

FULL BENCH

Before D. Falshaw, C. J., S. B. Capoor, A. N. Grover, I. D. Dua  
and D. K. Mahajan, JJ.

FIRM JAGAT RAM-OM PARKASH,— *Petitioner.*

*versus*

THE EXCISE AND TAXATION OFFICER,— *Respondent.*

Civil Writ No. 169 of 1962.

*East Punjab General Sales Tax Act (XLVI of 1948) — S. 11 (4) —  
Assessment to the best of his judgment by Assessing Authority —  
Whether can be made at any time if notice in Form S. T. XIV  
has been issued — “Proceed to assess” — Meaning of — When does the  
Assessing Authority proceed to assess — How to be determined.*

1964

October, 9th.

*Held*, that sub-section (4) of section 11 of the East Punjab General Sales Tax Act, 1948, fixes a period of three years after the expiry of the period of return furnished by the registered dealer within which the Assessing Authority has to proceed to assess to the best of his judgment. It cannot, therefore, be said that after the initial notice in Form S. T. XIV has been issued, is open to the Assessing Authority to proceed to make a best judgment assessment without any limitation in point of time. *it*

*Held*, that the expression “proceed to assess” to the best of his judgment in sub-section (4) of section 11 of the Act does not connote the actual framing of the final assessment order.

*Held*, that whenever a question arises as to whether or not an Assessing Authority has proceeded to assess to the best of his judgment, it is for that authority to show that it has so proceeded within the period prescribed by the statute. As to at what point of time he did actually proceed to so assess would have to be determined on

the facts and circumstances of each case in its own setting as it is not possible to lay down any definite and clear-cut test applicable to all cases. There must, however, be some definite act or step taken from which it can be clearly ascertained that from that point of time the Assessing Authority has proceeded to assess to the best of his judgment and the starting point of this process must be within the period of three years as provided in section 11 (4) of the East Punjab General Sales Tax Act, 1948.

*Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 21st August, 1964 to a larger Bench for decision owing to the importance of the question of law involved in the case. The Full Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw, the Hon'ble Mr. Justice S. B. Kapoor, the Hon'ble Mr. Justice A. N. Grover, the Hon'ble Mr. Justice Inder Dev Dua, and the Hon'ble Mr. Justice D. K. Mahajan, after deciding the question referred, returned the case to the Single Judge on 9th October, 1964. The case was finally decided by the Hon'ble Mr. Justice D. K. Mahajan on 2nd November, 1964.*

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order of the respondent, dated 29th November, 1961, creating a liability of Rs 13,292.04 nP., against the petitioner.*

BHAGIRATH DASS WITH B. K. JHINGAN AND S. K. HIRAJEE, ADVOCATES, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL WITH M. R. SHARMA, ADVOCATES, for the Respondent.

#### ORDER

Dua,

J.

DUA, J.—This writ petition initially came up before me sitting in Single Bench on 23rd March, 1962, when it was pointed out that the question whether the best judgment assessment under the Punjab General Sales Tax Act should be finalised within three years and also whether this Court should interfere with assessments on writ side without the aggrieved party utilising the remedies provided by the statute had been referred to a larger Bench with the result that I passed an order that this writ petition should await the decision of the Full Bench. The case to which reference had been made was later on decided by a Bench of three Judges and has since been reported as *Messrs Rameshwar Lal Sarup Chand v. Shri U. S. Naurath, Excise and Taxation Officer,*

and another (1). This writ petition was again placed before me for disposal in August, 1964, and my attention was drawn to conflicting decisions of this Court on the ratio of the Supreme Court's decision in *Madan Lal Arora v. Excise and Taxation Officer* (2), thereby tending to shake to some extent the binding authority of the majority view of the Full Bench in *Messrs Rameshwar Lal Sarup Chand's case*. As a matter of fact this was due to some observations in a later decision of the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax*, since reported as (3). It was in these circumstances that on 21st August, 1964, I considered it desirable that the conflict be settled by a larger Bench.

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The facts so far as relevant for our present purpose are briefly stated as follows: The petitioner partnership firm of Amritsar registered under the Indian Partnership Act, claims to be a registered dealer under the Central Sales Tax Act No. 74 of 1956 (hereinafter called the Central Act). For the year 1957-58 ending 31st March, 1958, the firm filed returns in respect of inter-State trade in accordance with the Central Act for the two quarters beginning from 1st July, 1957 to 30th September, 1957 and beginning from 1st October, 1957, to 31st December, 1957, relating to the textile goods sold by the petitioner outside the State of Punjab. It may be pointed out that the Central sales tax had become payable only from 1st July, 1957, by virtue of a notification issued under section 6 of the Central Act. As from 14th December, 1957, the incidence of the Central Act on woollen and cotton textiles was abolished with the result that in the second quarter the sales effected up to 13th December, 1957, were included. The petitioner paid tax due for these two quarters at the time of the filing of the returns in accordance with section 10 of the Punjab General Sales Tax Act (hereinafter called the Punjab Act). On 17th October, 1961, the Excise and Taxation Officer, described to be the Assessing Authority for Amritsar, respondent in these proceedings, sent a notice requiring the petitioner firm to appear on 20th October, 1961, with the account books of the concern for the purpose of assessment. It may be pointed out that

(1) I.L.R. (1963) 2 Punj. 370 = (1963) 65 P.L.R. 768.

(2) A.I.R. 1961 S.C. 1565.

(3) A.I.R. 1964 S.C. 766.

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in accordance with section 9(3) of the Central Act, the authorities for the time being empowered to assess, collect and enforce payment of tax under the Punjab Act are also empowered to assess, collect and enforce payment of the Central tax and the provisions of the Punjab tax law are made applicable for purposes of assessment, etc., to the same extent as if the Central tax is assessable under the Punjab Act. The provisions relating to returns, appeals, reviews and revisions in the Punjab Act are also made applicable. On receipt of the notice dated 17th October, 1961, the petitioner on 20th October, 1961, raised the objection of limitation urging that the proceedings so initiated were without jurisdiction being beyond three years from the end of the respective periods of returns. The Assessing Authority, however; proceeded with the assessment and calculated the amount of tax payable by the petitioner-firm at Rs. 20,101.06 and, after allowing the sum of Rs. 6,809.02, already deposited in accordance with the returns, created a liability of Rs. 13,292.04. No deductions on account of sales of goods claimed to have been made to registered dealers were allowed for the reasons that the 'C' forms had not been produced by the petitioner firm at the time of the assessment. Against the order of assessment an appeal was preferred by the petitioner firm before the Deputy Excise and Taxation Commissioner, Jullundur, the Appellate Authority, under section 20 of the Punjab Act, but since the tax assessed has to be paid before the hearing of the appeals this remedy has been described by the petitioner to be illusory. It is on these allegations that this Court has been approached under Articles 226 and 227 of the Constitution and the only question raised in these proceedings is whether the impugned assessment could be made after the expiry of three years from the end of the respective periods of submitting the returns.

In the respondent's return in opposition, it has been pleaded that as the proceedings for assessment had been initiated well in time, it was within the jurisdiction of the Assessing Authority to frame assessment under Section 9(3) of the Central Act read with section 11(3) of the Punjab Act on the basis of the returns furnished by the dealer. The notice issued on 13th October, 1961, has also been pleaded to be in continuation of the previous ones and, therefore, not hit by any provision as to limitation.

Here, it may be pointed out that it is not denied by the petitioner's counsel that initially a notice in Form S.T. XIV had been issued to the petitioner firm on 6th June, 1958. The petitioner had appeared, but the case was adjourned. Thereafter, the petitioner did not hear anything from the Assessing Authority till the receipt of what he describes to be a notice dated 17th October, 1961.

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The question which falls for determination relates to the scope and effect of section 11 of the Punjab Act. This section, so far as material for our purpose, reads as follow:—

“Assessment of tax, 11. (1) If the Assessing Authority is satisfied without requiring the presence of 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 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 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

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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.

(6) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period, but has failed to apply for registration, 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 in respect of such period and all subsequent periods and in cases where such dealer has wilfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount. \* \* \* \* \*

Form S.T. XIV, which is the prescribed form mentioned in sub-section (2) may also, so far as material, be reproduced at this stage:—

“FORM S. T. XIV

Notice under sections 11 and 14 of the Punjab General Sales Tax Act, 1948

(See Rules 31 and 33 of the Punjab General Sales-tax Rules, 1949).

Office of the Assessing Authority,  
\_\_\_\_\_ District

To

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS :

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(a) You, a dealer registered under Certificate No. \_\_\_\_\_ of \_\_\_\_\_ District, have not furnished return for the year/quarter/month ending the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(b) I am not satisfied that the return filed by you for the month/quarter/year ending the \_\_\_\_\_ day of \_\_\_\_\_ is correct and complete, and it appears to me to be necessary to make an assessment under sub-section (3) of section 11 of the Punjab General Sales Tax Act, 1948, in respect of the above mentioned period.

I am satisfied on information which has come into my possession that you have been liable to pay tax under Punjab General Sales Tax, Act, 1948, in respect of the period commencing on \_\_\_\_\_ and ending with \_\_\_\_\_ but that you have wilfully failed to apply for registration under section 7 of the said Act, and it appears to me to be necessary to make an assessment under sub-section (6) of section 11 of the said Act in respect of the above mentioned period and all subsequent periods.

You are hereby directed to attend in person or by an agent at (place \_\_\_\_\_ on (date) \_\_\_\_\_ at (time) \_\_\_\_\_ and there to produce or cause there to be produced, at the said time and place the accounts and documents specified below for the purpose of such assessment, together with any objection which you may wish to prefer and any evidence you may wish to adduce in support thereof and to show cause on that date and at that time why in addition to the tax to be assessed on you a penalty not exceeding one and a half times the amount should not be imposed upon you under section 11(6) of the said Act.

In the event of your failure to comply with this notice, I shall proceed to assess under section 11 of the Punjab General Sales Tax Act, 1948, to the best of my judgment without further reference to you."

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Before proceeding to consider the points canvassed at the bar, it may be made clear that the learned counsel for the petitioner-dealer has not contended that the best judgment assessment must be finalised within a period of three years after the expiry of the period in respect of which the returns have been furnished. Indeed, he has expressly conceded before us that in face of the decision of the Supreme Court in *Ghanshayam Das's case* such a contention is no longer open to him. The result, therefore, is that both sides are agreed on this point and we are not called upon to express our considered opinion on this question.

The sole contention pressed before us by the petitioner's learned counsel is that if the Assessing Authority desires to make the best judgment assessment, <sup>he</sup> must proceed to assess to the best of his judgment within three years after the expiry of the period of the returns furnished by the registered dealer. For this argument, he has relied on the language of section 11(4) of the Punjab Act, which, according to the counsel, is clear and unambiguous, admitting of no other construction. According to his contention, whenever a question is raised as to whether or not the Assessing Authority has proceeded within the prescribed time to assess to the best of his judgment, the onus would be on the authority to establish it by reference to the record.

On behalf of the Assessing Authority, on the other hand, it has been strenuously argued that once assessment proceedings begin, there is no time-limit fixed by the law within which the assessment must be concluded. Support for this submission has been sought from the observations in the judgment of the Supreme Court in *Ghanshayamdas's case* where it is observed that proceedings duly initiated in time are to be considered to be pending and can be completed without time limit and that a proceeding is said to be pending as soon as it is commenced and until it is concluded. The respondent's learned counsel has emphasised that notice in Form S.T. XIV is of a comprehensive nature which contemplates best judgment assessment in the event of non-compliance with what is required of the dealer. Annexure 'A' attached to the writ petition, it is pointed out, is only an intimation of the next date in the proceedings and is not the starting point of best judgment



process. According to this submission, when once a notice in Form S.T. XIV is given, then the assessment proceedings must be deemed to have commenced and there is no time limit within which the assessment is to conclude, even if the Assessing Authority chooses to assess to the best of his judgment, in other words, the Assessing Authority can proceed to assess to the best of his judgment whenever he likes without any limitation in regard to time.

This broad contention clearly overlooks the important words in section 11(4) of the Punjab Act which expressly fixes a period of three years after the expiry of the period of return furnished by the registered dealer within which the Assessing Authority has to proceed to assess to the best of his judgment. I, therefore, unhesitatingly decline to assent to the submission that after the initial notice in Form S.T. XIV it is open to the Assessing Authority to proceed to make a best judgment assessment without any limitation in point of time.

The question, however, arises as to when can an Assessing Authority be considered *to proceed to assess* to the best of his judgment. As already observed, the parties are agreed, and in fact it is their common case before us, that this expression does not connote the actual framing of the final assessment order. This common ground is thus the starting point from which we are asked to proceed to consider the question in issue. The parties are also agreed that as to when the Assessing Authority proceeds to make the best judgment assessment must depend on the facts of each case, but, according to the petitioner, in the case in hand, the respondent has not yet proceeded to so assess the dealer. It has, however, not been specified by the learned counsel as to what kind of step or act by the Assessing Authority would in law suggest that from that precise point of time he should be taken to proceed to make the best judgment assessment. The submission most seriously pressed on behalf of the petitioner is that it is for the Assessing Authority to show affirmatively from the record that he did actually proceed to so assess within the period provided by the statute.

The respondent has in reply submitted that law does not prescribe any particular form of notice or even information to be given to the registered dealer by the Assessing Authority for proceeding to assess to the best of his judgment and it is a matter for the authority alone to

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determine as to when he makes up his mind that on account of failure on the part of the registered dealer he should proceed to assess to the best of his judgment. The statute, it is pointed out, gives no guidance in this respect and it is a matter for determination in each case as to at what precise point of time the Assessing Authority in fact proceeds to so assess. It has been urged that it is common with the dealers to secure frequent adjournments and in certain cases to secure stay of proceedings from Courts and after thus delaying finalization of assessment proceedings to raise the plea of time bar; it has, therefore, been emphasised that the Assessing Authority should be deemed to proceed to assess to the best of his judgment when he feels that the dealer has failed to comply with the terms of the notice under section 11(2) of the Punjab Act. It has been submitted by the respondent's counsel that even in the case in hand, a large number of adjournments were secured by the dealer on various pretexts and in February, 1960, an adjournment was sought on the plea that the dealer wanted to move the High Court in the matter. Indeed, it is pointed out that on 15th February, 1960, the Assessing Authority when granting an adjournment up to 25th February, 1960, observed that no further extension would be allowed and the statements already asked for should be submitted "otherwise assessment on the basis of best judgment would be resorted to". It has been suggested that this observation might well be construed to mark the starting point of the process of best judgment assessment.

In my opinion, whenever a question arises as to whether or not an Assessing Authority has proceeded to assess to the best of his judgment, it is for that authority to show that it has so proceeded within the period prescribed by the statute. As to at what point of time he did actually proceed to so assess would have to be determined on the facts and circumstances of each case in its own setting as it is not possible to lay down any definite and clear-cut test applicable to all cases. There must, however, be some definite act or step taken from which it can be clearly ascertained that from that point of time the Assessing Authority has proceeded to assess to the best of his judgment and the starting point of this process must be within the period of three years as provided in section 11(4) of the Punjab Act.

The legal position having been clarified, the question as to when—if at all—in the case in hand the Authority proceeded to assess to the best of his judgment would have to be determined on its own facts. This case should, therefore, go back to the Single Bench for disposal of the writ petition in accordance with law and in the light of the observations made above. Costs of the hearing before the Full Bench would be costs in the cause.

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D. FALSHAW, C. J.—I agree.

Falshaw, C.J.

S. B. CAPOOR, J.—I agree.

Capoor, J.

A. N. GROVER, J.—I also agree.

Grover, J.

D. K. MAHAJAN, J.—I agree.

Mahajan, J.

B.R.T.