authority is entitled to call for the record of any case decided by the assessing authority or any appellate authority in order to see whether the order passed is proper or legal. Similarly he can call for the record of any proceedings pending before any assessing authority or appellate authority in order to determine the legality or propriety of the proceedings. But, before he decides to exercise this power, he must come to the conclusion that the order or the proceedings suffer from the vice of impropriety or illegality and for this conclusion he has to confine himself to the record which is called for by him and which was before the lower authority, as the lower authority can be presumed to have applied his mind only to that record. He cannot take into consideration any fresh material in order to come to this conclusion. After having come to that conclusion, he will be entitled to scrutinise the proceedings and the order passed in order to determine the correct turnover which should have been assessed to tax on the basis of that record. He cannot, however, bring to tax, in the purported exercise of revisional powers, any turnover which had not been disclosed to the assessing authority by the dealer or which was not discovered by him during the course of assessment and which has come to the notice of the revising authority after the expiry of three years following the close of the year to which the turnover proposed to be taxed relates. That is the function of the assessing authority u/s 11A of the Act and cannot be exercised by the revising authority. But, if any enquiry is to be made or some evidence has to be examined in respect of the turnover which was the subject-matter of the proceedings

before the assessing authority or the appellate authority, the revising authority will be at liberty to make such further enquiry or to take such further evidence as he considers fit to determine the legality or propriety of the order already passed. For example, and not meaning it to be exhaustive, he can determine whether the deductions or exemptions were correctly allowed or the tax was levied at the rate prescribed. The bogus nature or the falsity of the deductions or exemptions allowed can also be gone into. To emphasize, such further enquiry or evidence must be germane to the turnover already on the record and not to the turnover which is sought to be brought in for the first time as a result of some information obtained from somewhere.

11. So, respondent No. 2 had full authority to issue notice to the petitioner and reconsider the decision of the Assessing Authority. The provisions of Section 11A of the Act are not at all attracted.

12. The learned counsel contended that the Assessing Authority and the revisional authority are officers of the co-ordinate jurisdiction. Both have been notified to be the Assessing Authorities for district Amritsar. It is anomalous that an officer exercising the same powers in one district may be conferred powers to sit in revisions of his colleague. This argument is fallacious. The Assessing Authority in this case was Excise and Taxation Officer. The revisional powers have been conferred on an officer, who is Assistant Excise and Taxation Commissioner, who is clearly a superior officer than the Assessing Authority. There is thus no irregularity in conferring powers on respondent No. 2.

13. It was faintly argued that respondent No. 2 could not claim to be acting suo motu when he had already received information from audit section. The argument is wholly meritless. In our adversary system of jurisprudence either party aggrieved by an order, if law so provided, could file a revision petition. For that a period of limitation is provided. So, however, if a third person brings to the notice of the revisional authority any illegality in an order passed by a subordinate officer then the revisional authority can suo motu take action and correct the order if it is found illegal or improper. Simply the receipt of information from an outside source does not render an order of the revisional authority out of the purview of suo motu action. Mr. Sarwal has not been able to cite any authority in support of his contention.

14. Consequently, I find no merit in this petition and the same is dismissed with costs. However, the revisional authority will decide the revision pending before it expeditiously. Counsel's fee Rs. 100.