

FULL BENCH.

Before Shamsher Bahadur, R. S. Narula, and Bal Raj Tuli, JJ.

**THE ASSESSING AUTHORITY, AMRITSAR AND ANOTHER,—
Appellants.**

versus

OM PARKASH SETH,—Respondent.

Letters Patent Appeal No. 188 of 1964.

May 22, 1969.

Punjab General Sales Tax Act (XLVI of 1948)—Ss. 11, 11-A, and 21(1)—Commissioner setting aside assessment order and ordering fresh assessment under section 21(1)—Proceedings for fresh assessment taken by assessing authority—Whether governed by period of limitation provided in section 11(4), 11(5) and 11(6), or section 11-A.

Held, 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 11-A 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 decide to direct the assessing authority to make a reassessment in accordance with law, the proceeding for reassessment are fresh proceedings which are governed by the period of limitation prescribed in section 11-A of the Act. Even if the original assessment order is passed on best judgment, the nature of proceedings after remand remain the same. The same period of limitation is provided in sub-sections (4), (5) and (6) of section 11 which governed the orders of assessment based on best judgment.

(Paras 2 & 6)

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice S. B. Kapoor, and the Hon'ble Mr. Justice R. S. Narula, on September 26, 1968, to a Full Bench for decision alongwith Civil Writ No. 1232 of 1965 in which similar important question of law was involved and referred to full Bench. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice Bal Raj Tuli, on 22nd May, 1969.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice D. K. Mahajan passed in Civil Writ No. 2225 of 1963 on 9th January, 1964.

The Assessing Authority, Amritsar, etc. *v.* Om Parkash Seth (Tuli, J.)

B. S. DHILLON, ADVOCATE-GENERAL (PUNJAB), WITH B. S. SHANT, AND RATTAN SINGH, ADVOCATES, for the Appellants.

BHAGIRATH DASS, ADVOCATE, WITH B. K. JHJIAN AND S. K. HIRAJI, ADVOCATE, for the Respondent.

JUDGMENT

TULI, J.—This appeal under clause 10 of the Letters Patent has been placed before us for decision in pursuance of the order of S. B. Capoor and R. S. Narula, JJ., of September 26, 1968. When this appeal came up for hearing before the learned Judges, it was considered that the legal question arising in this appeal was the same as was referred by Sarkaria, J., on April, 1, 1968, in C.W. 1232 of 1965. That is how this appeal has come before us for decision.

(2) In fact, the point of law that arises for decision in this appeal is not the same as arose in C.W. 1232 of 1965 as observed by the learned Single Judge in his judgment as under:—

“I am not determining the question whether there is any period of limitation prescribed for the Commissioner within which he can exercise his powers under section 21.”

The question of law that was referred in C.W. 1232 of 1965 to a Full Bench was “Whether the jurisdiction of the Commissioner under section 21(1) of the Punjab General Sales Tax Act, 1948, is subject to the period of limitation prescribed in section 11-A of the Act”.

The question of law that arises in this appeal is 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 under section 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 11-A of the Punjab General Sales Tax Act, 1948, hereinafter called the Act. The learned Judge has taken the view 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 is governed by the period of limitation provided in sub-sections (4), (5) and (6) of section 11 or section 11-A of the Act. This view of the learned Judge is well-founded and finds support from a judgment of their

Lordships of the Supreme Court in *Jaipuria Brothers Limited v. The State of Uttar Pradesh and others* (1). Their Lordships were dealing with the provisions of U.P. Sales Tax Act, 1948. Sub-section (3) of section 10 of that Act provides:—

“The Revising Authority may in his discretion at any time *suo motu* or on the application of the Commissioner of Sales Tax or the person aggrieved, call for and examine the record of any order made by any Appellate or Assessing Authority under this Act, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order as he thinks fit:

Provided that no such application shall be entertained in any case where an appeal lay against the order, but was not preferred.”

This provision of law is analogous to section 21(1) of the Act which confers revisional powers on the Commissioner.

Section 21 of the U.P. Act provided as under:—

“Where the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax in any year, the Assessing Authority may, at any time within three years from the expiry of such year, and after issuing notice to the dealer and making such enquiry as may be necessary, assess the tax payable on such turnover.”

(3) This section corresponds to section 11-A of the Act. In that case a Division Bench of Allahabad High Court had taken the view that section 21 which imposed upon the assessing authority duty to exercise his power to assess turnover which escaped assessment within three years from the end of the year of assessment applied only to the order which the assessing authority made *suo motu*: where, he was directed to proceed by an order of the appellate or revisional authority under sections 9 and 10 of the Act to reassess, the period of limitation had no application. While holding the view of the Division Bench of the Allahabad High Court to be erroneous, their Lordships of the Supreme Court observed as under:—

“In our view the High Court was in error in so limited the operation of section 21. That section imposes a restriction upon the power of the Sales Tax Officer: that officer

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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."

Their Lordships relied on a judgment of the Privy Council in *Commissioner of Income-tax, Bombay Presidency and Aden v. Khemchand Ramdas* (a Firm) (2), in support of their view.

(4) In the instant case Om Parkash Seth, sole-proprietor of the Firm Kohinoor Woollen Silk Mills, Amritsar is a registered dealer under the Act. He was required to furnish quarterly returns for the year 1958-59. He filed a return only with respect to the first quarter of the year and best judgment assessment was made by order dated February 16, 1960, by the assessing authority at an estimated gross turnover of one lac rupees. A sum of Rs. 1,000 was assessed as purchase tax for an estimated amount of purchases of Rs. 50,000 within the State. The amount of Rs. 1,000 was paid by the assessee in two instalments of Rs. 500 each on July 7, 1960, and August 30, 1960. On December 16, 1960, another order creating the liability of Rs. 1,000 was made by the assessing authority with regard to the same year. On December 15, 1962, a notice was sent by the Excise and Taxation Commissioner, Punjab, "exercising the powers under section 21(1) of the Act" to the petitioner intimating that he had decided *suo motu* to examine the legality and propriety of the assessment orders, dated February 16, 1960, and December 16, 1960, and that the case would be heard and determined by the Additional Excise and Taxation Commissioner, Punjab, in due course. The case was heard by the Assistant Additional Excise and Taxation Commissioner, Punjab, Patiala, on March 15, 1963, in the presence of the Taxation Inspector on behalf of the State and Shri Kidar Nath who appeared for the respondent. The revising authority held that "the order passed by the Assessing Authority in this case is improper and is set aside. The Assessing Authority should have scrutinised necessary declaration forms before giving deductions under rule 26 on account of sale to registered dealers.

(2) [1938] L.R. 65 I.A. 236—6 I.T.R. 414.

Since the case was being decided on best judgment basis, deductions on account of sale to registered dealers should not have allowed. Moreover *suo motu* powers are not cabined by any time limit. The case is, therefore, sent down to the Assessing Authority, Amritsar, for a fresh assessment according to law".

(5) Against this order, the respondent filed the writ petition in this Court which was accepted by the learned Single Judge on January 9, 1964, while accepting the writ petition, the learned Single Judge relied on the judgment of their Lordships of the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur and others* (3), and observed as under:—

"The fresh proceedings which the Assessing Authority started after the lapse of four years would necessarily be proceedings under section 11-A and thus would be without jurisdiction as that they were initiated after the prescribed period for the purpose had elapsed."

(6) The present appeal has been filed by the Assessing Authority, Amritsar, and the Assistant Additional Excise and Taxation Commissioner, Punjab, for setting aside the order of the learned Single Judge. In support of it, the learned Advocate-General for the State of Punjab has contended that the fresh proceedings taken by the assessing authority in pursuance of the order of remand by the Assistant Additional Excise and Taxation Commissioner were not fresh proceedings but were continuation of the proceedings that had been taken earlier and in respect of which orders had been passed on February 16, 1960 and December 16, 1960. That contention has no force in view of the judgment of their Lordships of the Supreme Court in *Jaipuria Brothers Limited* (supra). The assessing authority, after the order of remand, issued a fresh notice to the respondent for reassessment as a part of the turnover had escaped assessment because of the deductions that had been held by the revising authority to have been wrongly allowed. It was open to the Commissioner to redetermine the quantum of turnover liable to tax while exercising the revisional powers but once he decided to direct the assessing authority to make a reassessment in accordance with law, the proceedings for reassessment were fresh proceedings which were governed by the period of limitation prescribed in section 11-A of the Act. The learned Advocate-General

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has put-fourth an argument that since the original assessment order was passed on best judgment the nature of the proceedings after remand remained the same. Even if that be so, the same period of limitation is provided in sub-sections (4), (5) and (6) of section 11 which govern the orders of assessment based on best judgment.

(7) For the reasons given above there is no merit in this appeal which is dismissed with costs.

SHAMSHER BAHADUR, J.—I agree.

R. S. NARULA, J.—I also agree.

K. S. K.

FULL BENCH.

Before Shamsher Bahadur, R. S. Narula, and Bal Raj Tuli, JJ.

M/S. HARI CHAND-RATTAN CHAND & CO.,—Petitioners.

versus

THE DEPUTY EXCISE & TAXATION COMMISSIONER (ADDITIONAL),
PUNJAB,—Respondent.

Civil Writ No. 1232 of 1965.

May 22, 1969.

Punjab General Sales Tax Act (XLVI of 1948)—Ss. 11-A and 21(1)—Respective scope of—Jurisdiction of the Commissioner under section 21(1)—Whether subject to period of limitation prescribed in section 11-A—Assessment Order made by an assessing authority—Whether becomes final if no appeal filed against it.

Held, that section 11-A of Punjab General Sales Tax Act, 1948, empowers the assessing authority to reassess a dealer in respect of any turnover which had escaped assessment or which had been under-assessed in consequence of any definite information which comes into his possession after the original order of assessment was made. This power cannot be exercised either by the appellate authority or the revisional authority. The revisional authority under section 21(1) of the Act 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