(1971) 10 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 302 of 1970

The State of Punjab and Another — APPELLANT

Vs

Bhagat Ram Amar Nath — RESPONDENT

Date of Decision : 06-10-1971

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 10, 11, 11A, 21

Citation : (1971) 28 STC 676

Hon'ble Judges : Harbans Singh, C.J;Gurdev Singh, J

Bench : Division Bench

Advocate : K.S. Thapar, for the Appellant; S.C. Goyal and G.R. Sethi, for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—In Civil Writ No. 469 of 1968 delivered on 27th February, 1970, is as follows:--

The petitioner-firm was assessed to purchase tax and sales tax for the year 1960-61 on 31st December, 1963, and for the year 1961-62 on 22nd February, 1965. With regard to the assessment order for the year 1961-62 the petitioner filed a petition under articles 226 and 227 of the Constitution of India in this Court (C.W. No. 344 of 1964), which was accepted on 23rd November, 1965. The assessment order was set aside and the case was remanded to the Assessing Authority for fresh assessment in accordance with law. A notice, thereafter, was issued by the Assessing Authority to the petitioner-firm on 28th April, 1967, to produce its account books for the years 1960-61 and 1961-62 on 2nd May, 1967, for disposal of the cases. The petitioner filed written objections to the effect that the provisions of the Punjab General Sales Tax Act (hereinafter called the Act) relating to the levy of purchase tax had been held to be illegal and ultra vires by the Supreme Court in its judgment delivered on 10th April, 1967, in the case of Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, The Assessing

Authority thereafter adjourned the cases sine die instead of disposing them of. On 5th January, 1968, the petitioner submitted an application before the Assessing Authority requesting that the cases be filed as they had become time-barred. Since respondent 2 did not agree to file the cases, the petitioner-firm filed the present writ petition in this Court.

2. The first point argued by the learned Counsel for the petitioner is that the period of limitation for making an assessment under Sub-sections (4), (5) and (6) of Section 11 and Section 11A of the Act was three years from the close of the year till 9th January, 1963. It was increased to four years by Punjab Act 2 of 1963 with effect from 10th January, 1963. This period was further increased to five years by Punjab Act 28 of 1965 with effect from 1st April, 1966. In the case of assessment for the year 1961-62 the period had expired on 31st March, 1966, and, therefore, the enhanced period of five years did not apply. Even if that period applied, the assessment became barred by time on 13th March, 1967. The notice for fresh assessment after remand by this Court was issued on 28th April, 1967, that is, beyond the period of five years. On these facts, it is submitted that the Assessing Authority has no jurisdiction now to proceed to assess for the year 1961-62, and reliance is placed on a Full Bench decision of this Court in The Assessing Authority, Amritsar, and Anr. v. Om Prakash Seth ILR (1970) 1 Punj. & Har. 246, wherein it was held "that the proceedings taken for the fresh assessment by the Assessing Authority in pursuance of the order of remand made by the Commissioner in exercise of revisional powers are governed by the period of limitation provided in Sub-sections (4), (5) and (6)of Section 11 or Section 11A of the Act. It is open to the Commissioner to redetermine the quantum of turnover liable to tax while exercising the revisional powers but once he decides to direct the Assessing Authority to make a reassessment in accordance with law, the proceedings for reassessment are fresh proceedings which are governed by the period of limitation prescribed in Section 11A of the Act. Even if the original assessment order is passed on best judgment, the nature of proceedings after remand remains the same. The same period of limitation is provided in Sub-sections (4), (5) and (6) of Section 11 which governed the order of assessment based on best judgment."

3. This court had directed reassessment by order dated 23rd November, 1965, but respondent 2, the Assessing Authority, did not take any action for fresh assessment till 28th April, 1967. If the Assessing Authority had acted promptly, the case would not have become barred by time. However, in view of the Full Bench judgment referred to above, I have no option but to accept this writ petition.

4. For the reasons given above, this writ petition is allowed and the proceedings for reassessment are quashed. Since the Full Bench judgment was delivered after this writ petition had been filed, I leave the parties to bear their own costs.

5. The respondents appealed under Clause 10 of the Letters Patent.

JUDGMENT

6. This appeal under Clause 10 of the Letters Patent is directed against an order of a learned Single Judge, dated 27th of February, 1970. By this order the proceedings for fresh assessment by the sales tax authorities for the years 1960-61 and 1961-62 have been quashed. In making this order the learned Judge has relied upon the Full Bench decision of this Court in The Assessing Authority, Amritsar and Anr. v. Om Parkash Seth ILR (1970) 1 Punj. & Har.246, wherein it has been ruled that the proceedings taken for fresh assessment by the assessing authority in pursuance of the order of remand made by the Commissioner in exercise of revisional powers are governed by the period of limitation provided in Sub-sections (4), (5) and (6) of Section 11 or Section 11A of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). It is contended before us by the learned Counsel for the State that the rule laid down in this Full Bench authority is not to be followed as it is contrary to the decision of their Lordships of the Supreme Court in Additional Assistant Commissioner of Sales Tax, Indore Region, Indore v. Firm Jagmohandas Vijay Kumar [1970] 25 S.T.C. 74 (S.C.).

7. After hearing the parties'' counsel we are of the opinion that the two authorities, referred to above, which according to the learned Counsel for the State are in conflict with each other, are distinguishable on facts. The decision in Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, though recorded on 14th of August, 1968, does not appear to have been brought to the notice of their Lordships of the Full Bench in Om Parkash Seth''s case, ILR (1970) 1 Punj. & Har.246. We, however, do not consider it necessary to go into the matter whether certain observations made by the Full Bench are in consonance with the rule laid down in the Supreme Court case, as we are of the opinion that that decision does not apply to the facts of the instant case and, in fact, it is the Supreme Court decision in Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, that covers it.

8. The question of law which the Full Bench had to answer, as stated at page 247 of the report was :

Whether the proceedings for fresh assessment taken by the Assessing Authority in pursuance of the directions made by the Commissioner while disposing of a revision petition u/s 21(1) of the Act setting aside the order of assessment and ordering the Assessing Authority to make a fresh assessment in accordance with law are governed by the period of limitation prescribed in Sub-sections (4), (5) and (6) of Section 11 or Section 11A of the Punjab General Sales Tax Act, 1948.

9. In answering this question in the affirmative the learned Judges placed reliance on the earlier decision of the Supreme Court in Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, , wherein it had been observed as follows while dealing with Section 21 of the U. P. Sales Tax Act:

That Section imposes a restriction upon the power of the Sales Tax Officer: that officer is competent within three years next succeeding the date to which the tax relates to assess tax payable on the turnover which has escaped assessment. But the Section does not provide expressly, nor is there any implication, that the period within which reassessment may be made applies only to those cases where the Sales Tax Officer acts on his own initiative and not pursuant to the directions of the appellate or the revisional authority.

10. Referring to the facts of the Full Bench case, as given in paragraph 4 of that judgment, we find that Om Parkash Seth, the sole proprietor of the firm, Kohinoor Woollen Silk Mills, Amritsar, and a registered dealer under the Act, filed a return only with respect to the first quarter of the relevant year and best judgment assessment was made by the Assessing Authority at an estimated gross turnover on 16th of February, 1960. On 15th December, 1962, the Excise and Taxation Commissioner, Punjab, served Om Parkash Seth with a notice in exercise of his powers u/s 21(1) of the Act, intimating that he had decided suo motu to examine the legality and propriety of the assessment orders, dated 16th February, 1960, and 16th December, 1960. The case was then heard by the Additional Excise and Taxation Commissioner, Punjab, on 15th of March, 1963, and he set aside the assessment order on coming to the finding that it was not proper, in view of the fact that since the case was being decided on best judgment basis, deductions on account of sales to registered dealers should not have been allowed. It was on a fresh notice issued by the Assessing Authority in pursuance of this order of remand that the Full Bench found that no fresh assessment could be made after the period of limitation prescribed in Sub-sections (4), (5) and (6) of Section 11 or Section 11A of the Act. It was obviously a case of escaped assessment as certain deductions on account of sales to registered dealers were wrongly allowed by the assessing authority and it was to include those sales in the assessment that the case had been remanded u/s 21 of the Act.

11. The facts in Firm Jagmohandas Vijay Kumar''s case, [1970] 25 S.T.C. 74 (S.C.) were that the firm Jagmohandas Vijay Kumar, which was registered as a "dealer" under the Madhya Bharat Sales Tax Act, had failed to submit its return for the year 1955-56, whereupon the Sales Tax Officer, Indore, made an order u/s 8(1)(b) of the Act and after determining the turnover of the respondent for the said period to the best of his judgment, made an assessment of the respondent to sales tax on that basis. The respondent took the matter to the Commissioner of Sales Tax, who by his order dated 12th of October, 1958, set aside the order of the Sales Tax Officer dated 13th of August, 1956, on the ground that the respondent had not been afforded an opportunity of being heard. The case was thereupon remanded to the Sales Tax Officer for fresh assessment after giving a fresh notice u/s 8(1)(b) of the Act. That notice was served upon the firm on 29th of November, 1958. The proceedings, however, remained pending for long and since no action had been taken till then, the Sales Tax Officer issued another notice on the 11th February, 1963, It was on an objection raised by the firm that the Sales Tax Officer had no jurisdiction to proceed to tax the sales made in the

year 1955-56 because the period of limitation contemplated by Section 10 of the Act for making the assessment had expired that the Madhya Pradesh High Court quashed the proceedings. The appeal against this order of the High Court was accepted by their Lordships of the Supreme Court with the following observations :

...it is manifest that the proceedings for assessment had started by the issue of the notice on 13th August, 1956, when the Sales Tax Officer made an assessment u/s 8(1)(b) of the Act and the same proceedings remained pending after the Commissioner of Sales Tax quashed the assessment and remanded the matter to the Sales Tax Officer for giving a fresh notice to the respondent which in fact was given on 29th November, 1958. We are therefore unable to accept the contention of the respondent that the case is one of escaped assessment and the period of limitation contemplated by Section 10 of the Act is applicable to the case. The reason is that once the proceedings for assessment are initiated u/s 8(1) (a) or (b) it cannot be said that the turnover has escaped assessment unless the proceedings have come to a close. In the present case, the proceedings were initiated after the respondent failed to submit a return and the Sales Tax Officer made an order of assessment u/s 8(1)(b) which was set aside by the Commissioner of Sales Tax in revision and the case was remanded back to the Sales Tax Officer for issuing a fresh notice u/s 8(1)(b) and making an assessment after giving an opportunity to the respondent to be heard. The proceedings for assessment have remained pending with the Sales Tax Officer and it is therefore not a case of escaped assessment and the provisions contained in Section 10 of the Act have no application to the case. The question has been the subject-matter of consideration by this Court in a recent case, Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, .

12. In this earlier case, Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, , the Supreme Court had ruled that in the case of a registered dealer the proceedings before the Commissioner start factually when a return is made or when a notice is issued to him either u/s 10(3) or u/s 11(2) of the C.P. and Berar Sales Tax Act, 1947. The statutory obligation of the registered dealer to make a return within the prescribed time does not proprio vigore initiate the assessment proceedings before the Commissioner; but the proceedings will commence after the return is submitted and will continue till a final order of assessment is made in regard to the said return. At page 989 of the majority judgment it was observed :

As we have held that the submission of a statutory return would initiate the proceedings and that the proceedings would be pending till a final order of assessment was made on the said return, no question of limitation would arise.

13. Let us now turn to the facts of the case that has given rise to this appeal before us. The respondent-firm had filed its quarterly return of its gross turnover and was assessed for the year 1960-61 on 31st of December, 1963, overruling its contention that the purchase tax was not to be levied on cotton seeds. Similarly,

its assessment for the assessment year 1961-62 was filed on 22nd of February, 1965, and the purchase tax and the sales tax were imposed in spite of its challenging the validity of the same. Thereupon, the firm approached this Court with a petition (Civil Writ No. 344 of 1964) brought under articles 226 and 227 of the Constitution. Though this Court held that the levy of the purchase tax was valid, the case was, however, remanded to the assessing authority to determine whether the liability for the payment of the purchase tax rested on commission agents or on the oil-millers. It was thereupon that the assessing authority on 28th of April, 1967, issued notice to the respondent-firm to produce its account books for the years 1960-61 and 1961-62 so as to enable it to dispose of the case remanded to it by the High Court.

14. It is obvious that the proceedings before the assessing authority consequent on the remand were not in respect of an escaped assessment. In fact, the respondent-firm had already been assessed and its contention throughout had been that the tax in question was not to be paid by it. The case was remanded for determining whether the liability for the purchase tax was that of the respondent-firm, which was engaged in extracting oils, or that of the commission agents. In these circumstances, the rule laid down by the Full Bench in Om Parkash Seth''s case ILR (1970) p&h 246 was not attracted, but on the contrary, the case had to be decided in accordance with the dictum of their Lordships of the Supreme Court in Firm Jagmohandas Vijay Kumar''s case 1970 25 S.T.C. 74 (S.C.). There was no initiation of any fresh proceedings u/s 11A of the Act after the remand and the effect of the remand order made by the High Court was to revive the proceedings for assessment that were initiated with the return made by the respondent-firm with regard to the assessment years 1960-61 and 1961-62, as it was held in The State of Punjab and Anr. v. Murlidhar Mahabir Parshad [1968] 21 S.T.C. 29 (S.C.), that proceedings against registered dealers commence when a return is filed.

15. Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, , a case which the Full Bench decision in Om Parkash Seth''s case, ILR (1970) 1 p&h 246 proceeds, was itself a case of escaped assessment and the learned Judges of the Full Bench held that if the proceedings were in respect of escaped income, Section 11A would apply. Nature of proceedings will not change on the case being remanded to the assessing authority. The decision in The State of Orissa Vs. Dabaki Devi and Others, and the observations of the Lahore High Court in (1935) 3 ITR 438 do not apply to this case. In fact, the argument raised in the later case has been rejected by their Lordships of the Supreme Court in Firm Jagmohandas Vijay Kumar''s case [1970] 25 S.T.C. 74 (S.C.).

16. We thus find that in accordance with the rule laid down by the Supreme Court in Firm Jagmohandas Vijay Kumar''s case [1970] 25 S.T.C. 74 (S.C.) the order of the learned Single Judge cannot be sustained. The appeal is consequently accepted and the respondent''s writ petition dismissed with costs.

