STATE OF PUNJAB & ORS.

v.

M/S. TARA CHAND LAJPAT RAI

February 28, 1967

[J. M. SHELAT AND G. K. MITTER, JJ.]

Punjab General Sales Tax Act (46 *of* 1948), *s.* 11(2) *and* (4)—*Return by assessee—Notice under s.* 11(2) *within the prescribed period—Compliance with notice by assessee—Order by Assessing Authority on the basis of best judgment—Order passed after prescribed period—Order if falls under s.* 11(4)—*Order, if barred by limitation.*

The respondent firm, was a registered dealer and furnished quarterly returns of its turnover as required by the Rules under the Punjab General Sales Tax Act, 1948. The Assessing Authority was not satisfied with the returns and issued a notice, under s. 11(2) of the Act asking the firm to produce evidence to establish that the returns were full and complete. The notice was served on the firm before the expiry of three years from the respective dates for furnishing the returns. A partner of the firm complied with the notice by appearing and producing its account books. The officer held an enquiry, and passed an order stating that he was assessing the firm to the best of his judgment. The order was passed after the expiry of three years from the dates when the quarterly returns had to be filed. The firm challenged its validity by a writ petition, and the High Court held that the order fell under s. 11(4) of the Act and that it was barred by limitation.

In appeal to this Court,

HELD : The impugned order could not be said to be under s. 11(4) even though it was stated that the assessment was made to the best of the officer's judgment, because, the condition precedent under that subsection is that a registered dealer who has furnished returns should fail to comply with the terms of the notice issued under s. 11(2). But assuming it was made under s. 11(4), the order could not be attacked on the ground of its being beyond limitation. Under s. 11(4), if a registered dealer having furnished returns in respect of *a period*, fails to comply with the terms of a notice under s. 11(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 tax due from the dealer. "Such period", refers to the period mentioned earlier in the sub-section, that is, in the present case, to the quarters in respect of which the firm had to submit returns. 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 s. 11(2), and would be pending from the time they are initiated until they are terminated by a final order of assessment. Therefore, if such proceedings were taken within the prescribed time, though the assessment was made final subsequently, even after the expiry of the prescribed time, no question of limitation would arise. [14 H; 15 A, F, G; 17 G; 18 E-F]

Madan Lal Arora v. *Excise and Taxation Officer, Amritsar*, [1962] 1 S.C.R., 823 and *Ghanshyam Das* v. *Regional Assistant Commissioner of Sales Tax, Nagpur*, [1964] 4 S.C.R. 436, followed.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1080 of 1965.

Appeal from the judgment and order dated September 25, 1963 of the Punjab High Court in Civil Writ No. 1088 of 1961.

Dipak Dutta Chaudhuri and R. N. Sachthey, for the appellants.

B *C. D. Garg*, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. This appeal by certificate granted by the Punjab High Court raises the following question :—

C "Where the sales tax authority is not satisfied with the returns filed by a registered dealer and issues a notice under s. 11(2) of the Punjab General Sales Tax Act, 1948 before the expiry of three years from the termination of the period for furnishing returns but finalises the assessment order after three years from the D aforesaid date, whether such an assessment order can be said to be time barred and, therefore, without jurisdiction".

A few facts for understanding this question may first be stated. The respondent is a partnership firm registered under the Act and was at the material time carrying on business in vegetable E ghee, sugar and other commodities. The assessment year in question commenced from April 1, 1955 and ended on March 31, 1956. The dealer furnished four quarterly returns as required by the Rules framed under the Act. *viz.*, for the period April to June, 1954 on October 1, 1954; July to September, 1954 on December 16, 1954; October to December, 1954 on March 12, F 1955 and for January to March, 1955 on June 16, 1956. Though these returns were not filed within 30 days after expiry of each of the quarters as required by the Rules, no objection was taken by the Assessing Authority. The firm deposited three sums at the time of filing the returns aggregating to Rs. 10,649-4-0. Subsequently, it paid a further sum of Rs. 14,477 on the basis of those returns.

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Not satisfied with these returns, the Assessing Authority issued a notice under s. 11(2) in form S.T. XIV which is a comprehensive form and which admittedly was served on the dealer on January 11, 1957, *i.e.*, before three years expired from each of the respective dates for filing of the said returns. This is clear H from the fact that the date for filing the first return would be July 30, 1954 and the date for filing the last return would be April 30, 1955. On July 5, 1960, the Assessing Authority examined Tara Chand, a partner in the firm but did not finalise the

assessment order on that day as he wanted to make further enquiries and passed the assessment order impugned in this appeal on August 11, 1960. The Assessing Authority disbelieved the accounts produced by Tara Chand and added sales of Rs. 4,00,000 in the gross turnover shown in the returns and assessed the firm on the turnover of Rs. 16,92,148-1-0 to a tax of Rs. 33,127-1-6. After giving credit of the said two sums deposited by the dealer the balance of Rs. 8,000 and odd remained payable by the firm.

The firm filed a writ petition in the High Court challenging the validity of the assessment order on the ground that as it was made after three years from the dates when the said returns had to be furnished, it was without jurisdiction. The department on the other hand urged (1) that the order was made under s. 11(3) which provided no limitation and (2) that assuming that the order was passed under s. 11(4) or s. 11(5) proceedings in respect thereof having commenced on the issuance of the said notice dated January 11, 1957 which was within time, no question of the order being time barred would arise. These were the only contentions raised before the High Court and as no contention regarding the merits of the order was raised, the High Court did not enter into that question. We need not also go into the merits of the assessment and we will consider only the question whether the order was invalid on the ground taken by the dealer in the High Court. The High Court following its earlier decision in *M/s. Rameshwar Lal Sarup Chand* v. *The Excise and Taxation Officer*(1), held that the order was an assessment on best judgment basis under s. 11(4) and as it was made after three years after the close of the assessment year it was without jurisdiction.

For the reasons which we shall presently set out, the question whether the assessment order was passed under s. 11(3) or s. 11(4) or (5) does not need any answer as it makes no difference so far as this case is concerned whether it was made under one or the other sub-section. However, the mere fact that the Assessing Authority mentioned that he made the order on the best judgment basis cannot be conclusive, for, by merely calling it as the best judgment assessment, the order does not become one.

Section 10 of the Act provides that the tax payable shall be paid in the manner thereinafter provided and at such intervals as may be prescribed. Rule 20 of the Punjab General Sales Tax Rules, 1949 provides that every registered dealer, other than those referred to in rules 17, 18 and 19 (with whom we are not presently concerned) shall furnish returns quarterly within 30 days from the expiry of each quarter. Rule 25 provides that all returns which are required to be furnished under these rules,

(1) [1963] P. L. R. 768.

A shall be signed by the registered dealer or his agent and shall be sent to the appropriate Assessing Authority together with the Treasury or the Bank receipt as proof of the payment of the tax due. Rule 40 provides that a dealer and his partner or partners shall be jointly and severally responsible for payment of the tax, and that every dealer liable to pay the tax shall pay it B quarterly unless directed otherwise by the appropriate Assessing Authority. Sub-rule (3) provides that the tax due for any quarter shall be paid before furnishing the return for that quarter. Rule 32 provides that every assessment order shall be recorded in writing and, where the Assessing Authority determines the turnover of a dealer at a figure different from that shown in the C return submitted under the provisions of these rules, the order shall state briefly the reasons therefor. Rule 33 provides that when it appears to the appropriate Assessing Authority to be necessary to make an assessment under s. 11in respect of a dealer, he shall serve a notice in form S.T. XIV on him calling upon him to produce books of accounts and other documents and stating the period or the return period or periods in respect of which D assessment is proposed. He shall fix a date ordinarily not less than after 10 days from the date of the notice for considering any objection which the dealer may prefer. Section 11(1) provides that if the Assessing Authority is satisfied without requiring the presence of the registered dealer or the production by him of any evidence that the returns furnished in respect of any period are E correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. Sub-section (2) provides that if the Assessing Authority is not satisfied without requiring the presence of the registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct or complete, he shall serve on such dealer a notice in the prescribed manner requiring him at a date and at F place specified thereunder 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. Sub-section (3) provides that on the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the Assessing Authority may require on specified points assess G the amount of tax due from the dealer. Sub-section (4) provides that 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. Sub-section H (5) provides that 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, amount of tax, if any, due from the dealer. Sub-section (6) deals with a case where a dealer has failed to apply for registration, in which case the Assessing Authority is empowered within the prescribed period to assess such a dealer to the best of his judgment. Since the firm in the instant case was duly registered, the question of application of sub-section (6) does not arise.

Section 11 envisages the following cases :—

(a) Where the dealer duly files returns and the Authority is satisfied with such returns and accepts them and formally passes an order of assessment which means no more than that he appropriates the amount deposited by the dealer towards the tax.

(b) Where the Authority is not satisfied with the returns, and issues a notice calling upon the dealer to appear and produce evidence in support of the returns, the Authority holds an enquiry under sub-section (3) and then makes an order of assessment.

(c) Where the registered dealer having furnished returns fails to comply with the terms of the notice issued under sub-section (2) the Assessing Authority is empowered within three years after the expiry of the period in respect of which the returns are filed to proceed to assess to the best of his judgment the tax due from the dealer.

(d) Where the registered dealer has failed to furnish returns in respect of any period by the prescribed date, the Assessing Authority is empowered to assess to the best of his judgment within three years after the expiry of the period in respect of which the returns have not been filed, and

(e) Where the dealer has failed to apply for registration in respect of the period for which he is liable to pay tax, the Assessing Authority is empowered within three years after the expiry of such period to assess him to the best of his judgment.

Sub-sections (4), (5) and (6) lay down the conditions precedent which must be satisfied before the power to make an assessment to the best of his judgment can be exercised. Under sub-section (4) the condition is that though the registered dealer has furnished returns he fails to comply with the terms of the notice issued under sub-section (2). Under sub-section (5) the condition is that the registered dealer has failed to furnish returns and under sub-section (6) the condition is that the dealer has failed to apply

A for registration. *Prima facie,* none of these conditions existed in the present case and therefore though the Assessing Authority states that he had to assess the firm to the best of his judgment, the impugned order cannot be said to be either under sub-section (4) or sub-section (5) or sub-section (6). But as we have stated earlier this question need not be gone into in the present B case and we do not, therefore, have to decide whether the order was one under sub-section (3) or sub-section (4) or sub-section (5).

The question that falls for determination is whether it was one under sub-section (3) or sub-section (4), is it one which can be said to be time barred? So far as sub-section (4) is concerned C the question as to when an assessment order thereunder becomes barred arose in *Madan Lal Arora* v. *Excise and Taxation Officer, Amritsar*(1). The petitioner, a registered dealer, filed his returns for the four quarters of the financial year ending on March 31, 1955, and likewise, for the four quarters of the financial year ending on March 31, 1956. In respect of each year the Sales Tax D Assessing Authority served three successive notices on him on March 7, 1958, April 4, 1958 and August 18, 1959, requiring him to attend with the documents and other evidence in support of his returns. It was, however, only in the last of the said notices that he stated that on failure to produce the documents and other evidence mentioned therein, the case would be decided on "best E judgment assessment basis". The petitioner did not comply with any of the notices, but on receiving the last notice he filed a writ petition in this Court challenging the right of the Authority to make the best judgment assessment. Sarkar, J. (as he then was) who spoke for the Court, posing the question as how to compute the three years mentioned in sub-section (4) observed: 'The sub-section says "within three years after the expiry of such period" F So the three years have to be counted from the expiry of the period mentioned. What then is that period? The period referred, therefore, is the period mentioned earlier in the sub-section, and that is the period in respect of which returns had been furnished by the dealer'. After considering s. 11(1) and Rule 20 of the Rules, he further observed: 'It would, therefore, appear that when sub-section (4) of s. 11 talks of "returns G in respect of a period" that refers in the case of the petitioner to the quarters in respect of which he submitted the returns. We then come to this that the three years within which the authority could proceed to make the best judgment assessment had to be counted from the end of each quarter in respect of which returns had been filed'. The Court held that the last of the quarters in H respect of which the petitioner filed his returns having ended on March 31, 1956 the Assessing Authority could not proceed

(1) [1962] 1 S.C.R. 823.

to make the best judgment assessment in respect of that quarter after March 31, 1959. In the case of the earlier quarters the three years had expired even prior to that date. There was no dispute that the Assessing Officer had not proceeded to make any assessment on the petitioner at the date of any of the notices. The notices given on August 18, 1959 that best judgment assessment would be made in respect of the quarters constituting the financial years 1955 and 1956 the last of which expired on March 31, 1956, were futile as no such assessment could be made in respect of any of the quarters after March 31, 1959. The question as to the effect of the two earlier notices was not canvassed. What this decision laid down was that the notice dated August 18, 1959 under which the authority proposed to proceed under s. 11(4) having been served after expiry of three years from the respective dates when the said returns had to be furnished, the notice was futile and the authority not having proceeded to assess within time any action taken by him would be without jurisdiction.

The question as to the legal effect of such a notice was considered in *Ghanshyam Das* v. *Regional Assistant Commissioner of Sales Tax, Nagpur*(1). The points which fell for determination there 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. For the year 1949-50 he submitted only one return for one quarter and defaulted in respect of the other quarters. A notice was served on him on August 13, 1954 under s. 11(1) and (2) of the C.P. and Berar Sales Tax Act, 1947 in respect of the turnover of the firm 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 returns at all and was served with a notice on October 15, 1954 under s. 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. This Court held 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 assess-

(1) [1964] 4 S. C. R. 436.

A ment. It was then stated 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; B (2) the Commissioner is not satisfied with the correctness of the return, he issues a notice to him under s. 11(2), but does not finalise the assessment; (3) the registered dealer does not submit a return, the Commissioner issues a notice under s. 10(3) and s. 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. The Court held that in the case of a C registered dealer the proceedings before the Commissioner start factually when a return is made or when a notice is issued to him either under s. 10(3) or under s. 11(2) of the Act. Since the proceedings commenced after the return was submitted and continued till a final order of assessment was made in regard to the return, the Tribunal had no jurisdiction to issue a notice under D s. 11-A with respect to the quarters other than that covered by the return made by the appellant. As regards the second case it held that the Commissioner had jurisdiction to assess the turnover in respect of the entire fourth quarter. At page 450, 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 E enquiry, the assessment proceedings would be pending till the final assessment is made. Even in a case where no return has been made, but the Commissioner initiates proceedings by issuing the notice either under s. 10(3) or under s. 11(4), the proceedings would be pending till the final assessment is made. But where no return has been made and the Commissioner has not F issued any notice under the Act, it cannot be held that any proceedings are pending before the Commissioner. 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 though an assessment order is finalised after the expiry of such period. This decision G is, therefore, a clear authority for the proposition that 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 s. 11(2) of the present Act, and that if such proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the expiry of the prescribed period, no H question of limitation would arise.

In the instant case the dealer filed returns. Though they were filed after the expiry of 30 days from the relevant date, they were

not rejected by the department on that ground. In fact the notice dated January 11, 1957 issued under s. 11(2) was on the footing that returns were filed, but the Assessing Authority was not satisfied with them and desired evidence to establish that the returns were full and complete. It is also an admitted fact that the dealer appeared and produced books of accounts in answer to the said notice and thereupon the Officer held an enquiry. The notice dated January 11, 1957 was within time though the assessment order was made much after the expiry of three years from the respective dates when the returns had to be filed. But on the authority of *Ghanshyam Das's* case(1), the assessment proceedings commenced either when the respondent firm filed the returns or in any event from the date of the said notice. Both the events, therefore, were within prescribed time.

Reliance, however, was placed on two decisions of the High Court of Punjab : *M/s. Rameshwar Lal Sarup Chand* v. *Excise and Taxation Officer*(2) and *Jagat Ram Om Parkash* v. *Excise and Taxation Officer, Assessing Authority, Amritsar*(3). Neither of these decisions would be of assistance as the question which was canvassed in *Ghanshyam Das's* case (1) regarding assessment proceedings having commenced within time and then remaining pending did not come up for consideration. Since the said notice dated January 11, 1957 was served on the respondent firm before the expiry of three years from the respective dates for furnishing the returns, the assessment proceedings must be held to have commenced from that date which was within time and thus the assessment proceedings remained pending until they were terminated by the assessment order. Though that order was finalised after the expiry of three years from the said period, it could not be attacked on the ground of its being beyond limitation and therefore without jurisdiction. The order passed by the High Court allowing the respondent's writ petition has, therefore, to be set aside. The appeal succeeds and the writ petition is dismissed. In the circumstances of the case, however, we do not propose to pass any order as to costs.

V.P.S. *Appeal allowed.*

(1) [1964] 4 S. C. R. 436. (2) [1963] P.L.R. 768.

(3) [1965] 16 P.L.R. 167.