

SUPREME COURT OF INDIA

State of Punjab

Vs.

Dalmia Biscuit (P) Ltd.

C.A.No.95 of1972

(H. R. Khanna and V. R. Krishna Iyer, JJ.)

10.12.1976

JUDGEMENT

KHANNA, J.:-

1. This appeal by special leave is against the judgment of the Punjab and Haryana High Court whereby the High Court answered the following question referred to it under Section 22 (3) of the East Punjab General Sales Tax act (East Punjab Act 46 of 1948) (hereinafter referred to as the Act) in favour of the assessee-respondent and against the revenue:

"Whether the assessing authority can make a fresh assessment after the expiry of three years as prescribed in Sections 11 and 11-A of the East Punjab General Sales Tax act, 1948, under direction from a revising authority in a suo motu revision?"

2. The matter relates to the assessment year 1958-59 which ended on March 31, 1959. The

assessing authority made an order for assessment of the assessee on April 29, 1960. The assessee paid tax in accordance with the assessment order. The Additional Assistant Excise and Taxation Commissioner suo motu set aside the assessment order and remitted the case to the assessing authority for fresh assessment. The order of the Additional Assistant Excise and Taxation Commissioner is dated March 26, 1962. It was stated in the course of that order that certain items of turnover had escaped assessment. The said order was challenged by the assessee before the financial commissioner in revision. The revision petition was dismissed. The assessee then sought a reference of questions of law which were said to arise out of the order of the Financial Commissioner to the High Court. The financial Commissioner declined to make the reference. The assessee then approached the High Court under Section 22 (2) of the Act. The question reproduced above was then directed to be referred to the High Court. The High Court, as mentioned above, answered the question in favour of the assessee and against the revenue.

3. At the hearing of the appeal, Mr. Mahajan, learned counsel for the appellant, has invited our attention to the provisions of Sec. 11 as well as Section 11A of the Act which have been mentioned in the question. It is urged that though the question as framed refers in the context of limitation to the fresh assessment, the above provisions as they stood at the relevant time, contemplate that the assessing authority should proceed to assess or reassess within three years following the close of the assessment year in question. The order of the Additional Assistant Excise and Taxation Commissioner is dated March 26, 1962, but there is, according to Mr. Mahajan, nothing in the statement of case or otherwise in the material on record to indicate one way or the other as to whether the assessing authority proceeded to assess or reassess within the period of few days from March 26, 1962 till the expiry of three years following the close of the assessment year in question. There is thus stated to be a lacuna on the record as might justify the direction for a supplementary statement of case. After hearing the learned counsel for the parties, we are of the opinion that supplementary statement of case should be called from the Tribunal on the point as to whether the assessing authority proceeded to assess or reassess the respondent in pursuance of the order dated March 26, 1962 within the period of few days between March 26, 1962 and the date of expiry of three years following the close of the assessment year 1958-59. The supplementary statement should be sent to this Court within four months from the receipt of this order.

Order accordingly.