

Before Binod Kumar Roy, C.J., G.S. Singhvi & Surya Kant, JJ

M/S. KOTAH RUBBER INDUSTRIES LTD.,—Petitioner

versus

**THE ASSISTANT EXCISE & TAXATION COMMISSIONER
(INSPECTION) AND ANOTHER,—Respondents**

C.W.P. No. 1289 OF 1984

24th January, 2005

Punjab General Sales Tax Act, 1948—Ss. 11-A & 21—Central Sales Tax Act, 1956—S.8(2-A)—Assessing Authority granting exemption u/s 8(2-A) of 1956 Act & S. 5(2)(d)(ii) of 1948 Act to a dealer of Rubber Transmission Belting relying on an order passed by the Tribunal—Revisional Authority initiating proceedings u/s 21(1) of 1948 Act in view of a later judgment of the Tribunal which held that the dealer is not covered by item No. 30-B of Schedule B of 1948 Act—Challenge thereto—Whether the Revisional Authority has jurisdiction to exercise power u/s 21(1) if the judgment on which the order of assessment is based is over-ruled or set aside by the Superior Court or a contrary opinion is expressed by the higher adjudicating judicial/quasi-judicial authority—Held, yes—Period of limitation as prescribed by S. 11-A of 1948 Act not applicable to such cases in which Revisional Authority has not relied upon any material which was not available to the Assessing Authority.

[State of Haryana versus Free Wheels (India) Ltd., (1997) 107 STC 332, over-ruled]

Held, that the Commissioner or the Officer to whom the power of the Commissioner is delegated by the State Government under Section 21(2) of the State Act, can exercise power under Section 21(1) thereof if the judgment on which the order of assessment is based is over-ruled or set aside by the Superior Court or a contrary opinion is expressed by the higher adjudicating judicial/quasi-judicial authority.

(Para 13)

*R.P. Sawhney, Senior Advocate, with Pritam Saini, Advocate,
for the petitioners.*

*Mrs. Charu Tuli, Senior Deputy Advocate, General, Punjab,
for the respondent.*

ORDER

SURYA KANT, J.

The following question of law is required to be answered by the Full Bench :—

“Whether the Commissioner or the officer to whom the power of the Commissioner is delegated by the State Government under Section 21(2) of Punjab General Sales Tax Act, 1948 can exercise power under Section 21(1) thereof if the judgment on which the order of assessment is based is overruled or set aside by the Superior Court of a contrary opinion is expressed by the higher adjudicating judicial/ quasi-judicial authority ?”

(2) The petitioner challenges the notice dated 17th February, 1984 (Annexure P-2) issued by the Assistant Excise and Taxation Commissioner (Inspection), Jalandhar (for short the Revisional Authority) for taking *suo-motu* action under Section 21(1) of the Punjab General Sales Tax Act, 1948 (for short, the State Act).

(3) By placing reliance on a Division Bench Judgment of this Court in **State of Haryana versus Free Wheels (India) Ltd., (1)**, it was contended on behalf of the Petitioner before one of us (G. S. Singhvi, J.) that proceedings initiated by the Revisional Authority were liable to be declared as without jurisdiction because power under Section 21(1) of the State Act could not be exercised on the basis of a later judgment of the Tribunal. On behalf of the State of Punjab, reliance was placed on the judgments of a learned Single Judge in **The Asian Rubber and Plastic Industries versus State of Punjab and another, (2)**, Division Bench in **Luthra Rubber Industries versus State of Punjab and another (3)**, and also the Full Bench judgment in **Hari Chand Rattan Chand and Co. versus The Deputy Excise and Taxation Commissioner (Additional), Punjab (4)**, and it was argued that the Revisional Authority had the jurisdiction to exercise power under Section 21 in view of the later

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- (1) (1997) 107 S.T.C. 332
(2) (1982) 50 S.T.C. 383
(3) (1985) 59 S.T.C. 198
(4) (1969) 24 S.T.C. 258

order passed by the Tribunal. His Lordship having noticed that in the judgment of Division Bench delivered in the **State of Haryana versus Free Wheels (India) Ltd.** (*supra*), which is later in point of time, the earlier judgment of the Division Bench in **Luthra Rubber Industries case** (*supra*) which is directly on the point in issue, was not considered and, thus, there were conflicting views expressed by the Division Benches in the afore-mentioned two judgments. That is how this reference is before us.

(4) With a view to appreciate the controversy in its right perspective, we may briefly notice the facts.

(4.1) The Petitioner is engaged in the manufacture and sale of rubber transmission belting at Jalandhar and is registered as a dealer under the State Act as well as Central Sales Tax Act, 1956. For the assessment year 1968-69, the Assessing Authority assessed the petitioner,—*vide* order dated 7th May, 1971 and granted exemption to the tune of Rs. 2,01,899 by treating the goods manufactured by it as exempted from tax under section 8(2-A) of the Central Act read with section 5(2)(a)(ii) of the State Act. The Assessing Authority relied on an order dated 29th February, 1968 passed by the Sales Tax Tribunal, Punjab in the case of **M/s. Allied Rubber Industries versus State of Punjab** for granting the afore-mentioned exemption. Similar exemption was granted to the petitioner for the Assessment Years 1969-70, 1970-71 and 1971-72.

(4.2) The Revisional Authority issued notices dated 11th June, 1975 to the Petitioner under section 21(1) of the State Act proposing *suo-motu* revision of the Assessment for the years 1969-70 to 1971-72 in view of a later judgment dated 8th January, 1973 of the Tribunal in Appeal No. 118 of 1971 (**M/s Brij Cycle Works, Kotkapura versus State of Punjab**) in which it was held that rubber transmission belting is not covered by Item No. 30-B of Schedule-B of the State Act. Separate notices were also issued to the petitioner proposing revision of assessment made under the Central Act in relation to the same assessment years. The petitioner filed objections against the proposed revision of assessment mainly contending that the subsequent decision of the Tribunal in the case of **M/s Brij Cycle Works, Kotkapura versus State of Punjab** could not be made basis for invoking powers under section 21(1) of the State Act. The afore-mentioned objection did not find favour with the Revisional Authority,

who,—*vide* its orders dated 25th January, 1984 and 27th January, 1984 imposed tax on the Petitioner under the Central Act @10% for the assessment year 1968-69. Similar orders were passed for subsequent assessment years as well. The legality of these orders has been questioned by the Petitioner primarily on the ground that the Revisional Authority could not have invoked the provisions of Section 21(1) of the State Act merely because the legal position had undergone a change. An ancillary argument that the remedy available to the department under Section 11-A of the State Act having become time barred it was not open to the Revisional Authority to exercise power under section 21(1) of the State Act has also been raised.

The submissions before us :—

(5) Relying upon Section 11-A of the State Act, Shri R.P. Sawhney, Learned Senior Counsel appearing on behalf of the Petitioner, in support of the afore-mentioned contention argued that if on receipt of a “definite information” the Assessing Authority discovers that the turnover of a dealer has been under-assessed or escaped assessment in a year, it may proceed to re-assess the tax payable on the turnover which has been under-assessed and/or escaped assessment but such power can be exercised by the Assessing Authority within five years following the close of the year for which the turnover is proposed to be re-assessed. According to him *suo-motu* power of Revisional Authority under Section 21(1) of the State Act to call for the records of any proceedings, which are pending before or have been disposed of by an Authority subordinate to him, for the purposes of satisfying himself as to the **legality or propriety** of such proceedings and/ or the order made therein and thereafter to pass such an order in relation thereto as he may think fit, it meant to achieve the same object for which the Assessing Authority is authorised under Section 11-A of the State Act. He further contended that Sections 11-A and 21(1) of the State Act are complimentary to each other, therefore, the maximum period of limitation for invoking such powers as expressly prescribed in Section 11-A be read into Section 21(1) as well. Shri Sawhney contended that since the subsequent judgment by the Tribunal on the basis of which *suo motu* revision of the assessment for the year 1969-70 to 1971-72 is sought to be made is a “definite information” only, it would, at the best, entitle the Assessing Authority to re-assess a dealer under Section 11-A of the State Act, however, the period of limitation of five years

having expired, no action could have been taken by the Assessing Authority and since the re-assessment had become time barred under Section 11-A, it was no ground for the Revisional Authority to initiate *suo motu* proceedings under Section 21(1) as the previous assessment orders which were based upon the law which held the field at the relevant time, were neither suffering from any "illegality" or "impropriety". To buttress his submissions reliance has been placed by **Shri Sawhney on State of Kerala versus K.M. Cheria Abdulla and company, (5) Gurbaksh Singh versus Union of India and others, (6)** and the Division Bench judgment in **Luthra Rubber Industries versus State of Punjab and another, (supra)**.

(6) Smt. Charu Tuli, learned Senior Deputy Advocate General, Punjab relied on the judgment of the Supreme Court in **State of Haryana and others versus Alfa Surgical (P) Ltd., (7)** and argued that the judgment of the Division Bench in **State of Haryana versus Free wheels (India), (supra)** can no longer be treated as good law and the Court may re-affirm the view expressed in **Luthra Rubber Industries versus State of Punjab and another, (supra)**.

Our findings :—

(7) Sections 11-A and 21(1) of the State Act, which have a bearing on the merits of the instant case, are reproduced hereunder for the sake of reference :—

"11-A Re-assessment of Tax (1) If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment in any year, the Assessing Authority may, at any time within five years following the close of the year for which the turnover is proposed to be re-assessed and after giving the dealer a reasonable opportunity, in the prescribed manner of being heard, proceed to reassess the tax payable on the turnover which has been under-assessed or has escaped assessment.

(5) (1965) 16 S.T.C. 875

(6) (1976) 59 S.T.C. 4259 (S.C.)

(7) (2000) 9 S.C.C. 301

(2) An Assessing Authority or any such authority as may be prescribed, may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify any clerical or arithmetical mistake apparent from the record.”

“21. Revision—(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any Officer powers to the Commissioner sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order, may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.”

(8) In **The Asian Rubber Plastic Industries case** (*supra*), a learned Single Judge considered the question whether the Revisional Authority has the jurisdiction to revise the assessment by invoking section 21(1) of the State Act. It was argued on behalf of the assessee that a change in the legal position did not empower the Revisional Authority to invoke its *suo motu* revisional powers under section 21(1) of the State Act. While rejecting the afore-mentioned plea, the learned Single Judge observed as follows :—

“Mr. Sarwal has further contended that since in the present case information in the form of a decision of this Court was made available to the authorities, section 11-A of the Act will be applicable because the word “information” occurs

in section 11-A of the Act and not section 21 of the Act. To say the least this argument of the learned counsel is far fetched. Only because the word "information" occurs in section 11-A of the Act and this word has been interpreted to include the correct state of law, it will now follow that the provisions of section 11-A are automatically attracted to the case. The assessing authority had decided the cases of the petitioner for the three years and on the authority of a judgment of the State Sales Tax Tribunal, had held that transmission rubber belting was not taxable. He had considered all the evidence and other material on the file. The revisional authority has not acted on any outside information. It has not taken into account any material which was not available to the assessing authority. The judgment of this court does not provide any factual material, which was not on the file of the assessing authority. The State Sales Tax Tribunal had interpreted an entry in the Act in one way and held the sale of transmission rubber belting to be exempt from tax under the Act. However, this Court while deciding Laxmi Machinery Stores case (1977)39 STC 87 interpreted this very statutory provision and held that transmission rubber belting is taxable. Now the Audit Section has only brought the true legal position to the notice of the revisional authority. They have not put in new facts before the authority. The decision of the Court will relate back to the time of enactment of the provisions in the Act. It will be deemed to be the state of law even when the assessment orders were passed. Section 21(1) of the Act gives plenary powers of revision to the Commissioner. There is no period of limitation prescribed for the exercise of this power. Exercising revisional powers, respondent No. 2 could reopen the cases of the petitioner beyond the period of five years which is the limitation for the assessing authority to review his own order. The period of limitation as prescribed by section 11-A of the Act is not applicable to the cases in which the revisional authority while deciding the revision does not rely upon any material which was not present before the assessing authority at the time of decision of the case...."

(9) The afore-mentioned view of the learned Single Judge was approved by the Division Bench in **Luthra Rubber Industries's** case (*supra*). In that case also, on the basis of a later order passed by the Tribunal that the rubber transmission belting was not tax free and was exigible to tax, proceedings under section 21(1) of the State Act were initiated by the Revisional Authority in relation to the earlier assessment years for which exemption had been granted on the basis of an earlier view taken by the Tribunal. The Revisional Authority rejected the plea of the assessee that the judgment of the Tribunal and the High Court amounted to "fresh and definite information" within the meaning of section 11-A of the State Act and as such proceedings could be taken under section 11-A of the State Act only. The order of the Revisional Authority was upheld by the Division Bench and it was observed :—

"The revisional authority 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 call for the record of any proceedings pending before any Assessing Authority or appellate authority in order to determine the legality or propriety of the proceedings. But, before he decides to exercise this power, he must come to the conclusion that the order or the proceedings suffer from the vice of impropriety or illegality and for this conclusion he has to confine himself to the record which is called for by him and which was before the lower authority, as the lower authority can be presumed to have applied his mind only to that record. He cannot take into consideration any fresh material in order to come to this conclusion. After having come to that conclusion, he will be entitled to scrutinise the proceedings and the order passed in order to determine the correct turnover, which should have been assessed to tax on the basis of that record. He cannot, however, bring to tax, in the purported exercise of revisional powers, any turnover which had not been disclosed to the Assessing Authority by the dealer or which was not discovered by him during the course of assessment and which has come to the notice of the revising authority after the expiry of three years following the close of the year to which the turnover proposed to be taxed relates. That is the function of the Assessing Authority under Section 11-A of the Act

and cannot be exercised by the revising authority. But, if any enquiry is to be made or some evidence has to be examined in respect of the turnover which was the subject-matter of the proceedings before the Assessing Authority or the appellate authority, the revising authority will be at liberty to make such further enquiry or to take such further evidence as he considers fit to determine the legality or propriety of the order already passed. For example, and not meaning it to be exhaustive, he can determine whether the deductions or exemptions were correctly allowed or the tax was levied at the rate prescribed. The bogus nature or the falsity of the deductions or exemptions allowed can also be gone into. To emphasize, such further enquiry or evidence must be germane to the turnover already on the record and not to the turnover which is sought to be brought in for the first time as a result of some information obtained from somewhere.

Mr. R.N. Narula, learned counsel for the petitioner, contended that the aforesaid decision of the learned Single Judge deserves reconsideration, as it does not lay down a correct law, but he has not been able to cite any relevant authority on the point, on the basis of which, a contrary view could be taken. The reasoning of the learned Judge in the Asian Rubber and Plastic Industries case (1982) 50 STC 383 is unassailable and we are in full agreement with the same."

(10) In *State of A.P. versus Lalitha Oil Mills and others* (8), a Division Bench of Andhra Pradesh High Court, while interpreting Section 20(1) of the Andhra Pradesh General Sales Tax Act, 1957, which is *pari-materia* to Section 21(1) of the State Act, upheld the invoking of revisional power on the ground that the judgment of the High Court relied upon by the assessee had been over-ruled by the Supreme Court. The Division Bench held as follows :—

"That under Section 20 of the Act what the Deputy Commissioner was concerned with was the legality of the order passed by the Commercial Tax Officer. He was not concerned with the question whether the exemption was rightly granted at the date when the assessing authority passed the order. He had to apply the law as it stood at the date when he chose to exercise his revisional authority

and if, on that date, it was found that the correct law that was applicable was the one laid down by the Supreme Court, then it would be open to him to revise the assessment in accordance with the law as laid down by the Supreme Court. The Deputy Commissioner was therefore right in exercising his jurisdiction under Section 20(2) of the Act."

(11) The controversy has now been set at rest by their Lordships of the Supreme Court in **State of Haryana and others versus Alfa Surgical (P) Ltd., (supra)**. The facts of that case are that the Revisional Authority, in exercise of power under section 40 of the Haryana General Sales Tax Act, 1973, as mentioned above, is **pari-materia** to Section 21(1) of the State Act, issued a notice to the assessee based on a judgment of the Court holding that the surgical cotton should have been assessed @ 8% and not @ 4% which was prescribed for ordinary cotton. The assessee challenged the same on the ground that subsequent judgment of the High Court could not be made basis for invoking the provisions of Section 40. A Division Bench of this Court relying upon the judgment of the co-ordinate Bench in the **State of Haryana versus Free Wheels (India) Ltd. (supra)** quashed the same on the same reasoning, namely, the power of suo-motu revision could not have been invoked by the Revisional Authority on the basis of a later judgment. In the Appeal filed before the Apex Court by the State of Haryana, the view taken by this Court was supported on behalf of the assessee on the plea that "the authorities merely wanted to re-assess the assessee for which the appropriate provision is there under the statute and, therefore, the revisional power could not have been exercised" and that "on the basis of law as it stood on the date of assessment, the order of assessment was perfectly valid and since the authorities have issued the notice because of a change of law with regard to the assessment of the surgical cotton, the jurisdiction of the Revisional Authority could not have been exercised." Repelling these contentions, the Supreme Court held as follows :—

"2. On a plain reading of the aforesaid section, we do not find any fetter on the powers of the revisional authority to issue notice and call for the records of any case whether pending or disposed of by any assessing authority or appellate authority for the purposes of satisfying himself as to the legality or propriety of any order made therein. The power conferred on the revisional authority is wide enough to include a case where the revisional authority feels that

the assessing authority committed error in assessing the sale of surgical cotten at 4% though in law it ought to have been assessed at 8%. On the plain language of the aforesaid section and on examining the impugned notice, we are not in a position to come to the conclusion that either the revisional authority lacked jurisdiction in issuing the notice in question nor can it be said that the necessary ingredients for exercising that power, as conferred by the statute have not been specified. In this view of the matter, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the notice issued by the revisional authority. We, therefore, quash the aforesaid order of the High Court and direct that the revisional authority shall proceed with the matter in accordance with law. Since the assessee has not shown cause and the time has already expired as per the notice, we allow 3 weeks from today to the assessee to file the show cause before the revisional authority whereafter the revisional authority shall proceed with the matter. The appeal is allowed.” (emphasis applied)

(12) In view of this judgment, the view taken in **State of Haryana versus Free Wheels (India) Ltd.** (*supra*) cannot be treated as good law whereas the view expressed by the learned Single Judge in **The Asian Rubber and Plastic Industries versus State of Punjab and another** (*supra*), which was approved by the Division Bench in **Luthra Rubber Industries versus State of Punjab and another** (*supra*), should be treated to have been approved by the Apex Court.

(13) In the light of the above discussion, we hold that the Commissioner or the officer to whom the power of the Commissioner is delegated by the State Government under section 21(2) of the State Act, can exercise power under section 21(1) thereof if the judgment on which the order of assessment is based is over-ruled or set aside by the superior Court or a contrary opinion is expressed by the higher adjudicating judicial/quasi judicial authority.

(14) We accordingly answer the question, referred for adjudication, in the affirmative.