

State of Punjab and Another

v.

Murlidhar Mahabir Parshad

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE S. M. SIKRI HON'BLE  
JUSTICE VAIDYNATHIER RAMASWAMI

Civil Appeal No. 188 Of 1966 | 04-04-1967

RAMASWAMI, J.

1. This appeal is brought, by certificate, from the judgment of the Punjab High Court dated November 6, 1963, dismissing the Letters Patent Appeal No. 319 of 1963, against the order of Harbans Singh, J., dated August 1, 1963, allowing the writ petition of the respondents being Civil Writ No. 725 of 1961 dated June 6, 1961.

2. The respondent-firm is a registered dealer under the Punjab Sales Tax Act and has been dealing in gur, shakkar and sugar. On March 16, 1959, there was a notice issued in Form S.T. XIV in respect of the assessment to sales tax for the year 1957-58. The service of the notice was effected on January 2, 1960, and the respondent was required to appear before the Assessing Authority on January 11, 1960. The respondent did not appear on that date and the case was adjourned. Thereafter, the respondent was requested to appear before the Assessing Authority on March 18, 1961, but he failed to appear on that date also due to the illness of his son. Further adjournments were granted and ultimately the respondent was given a final opportunity for appearance on June 10, 1961, with account books for the years 1957-58, 1958-59 and 1959-60 failing which the Assessing Authority would assess him on best judgment basis. Before the assessment proceedings could be completed, the respondent filed a writ petition in the Punjab High Court on June 6, 1961, for grant of a writ mandamus or any other suitable writ directing the appellants not to proceed against the respondent under section 11 of the Punjab Sales Tax Act. In answer to the writ petition the appellants filed a counter-affidavit contesting the averments raised in the writ petition. The writ petition was, however, allowed by Harbans Singh, J., by his judgment dated August 1, 1963, and directions were issued to the appellants not

to continue the proceedings for assessment of the respondent to sales tax for the year 1957-58. The learned Judge took the view that the point of law arising in this case was covered by the decision of the Full Bench of the Punjab High Court in Rameshwar Lal Sarup Chand v. U. S. Naurath (Civil Writ No. 798 of 1962; 1963 P.L.R. 768; 15 S.T.C. 932), in which it was held that assessment of sales tax under sub-sections (4), (5) and (6) of section 11 of the Punjab Sales Tax Act must be completed within a period of three years from the last day on which the return has to be filed and any assessment made after the lapse of the said period of three years shall be without jurisdiction. The appeal under the Letters Patent from the judgment of Harbans Singh, J., was summarily dismissed on November 6, 1963. Section 11 of the Punjab General Sales Tax Act originally stood in these terms :

"If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the assessing authority is not satisfied that the returns furnished are correct and complete, the assessing authority shall, within twelve months after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer."

3. The section was amended by section 7 of the East Punjab General Sales Tax (Amendment) Act, 1952 (No. 6 of 1952) and the phrase "proceed to assess" was substituted by the word "assess". In the year 1955, the section was again amended by section 3 of the East Punjab General Sales Tax (Amendment) Act (No. 4 of 1955). The effect of the amendment was that in sub-sections (1) and (3), the word "assess" has been retained while in sub-sections (4), (5) and (6) it has been substituted by the phrase "proceed to assess". The relevant part of section 11 is to the following effect :

"11. (1) If the Assessing Authority is satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the

returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(4) 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.

(5) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer.

4. The question of law arising in this appeal is whether, on a proper interpretation of section 11, sub-section (4) and (5), of the Punjab Sales Tax Act, the period of limitation is three years for making the assessment from the last date on which the return is to be filed, as held by the Punjab High Court, or whether the connotation and effect of the language of section 11(4) and (5) is that the order of assessment is valid even if it is made after a period of three years provided the necessary notice is issued within a period of three years from the last date on which the return is to be filed.

5. The question has been the subject-matter of consideration by this Court in a recent case, *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax Nagpur* ([1964] 4 S.C.R. 436; 14 S.T.C. 976). The points which arose in that case for determination were : (1) when can a proceeding be said to commence and (2) if a proceeding has commenced within the prescribed period but is pending when such period expires and an order is finalised thereafter, whether such an order is invalid on the ground of its being time-barred. The appellant

there was a registered dealer, carrying on business in bidis. For the year 1949-50, i.e., for the period from October 22, 1949 to November 9, 1950, he submitted only one return on October 5, 1950, for one quarter and defaulted in respect of the other quarters. He was served a notice on August 13, 1954, under section 11(1) and (2) of the C.P. and Berar Sales Tax Act, 1947, in respect of the turnover for the said period. He filed the returns subsequently, but contended that the proceedings before the Sales Tax, Commissioner were barred by time. He then filed a writ petition in the High Court challenging the said proceedings. For the year 1950-51 he had filed no return at all and was served a notice on October 15, 1954, under section 11(4) of the Act. That notice was within three years from October 16, 1951, which fell within the fourth quarter of the year in question. He also filed another writ petition for a similar relief in respect of that year. The contention was that whatever may be said in the case of an unregistered dealer, in the case of a registered dealer the proceedings commence from the date of the registration certificate within which he has a statutory obligation to furnish his returns. It was held by this Court that assessment proceedings under the Act must be held to be pending from the time they are initiated until they are terminated by a final order of assessment. It was also held that in the case of a registered dealer there would be four variations in the matter of assessment of his turnover : (1) he submits a return by the date prescribed and pays the tax due in terms of the said return, the Commissioner accepts the correctness of the return and appropriates the amount paid towards the tax due for the period covered by the return; (2) the Commissioner is not satisfied with the correctness of the return, he issues a notice to him under section 11(2), but does not finalise the assessment; (3) the registered dealer does not submit a return, the Commissioner issues a notice under section 10(3) and section 11(4) of the Act; and (4) the registered dealer does not submit any return for any period and the Commissioner issues a notice to him beyond three years. It was held by this Court 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 under section 10(3) or under section 11(2) of the Act, and that the acceptance of the contention that the statutory obligation to file a return initiates the proceedings is to invoke a fiction not sanctioned by the Act. It was held in the first case that the Tribunal had no jurisdiction to issue a notice under section 11-A with respect to the quarters other than that covered by the return made by the appellant. In the second case the Commissioner had jurisdiction to assess the turnover in respect of the entire fourth quarter. At page 450 of the report, the Court observed that in a case where a return has been made, but the Commissioner has not accepted it and has issued a notice for enquiry, the assessment proceedings would be pending till the final assessment is made. The

Court Proceeded to observe that even in a case where no return has been made, but the Commissioner initiates proceedings by issuing the notice either under section 10(3) or under section 11(4), the proceedings would be pending till the final assessment is made. This decision therefore clearly lays down the principle that in the case of a registered dealer the proceedings before the Commissioner start factually when a return is made or a notice is issued and no question of limitation would arise where such proceedings are taken before the expiry of the prescribed period of three years though an assessment order is finalised after the expiry of such period. In other words, the assessment proceedings commence in the case of a registered dealer either when he furnishes a return or when a notice is issued to him under section 11(4) or 10(3), and if such proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the expiry of the prescribed period, no question of limitation would arise. The view expressed by this Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* ([1964] 4 S.C.R. 436; 14 S.T.C. 976), has been subsequently followed by this Court in a recent case, *State of Punjab & Others v. M/s. Tara Chand Lajpat Rai* (Civil Appeal No. 1080 of 1965 decided on 28-2-1967; [1967] 19 S.T.C. 493), in which the material facts were almost parallel to those in the present case. In view of the principle laid down by these decisions we hold in the present case that the proceedings for assessment of sales tax taken against the respondent by the Assessing Authority are legally valid, because the assessment in question being for the year 1957-58, the notice with regard thereto in Form S.T. XIV had been issued and served upon the respondent on January 2, 1960, and proceedings for assessment were initiated in time within the period prescribed under section 11(5) of the Act. It follows therefore that the respondent has made out no case for the grant of a writ under Article 226 of the Constitution for quashing the proceedings for assessment of sales tax for the year 1957-58 taken against him by the appellants.

6. We accordingly allow this appeal, set aside the order of the Division Bench of the High Court dated November 6, 1963, and of Harbans Singh, J., dated August 1, 1963, and direct that the writ petition of the respondents, being Civil Writ No. 725 of 1961 should be dismissed. There will be no order with regard to the costs of this appeal.

7. Appeal allowed.

