

Lastly, it was submitted that Mr. Kirpa Ram was not the advocate of Sukhan Lal. This objection again is pointless. In the first place, when the *Mukhtar-i-khas* had himself signed the statement, there was no necessity for the advocate to sign the same. Secondly, as pointed out by the learned Additional District Judge, there was on the record a power of attorney dated 3rd of February, 1964, by which Sukhan Lal had engaged both Mr. Kirpa Ram and Mr. Mahi Pal Singh as his counsel. In the body of this document, the names of both the advocates are written, But, it appears that at the bottom, by an accidental omission Mr. Kirpa Ram, Advocate, had forgotten to put his signature, because it was only signed by Mr. Mahipal Singh. However, Mr. Kirpa Ram had been appearing in the case on behalf of Sukhan Lal on other hearings as well and that showed that he was the counsel for respondent No. 1. There is no manner of doubt that by his conduct in appearing for the respondent in the trial Court, he had accepted the power of attorney given to him.

No other point was argued.

It is note-worthy that Sukhan Lal or any other respondent is not raising any objection to the compromise. It is only Johri Mal who seems to be dis-satisfied with the said compromise and wants to back out of it by taking one objection or the other. Undoubtedly, he had made the statement on solemn affirmation in the presence of his counsel who also had signed the same. It does not now lie in his mouth to try to get out of the said compromise by taking useless objections.

The result is that this appeal fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

MESSRS JAI GOPAL & CO.,—*Petitioner*

versus

THE ASSESSING AUTHORITY, AMRITSAR,—*Respondent*

Civil Writ No. 2352 of 1964.

April 3, 1967

Punjab General Sales Tax Act (XLVI of 1948)—S. 10—Punjab General Sales Tax Rules (1949)—Rule 20—Dealer—Whether can be required to file a return relating to a broken part of the quarter.

Messrs Jai Gopal & Co. v. The Assessing Authority, Amritsar (Narula, J.)

Held, that according to rule 20 of the Punjab Sales Tax Rules, 1949, the dealer had to furnish returns in the prescribed form quarterly within thirty days from the expiry of each quarter. No order under rule 23 prescribing a shorter period for furnishing the returns having been passed in this case, it was the right of the petitioner-firm to wait till the last of the thirty days allowed to it after the expiry of each relevant quarter for submitting the prescribed returns. The petitioner-firm could not in law be compelled to file a return relating to a broken part of the quarter and assessment proceedings for any part of the quarter could not have been taken up by the Assessing Authority before the expiry of thirty days from the last day of the quarter.

Petition under Article 226 of the Constitution of India, praying for a writ of certiorari, mandamus or any other appropriate writ, order or direction quashing the order of the Respondent, dated 9th July, 1964 and directions requiring him to forbear from enforcing his order for recovery of the sales-tax assessed and effecting the arrest of the petitioner and/or other appropriate writ, order or direction on behalf of the petitioner.

T. S. MUNJRAL, ADVOCATE, for the Petitioner.

MAN MOHAN SINGH, ADVOCATE FOR ADVOCATE-GENERAL, for the Respondent.

ORDER

NARULA, J.—Messrs Jai Gopal and Company of Katra Mit Singh, Amritsar, were registered dealers under the Punjab General Sales Tax Act (46 of 1948) (hereinafter called the Act). They filed returns for the first three quarters of the financial year 1963-64, ending December 31, 1963. Before the expiry of the last quarter, a notice dated February 19, 1964; was issued to the petitioner-firm by the Assessing Authority, Amritsar (respondent), in Form ST. XIV for production of up-to-date account books for the whole of the year 1963-64, including the quarter which had not yet expired alongwith a notice to show cause as to why the registration certificate of the petitioner-firm should not be cancelled under sub-section (4) of section 7 of the Act. The account books were produced by the petitioner-firm, but it did not file any return in the prescribed form for the period ending March 31, 1964. A return for the first fourteen days' of January, 1964, is now admitted by counsel to have been filed with the Assessing Authority under orders from him. During the course of the proceedings, the petitioner-firm surrendered its registration certificate along with its application, dated March 3, 1964 (said to have been received in the office of the Assessing Authority on March, 11, 1964), wherein it was stated that it had

discontinued business with effect from March 2, 1964. Copy of that application has not been produced by the respondent. But it is added in paragraph 12 of the return that the petitioner-firm had also stated that no other "purchases" had been effected by the petitioner-firm after January 14, 1964. It was admittedly not stated in the said application that no "sales" were effected between January 14, 1964 and March 2, 1964. On the other hand it has been definitely averred in paragraph 12 of the writ petition that the petitioner-firm carried on business of sales even after February 19, 1964.

By order, dated July 9, 1964, the Assessing Authority cancelled the registration certificate of the petitioner-firm under section 7(6) (a) of the Act with effect from March 11, 1964, on its own application. He disallowed a substantial part of the exemptions claimed by the petitioner-firm on various grounds, with which I need not deal in this judgment, and proceeded to assess the petitioner-firm for the whole of the financial year 1963-64. The said order was impugned in this writ petition on three grounds, namely:—

- (i) that the assessment proceedings before the expiry of the whole of the financial year were not authorised by the Act and were, therefore, illegal;
- (ii) that substantial part of the exemptions claimed by the petitioner-firm under section 5(2)(a)(ii) of the Act had been illegally disallowed by the Assessing Authority; and
- (iii) that the assessment proceedings, for the fourth quarter of 1963-64, were in any case wholly without jurisdiction.

The first attack on the impugned order was based on a Division Bench judgment of this Court in *Mansa Ram-Sushil Kumar v. The Assessing Authority, Ludhiana* (1). Counsel concedes that the said judgment having been over-ruled by a subsequent Full Bench judgment of this Court in *M/s Om Parkash-Raiinder Kumar v. K. K. Opal* (2), he cannot successfully sustain the said attack so far as this Court is concerned. In the Full Bench judgment it has been held that sales tax can be assessed under section 11 of the Act on the basis of quarterly returns submitted by a dealer and that it is not

(1) (1964) 15 S.T.C. 857.

(2) I.L.R. (1967) 1 Punj. 115.

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necessary that assessment proceedings should be taken up only after the expiry of the whole assessment year. In this view of the matter, the first contention is not pressed by Mr. Munjral.

In the view I am taking of the third argument of the learned counsel for the petitioner, it is not necessary to deal with his arguments relating to the order disallowing exemptions being without jurisdiction as based on extraneous considerations and not justified by the provisions of section 5(2)(a)(ii) of the Act and rule 26 of the rules framed thereunder. Counsel has relied in this connection on my judgment in *A. D. M. Stores and another v. Commissioner of Sales Tax, Delhi, and others* (3), Mr. Manmohan Singh on the other hand has submitted that there is a Single Bench judgment to the contrary in the case of *Jhangi Mall Nathu Mall and Sons*. Learned counsel has not, however, been able to give the citation of the case nor referred to any copy of the judgment therein. It will be for the Assessing Authority to deal with this matter in the first instance.

I, however, find great force in the argument of Mr. Tirath Singh Munjral on the third count. Rule 20 of the Punjab General Sales Tax Rules, 1949, lays down that every registered dealer (with the exception of some categories in which the petitioner-firm admittedly does not fall) has to furnish returns in the prescribed form quarterly within thirty days from the expiry of each quarter. No order under rule 23 prescribing a shorter period for furnishing the returns having been passed in this case, it was the right of the petitioner-firm to wait till the last of the thirty days allowed to it after the expiry of each relevant quarter for submitting the prescribed returns. The petitioner-firm could not in law be compelled to file a return relating to a broken part of the quarter. It is not the case of the respondent that any special order fixing a shorter period had been passed by the Assessing Authority for reasons recorded by him. In the absence of any return for the period January 1, 1964 to March 31, 1964 or March 2, 1964, in this case, assessment proceedings for that period could not have been taken up by the Assessing Authority before the expiry of thirty days from the last day of the quarter. The notice, dated February 19, 1964, in so far as it related to the fourth quarter of 1963-64, and the assessment proceedings commenced during that time relating to the said quarter, are, therefore, wholly illegal and

without jurisdiction. Since the impugned order does not show as to how much demand has been created for the period ending December 31, 1963, and how much for the last quarter, it is impossible to sustain any part of the order.

I, therefore, allow this writ petition and set aside the impugned order of the Assessing Authority, dated July 9, 1964, and direct that the petitioner-firm would be re-assessed for the year 1963-64, in accordance with law. The question of exemptions to which the petitioner-firm may or may not be entitled under section 5(2)(a)(ii) of the Act read with rule 26 of the rules framed thereunder shall also be considered and decided by the Assessing Authority on merits afresh. In the circumstances of the case there is no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

PRITHVI CHAND,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No 1619 of 1963

April 4, 1967

Defence of India Act (LI of 1962)—Preamble and Ss. 29, 40 and 44—Order requisitioning a shop mentioning that it is expedient and necessary to requisition it for maintaining supplies and services essential to the life of the community—Declaration regarding expediency and necessity—Whether can be challenged—S. 29—Whether falls within purview of the Preamble—Order of requisitioning—Whether should contain the period for which the property is requisitioned—S. 44—Scope of—Whether controls jurisdiction of the authority under S. 29—‘Collector’ in notification, dated December 13, 1962 issued under S. 40—Whether includes ‘Land Acquisition Collector’—Constitution of India (1950)—Article 226—Decision of authority under section 29 regarding necessity and choice of place—Whether can be challenged in a writ petition—Constitution of India (1950)—Article 245—S. 40—Whether suffers from excessive delegation—Interpretation of Statutes—Preamble of an Act—Whether can be looked into.