

(15) In certain cases before us the assesseees have come at the stage of show cause notice, that is, before assessment is framed. Each assessee would take its stand in reply to the show cause notice and the Assessing Authority will frame the assessment keeping in view the law laid down in this judgment.

(16) For the reasons recorded above, Civil Writ Petition Nos. 5190 of 1989, 818, 2509, 2510, 3197, 4510, 5260 to 5264, 6006, 6302, 7467, 7932, 8163, 8418, 9297, 10587 and 11584 of 1990 stands disposed of with no order as to costs.

S.C.K.

Before Hon'ble G. C. Mital, A.C.J. & H. S. Bedi, J.

M/S KENAPO TEXTILES PVT. LTD. & ANOTHER.—*Petitioners.*

versus

STATE OF HARYANA & OTHERS.—*Respondents.*

C.W.P. No. 4191 of 1989

16th April, 1991

Haryana General Sales Tax Act, 1984—Assessing Authority—Power to appoint such authority—Two authorities having started proceedings—Whether two separate proceedings can continue.

Held. that under the Act, the District Excise and Taxation Officer-cum-Assessing Authority, would have jurisdiction to make the assessment.

(Para 7)

Further held. that the State Government issues Notification in exercise of the powers conferred by Section 3 and clause (a) of Section 2 of the Act, the officer so appointed shall also have the jurisdiction to frame the assessment.

(Para 7)

Further held, that in case any one of the aforesaid two officers starts the assessment proceedings, the other officer shall not be entitled to start the same and the moment the officer who started the proceedings later on gets the information that the proceedings have already been started by the other officer, he will have to stay his hands. However, the authority named in Rule 7 will have the jurisdiction to transfer the pending proceedings to the other officer and until such an order is passed, the officer who started the proceedings

first will continue to have jurisdiction to frame the assessment and the other officer will not have the jurisdiction to do so. If this rule is not followed, there is likelihood of conflict of opinion between officers of co-ordinate jurisdiction and in law such a course would be avoided as far as possible.

(Para 7)

R. C. Dogra, Sr. Advocate, with Mrs. Dogra Advocate and Rajesh Bindal, Advocates, for the Petitioners.

S. C. Mohunta, A.G., Haryana with S. K. Sood, A.A.G., Haryana, for the Respondents.

JUDGMENT

Gokal Chand Mital, A.C.J.

(1) The petitioners are carrying on the business of job work of grey cloth supplied by customers which, after processing into fine cloth, bleaching and printing, is returned to the owners of grey cloth. They also purchase grey cloth and after processing it into fine cloth, bleaching and printing, sell the same. Until 17th April, 1984, the material used for job work, that is, processing, bleaching and printing, was not liable to sales-tax but from 18th April, 1984, due to certain Constitutional Amendments and the amendments carried out by the State of Haryana in the Haryana General Sales Tax Act (hereinafter referred to as the Act), the material used in the job work became liable to sales-tax with effect from 1st April, 1987. The vires of the amended provisions of the Act have been upheld by the Supreme Court in *Builders Association of India and others v. Union of India and others* (1). Accordingly, we are not concerned with the vires in this case.

(2) The Excise and Taxation Officer, Faridabad, who is the Assessing Authority, took up the case for assessment of sales-tax in respect of the two petitioners with effect from 1st April, 1987, the date from which the provisions of the Act were made applicable. While proceedings were pending before the aforesaid officer. Shri M. S. Hooda, Excise and Taxation Officer, was designated as Excise and Taxation Officer-cum-Assessing Authority (AES) for the entire State of Haryana, including Faridabad. (AES stands for Anti Evasion Squad). Shri M. S. Hooda also issued notices annexures P-1

(1) (1989) 73 S.T.C. 370.

and P-2 to the petitioners to frame assessment against them. In their replies contained in annexures P-3 and P-4, they challenged his jurisdiction on various grounds. Now, notices annexures P-1 and P-2 have been challenged in this writ petition.

(3) Under the Act, it is the Excise and Taxation Officer-cum-Assessing Authority of the district who has jurisdiction to frame assessment and in each district the State of Haryana has appointed an Excise and Taxation Officer-cum-Assessing Authority. However, power is vested in the State Government, by virtue of section 3 and clause (a) of section 2 of the Act to appoint Excise and Taxation Officer (Anti Evasion Squad) in the Excise and Taxation Department to assist the Commissioner, Haryana, and to perform the duties of an Assessing Authority within the meaning of clause (a) of Section 2 of the Act, throughout the State of Haryana. The Governor of Haryana issued Notification dated 19th of May, 1989,—vide No. S.O. 76/H.A-20/73/S. 3/89, under the aforesaid provision appointing Shri M. S. Hooda for performing the duties of an Assessing Authority throughout the State of Haryana.

(4) A similar notification issued under the Punjab Act came up for consideration before a Division Bench of this Court in *Devi Dass Gopal Krishan v. The State of Punjab* (2), and the validity thereof was upheld by this Court.

(5) For the detailed reasons given in that decision, we find no error in the notification appointing Shri M. S. Hooda as the Assessing Authority (AES) to perform his duties throughout the State of Haryana.

(6) The next question arises that once the Excise and Taxation Officer-cum-Assessing Authority of the District had already started proceedings and were pending, would Shri M. S. Hooda initiate similar proceedings thereafter.

(7) On a consideration of the matter, we are of the view that for the assesseees within the district of Faridabad, the Excise and Taxation Officer-cum-Assessing Authority, Faridabad, as well as Shri M. S. Hooda, Excise and Taxation Officer (AES) will have the jurisdiction to make the assessment. Whosoever starts the proceedings first, those proceedings will go on and the second authority

would not be justified in starting the proceedings or continuing with the same once the authority who started the proceedings later on is informed that the proceedings by the other officer have already been initiated. For avoiding conflict of opinion, there is a provision in the Statute. Rule 7 provides for transfer of cases from one Assessing Authority to another or from one Excise and Taxation Officer to another. In such a situation, if the Assessing Authority wishes to start or starts proceedings later on without knowing that the other officer has already started the proceedings, the appropriate course for him would be to apply for transfer of the case to the higher authority as provided under rule 7 of the Rules framed under the Act. The higher authority may transfer the case from the Assessing Authority to another or may refrain from doing so. In this case, the proceedings had already been started before the District Assessing Authority and therefore Shri M. S. Hooda could not start parallel proceedings. Moreover, there is no order of transfer of the case from the District Assessing Authority to Shri M. S. Hooda and, therefore, Shri Hooda could not issue notices for making assessment while the proceedings were pending before the District Assessing Authority. Accordingly, we record the following propositions of Law :—

1. Under the Act, the District Excise and Taxation Officer-Assessing Authority would have jurisdiction to make the assessment ;
2. In case the State Government issues Notification in exercise of the powers conferred by section 3 and clause (a) of section 2 of the Act, the officer so appointed shall also have the jurisdiction to frame the assessment ;
3. In case any one of the aforesaid two officers starts the assessment proceedings, the other officer shall not be entitled to start the same and the moment the officer who started the proceedings later on gets the information that the proceedings have already been started by the other officer, he will have to stay his hands. However, the authority named in rule 7 will have the jurisdiction to transfer the pending proceedings to the other officer and until such an order is passed, the officer who started the proceedings first will continue to have jurisdiction to frame the assessment and the other officer will not have the jurisdiction to do so. If this rule is not followed,

there is likelihood of conflict of opinion between officers of co-ordinate jurisdiction and in law such a course would be avoided as far as possible.

(8) For the reasons recorded above, the notices annexures P-1 and P-2 issued by Shri M. S. Hooda, Excise and Taxation Officer-AES) are hereby quashed. However, the Excise and Taxation Officer-cum-Assessing Authority, Faridabad, would have jurisdiction to frame the assessment and can continue the proceedings until the same are got transferred under rule 7 to Shri M. S. Hooda or some other officers competent to frame the assessment. The writ petition stands disposed of accordingly.

S.C.K.

Before Hon'ble Jawahar Lal Gupta, J.

MOHAN LAL VOHRA,—*Petitioner.*

versus

STATE OF HARYANA & ANOTHER,—*Respondents.*

C.W.P. No. 10391 of 1990

14th November, 1991

Constitution of India, 1950—Arts. 226/227—Teacher graded 'B'—Grading reduced to Below Average—Down grading of the reports—Pre-mature retirement on the basis of such report— Validity of.

Held, that once the petitioner's performance was assessed as 'Good' or 'Very Good', it cannot be down graded merely on the basis of the results. The overall results of a school depend not only on the performance of the other teachers, but also on the calibre of the students. Surely, a teacher alone much less than a headmaster cannot be made to suffer even if the results of the school are not upto the expected standards. On an overall consideration of the matter, the petitioner cannot be described as 'dead wood' which may need to be chopped off.

(Para 6)

S. P. Laler, Advocate, for the Petitioner.

Jaswant Singh, Advocate, for State of Haryana (Respondent).