
(1973) 07 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Sales Tax Reference No. 10 of 1972

A. Duggal and Co.

APPELLANT

Vs

The Excise and Taxation Commissioner

RESPONDENT

Date of Decision : 27-07-1973

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 11, 13, 22, 4

Citation : (1975) 2 ILR (P&H) 417 : (1973) 32 STC 445

Hon'ble Judges : Harbans Singh, C.J.; Prem Chand Jain, J

Bench : Division Bench

Advocate : P.K. Bansal, D.S. Nehra and M.L. Garg, for the Appellant; Anand Swaroop and M.L. Puri, for the Respondent

Judgement

Harbans Singh, C.J.—This is a reference u/s 22 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), asking this court to give a decision on the following question :

Whether, on the facts and in the circumstances of the case, the applicant could be assessed u/s 11 of the Act or not ?

2. The facts necessary for the decision of this reference, briefly stated, are as follows:

The firm, Messrs. A. Duggal and Co., Sector 18-C, Chandigarh (hereinafter referred to as the assessee), had its head office at Delhi from where it obtained the goods and then sold the same within the Union Territory of Chandigarh. On 20th February, 1964, the assessee made an application u/s 7(2) of the Act for being registered as a dealer under the Act. Sub-section (3) of Section 7 provides that if the authority under the Act, to whom the application for registration is given, is satisfied that the same is in order, then that authority shall "in accordance with such rules and on payment of such fees as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed forms which may specify the class or classes of goods for the purpose of Sub-

clause (ii) of Clause (a) of Sub-section (2) of Section 5.

3. Now, this application for registration was granted on 16th June, 1965, though this date is mentioned as 8th June, 1965, in some of the orders. But, this discrepancy is hardly of any importance for our purposes. It is the admitted case that after the issue of the registration certificate, viz., on 20th July, 1965, the assessee submitted all the four quarterly returns relating to the year 1964-65 and also deposited a sum of Rs. 19,562.36. The Assessing Authority by its order dated 26th May, 1967, felt that there was a delay in filing the returns and depositing the money. On behalf of the assessee, it was contended that the registration certificate having been received late, the quarterly returns could not be submitted in time. Apparently, on this basis, the assessee wanted to escape imposition of a penalty. Inter alia, it was stated by the Assessing Authority that "even after the delivery of the registration certificate, the dealer filed returns after six weeks and deposited the tax". A penalty of Rs. 1,000 was imposed for this delay u/s 10(6) of the Act. This matter of imposition of penalty is not before us, though it was stated that the assessee failed before all the authorities under the Act in getting this penalty set aside.

4. Thereafter, the Assessing Authority found that the account books of the assessee were in order, that the goods were received from the head office for sale in Chandigarh and that "as per account books produced gross sales amount to Rs. 6,77,978.28 which are inclusive of tax". These figures were taken as correct. Certain deductions were also claimed either on account of exports or on account of sales made to registered dealers. Another deduction was claimed on account of sales made to Government department. Some of the deductions claimed were disallowed and as a result, an additional tax liability of Rs. 524.29 was raised. Adding to this the penalty amount, the total demand raised was Rs. 1,524.29.

5. The question raised in appeal before the Deputy Excise and Taxation Commissioner and before the Tribunal was that no tax could be charged for the period during which the application for registration remained pending with the authorities. On an application being made u/s 22 of the Act, the point of law, as mentioned above, has been referred to this court for decision.

6. It may be mentioned here that this case would be governed by the provisions of the Act and the Rules as they existed prior to the extensive amendments made in 1965, i. e., the amendments made in the law and rules, after the date of issue of the certificate and after the date on which the liability had arisen, cannot be taken into consideration.

7. Relevant provisions of the Act, which require notice, may now be reproduced. Sub-section (1) of Section 4 provides that, subject to certain provisions to which it is not necessary to refer, every dealer "whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the

coming into force of this Act". According to Sub-section (2) of this section, all other dealers to whom the provisions of Sub-section (1) do not apply "shall be liable to pay tax under this Act on the expiry of 30 days after the date on which his gross turnover during any year first exceeds the taxable quantum", "Taxable quantum" is detailed in Sub-section (5) and need not be referred in detail.

8. Relevant part of Section 7 of the Act is as under:

(1) No dealer shall, while being liable to pay tax under this Act carry on business as a dealer unless he has been registered and possesses a registration certificate.

(2) Every dealer required by Sub-section (1) to be registered shall make application in this behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for registration is in order he shall, in accordance with such rules and on payment of such fees as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form which may specify the class or classes of goods for the purposes of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5....

9. Section 10 deals with the payment of tax and filing of the returns. Sub-section (3) of this section runs as under:

(3) Such dealers as may be required so to do by the Assessing Authority by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed.

10. Section 11 provides for the assessment of the tax. Sub-sections (1), (2) and (3) are to the following effect :

(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.

11. Sub-sections (4) and (5) provide for a case where the dealer having furnished the return to comply with notice under Sub-section (2) or, where such

a dealer does not furnish the return. In both these cases, the Assessing Authority, after giving the dealer a reasonable opportunity of being heard, can proceed to assess "to the best of his judgment". Sub-section (6) does not deal with a registered dealer, who under Sub-section (3) of Section 10, is bound to furnish a return, but to a dealer other than the registered dealer. Under this Sub-section "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 can proceed to make an assessment to the best of his judgment after giving a notice to the party concerned and can also impose penalty on him.

12. The argument of the learned counsel for the assessee was that during the period the application for the grant of registration certificate remained pending with the Assessing Authority, he could not be treated as "a registered dealer" and that he became a registered dealer only on 16th June, 1965, when his application was granted and the certificate was issued. In the registration certificate, no doubt, it was mentioned that the liability of the assessee was with effect from 20th February, 1964. It is also not disputed that a return was filed by the assessee on 20th July, 1965, for the accounting period 1964-65. He also deposited a sum of Rs. 19,562.36 as tax which became payable according to the return filed by the assessee. The assessee also produced his account books and, inter alia, it was noticed that the gross sales amounted to nearly Rs. 7 lacs "which are inclusive of tax". In other words, although during 1964-65, as stated by the assessee, his application remained pending and he was not a registered dealer, yet he had been charging sales tax from his customers. The assessee also claimed various types of deductions which are available to a registered dealer.

13. Before the Tribunal as well as before us great reliance was placed on the Supreme Court decision in *Commissioner of Sales Tax, Cuttack, Orissa v. Brijraj Rameshwar* [1966] 17 S.T.C. 295 (S.C.). That was a case under Sub-section (5) of Section 12 of the Orissa Sales Tax Act, 1947, which substantially corresponded to Sub-section (6) of Section 11 of the Punjab Act. Under the Orissa Act it was provided that where a dealer who is liable to pay tax but has "nevertheless wilfully failed to apply for registration", then such a dealer became liable to the best judgment assessment and also for payment of penalty.

14. In *Brijraj Rameshwar*'s case [1966] 17 S.T.C. 295 (S.C.) the facts were that the assessee had made an application on 22nd August, 1949, for being registered as a dealer and stated in the application that his gross turnover during the period from 22nd August, 1948, to 21st August, 1949, i. e., a year before the date of application, exceeded Rs. 5,000. On the report of an Inspector, that the turnover of the assessee did not exceed Rs. 5,000, the application was filed but no intimation was sent to the assessee. On 18th December, 1950, the assessee sent a reminder requesting the officer to grant certificate of registration on the basis of his application dated 22nd August, 1949, On this, the assessee was informed on 11th September, 1951, that the earlier application was cancelled,

because he was not then liable for registration and asked him to furnish a fresh application for registration. The assessee then submitted another application on 18th October, 1951, on the basis of which he was granted a certificate of registration on 2nd November, 1951. The only question raised was whether the assessee could be legally assessed on the best judgment basis u/s 12(5) of the Orissa Act for the quarters ending 31st December, 1950 and 31st March, 1951. It was held that on the facts and in the circumstances of the case, it was not established that the assessee wilfully failed to apply for registration and, therefore, the assessment could not be made under Sub-section (5) of Section 12 of the Orissa Act.

15. This judgment obviously has no bearing on the facts in the present case for the simple reason that in the present case there is no question of the best judgment assessment having been made under Sub-section (6) of Section 11 of the Act. Here the assessment has been made under the provisions of Sub-sections (1), (2) and (3) of Section 11. A return was filed by the assessee, as provided under Sub-section (1) and on the date on which the return was filed he was, in fact, a "registered dealer", because before the date of the filing of the return, the registration certificate had already been issued and the status of the assessee was not merely that of a "dealer" but of a "registered dealer".

16. The sole question for determination is whether, merely because the application for the grant of registration certificate remains pending for a long period, a "dealer", who has become a "registered dealer" subsequently, is not liable to pay tax for the intervening period during which the application remains pending. The wording of Sub-section (1) of Section 7 of the Act is rather peculiar. According to this section, as soon as a dealer becomes liable to pay tax, because his turnover exceeds the quantum provided in Section 4, he must stop his business, as he cannot be said to be "registered" and in possession of a "registration certificate". At best he can file an application the moment he comes to know that his gross turnover during the preceding year exceeds the prescribed limit, but there must necessarily be a time-lag between the filing of the application and the granting thereof, because the authority concerned has to make enquiries into the matter. The law, as it stood, did not provide that the registration certificate can relate back and, in any case, not being in possession of a registration certificate a dealer would be committing contravention of Sub-section (1) of Section 7 if he continues his business.

17. There is another thing. During the period when the application remains pending, the "dealer" being an unregistered dealer is bound to pay sales tax on all the purchases made by him and, it was urged that, strictly speaking, he cannot charge any sales tax from anybody, again because he is not a "registered dealer". As a "registered dealer" he can make purchases on giving his registration number, etc., for the class or classes of goods mentioned in the registration certificate and he can also charge sales tax for the sales made by him to the perpsns other than the "registered dealers". These are, however, all

matters which are not strictly relevant to the short question which has been referred to this court. These are matters which can be considered by the Assessing Authority in fixing the liability of the assessee for the period during which the application remained pending. If the assessee would be able to show that during the period in question he could not charge the sales tax because of the failure of the department to issue the registration certificate quickly or that he had to incur expenses of purchasing goods on payment of sales tax, which, in turn, he received from his purchasers, the consequential relief may be admissible to him. But, as stated above, that is not a matter before us. Apparently, in this case no such difficulty had arisen and it was stated before the Assessing Authority and, in fact, from the order of the Assessing Authority, part of which has been quoted above, it appears that the assessee got the goods from its head office in Delhi and that the gross amount of sales shown in the return and taxed did include the sales tax.

18. In *Commissioner of Commercial Taxes, Bihar v. Sharda Automobiles of Bhagalpur* [1968] 22 S.T.C. 137(Pat) there was a considerable time-lag between the date of the application and the grant of the registration certificate. There was some dispute between the department and the assessee as to whether this delay in the issue of the registration certificate, which was from 16th November, 1956, to 14th May, 1957, was due to any fault or negligence on the part of the assessee. The subordinate authorities came to the conclusion that it was the fault of the assessee but the Commissioner of Commercial Taxes came to the conclusion that this delay was not due to the fault or negligence on the part of the assessee and he, accordingly, directed that a sum of Rs. 29.95 representing the sales tax paid by the assessee to its sellers for the goods intended for resale should be adjusted towards sales tax due for subsequent periods. With regard to the question, whether the assessee was to be assessed for sales tax "on transactions of sale made between the 3rd November, 1956 and 14th May, 1957," the matter was taken to the Additional Member, Board of Revenue and the contention that by virtue of Section 15A of the Act the exemption from payment of sales tax could be granted, was rejected by him, because "Section 15A applies to purchases made by the dealer from his sellers and it has nothing to do with payment of sales tax for sales made by him to other customers". He, however, held that the liability to pay sales tax should not have been fixed retrospectively from 3rd November, 1956, but only from the date on which the registration certificate was issued and then gave the following direction :

In view of the reasons given above I would direct that the date of issue of registration certificate should be the date on which the liability for payment of sales tax should take effect.

19. Now, Section 14A of the Bihar Sales Tax Act, 1947, prohibits a dealer who is not registered, to realise any amount by way of tax. Consequently, the Additional Member, Board of Revenue, directed that if the dealer had contravened the provisions of Section 14A of the Act, action under that section could be taken. As

was remarked by the Bench of the Patna High Court, no clear finding was given "as to whether as a proposition of law...it would be illegal to fix a date of liability to sales tax from a date prior to the date of actual registration, or else, whether on a question of propriety he held that, in view of the finding of the Commissioner in revision that there was no delay on the part of the dealer in applying for registration and his granting him relief u/s 15A, it was not proper to fix the liability for sales tax on the assessee from any date prior to the actual date of registration". The three questions referred by the Member, Board of Revenue, were as follows :

- (1) Whether the liability of the dealer to pay tax under the charging Section 4 of the Bihar Sales Tax Act, 1947, commences from the date on which such liability accrued, or is determined by the date of the grant of the registration certificate ?
- (2) Whether the provisions of Section 4 of the Act are controlled by the provisions of Section 14A of the Act, so as to shift the date of liability u/s 4 of the Act, to the date of the grant of registration certificate ?
- (3) Whether the payment of tax by a dealer under the Act is dependent on his having realised the tax ?

20. The reply returned by the Bench to these questions was as follows:

- (1) The liability of the dealer to pay tax u/s 4 of the Act undoubtedly commenced from the date on which that liability accrued and if the dealer was an unregistered dealer he could be assessed to sales tax from that date; but if he became a registered dealer on the date of assessment, then his assessment for the period from the date of his application for registration till the date of the actual granting of certificate will be subject to the conditions laid down in Sub-section (5) of Section 13.
- (2) Covered by the answer to question No. (1).
- (3) Payment of tax by a dealer ordinarily will not be dependent on his having realised the tax. But if he is prevented from realising the tax on account of the delay on the part of the sales tax department in granting him registration certificate, the authority concerned has discretion not to assess him to tax for the period of the delay.

21. From the above it is quite clear that the liability for payment of tax arises as soon as a dealer's gross turnover exceeds the permissible limit. This is clearly provided in Section 4 of the Punjab Act. Section 11 only provides for a procedure. If such a dealer fails to make an application for registration, he is liable to pay penalty and also to be assessed according to the best judgment under Sub-section (6) of Section 11. However, if the dealer makes an application in time, the penal consequences of Sub-section (6) are not attracted. That, however, would not mean that he escapes liability for the period for which the application remains pending. There is no provision of law giving him such an exemption.

22. Whether, for the period for which the application for registration remains pending, the assessee is or is not entitled to any relief would be governed by the facts of each case and, as was observed by the Bench of the Patna High Court in answer to question No. (3), the authority concerned can take into consideration the handicaps that may have been suffered by the dealer on account of the application remaining pending and the registration certificate not being available with the assessee, in the exercise of its discretion not to assess him to tax for the period of the delay, This is note the same thing as is urged by the learned counsel for the assessee, that as a legal proposition, a dealer, who is registered, cannot be assessed to tax for the period during which the application remained pending. As already indicated, his liability to pay arises irrespective of the fact of his filing the application for registration. If his application for registration is pending, then notwithstanding the provisions of Sub-section (1) of Section 7 of the Act, no penal consequences may occur if he continues to carry on the business without being in possession of the certificate, because he has not been able to get the certificate for no fault of his. Section 11 is only procedural and the procedure envisaged under Sub-sections (1), (2) and (3) was rightly followed in the present case, because on the date of the filing of the return, on the date the assessee was served with a notice to produce the accounts and also on the date on which the accounts were produced and the assessment was made, the assessee was a "registered dealer".

23. In the light of the view that we have taken above, it is not necessary to refer, in detail, to the decision in Central Potteries Ltd. Vs. State of Maharashtra and Others, , on which reliance was placed by the Tribunal. In that case, the appellant, who was registered as a dealer, continued paying the tax assessed on it for the period 1st June, 1947, to 30th June, 1951. Subsequently, however, the appellant contended that the Sales Tax Officer who issued the registration certificate was not authorised to do so under the Act and that in consequence all assessments and recoveries of tax were illegal and void. The Supreme Court held:

(1) that the appellant was liable to pay the tax under the Act irrespective of whether the registration u/s 8 was valid or not. That liability arose u/s 4, which was the charging Section and it was not conditional on the registration of the dealer u/s 8 ;

(2) that even if the registration of the appellant as a dealer u/s 8 was bad that had no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder.

24. In view of the above discussion, we are definitely of the view that the liability of the assessee was not dependent on the issue of the registration certificate and that it arose under Sub-section (1) of Section 4 of the Act as soon as his gross turnover exceeded the limit fixed. There is no dispute that his liability did arise from 20th February, 1964. The registration certificate though issued on 16th June, 1965, had clearly mentioned that the liability arose with effect from 20th February, 1964. While filing the return and while presenting the case before the

Assessing Authority, it was not suggested on behalf of the assessee that he had in any way been adversely affected by the delay in the issue of the registration certificate. Nor did the assessee pray for any relief being given on that ground. He could be assessed under Sub-sections (1), (2) and (3) of Section 11 of the Act, because he filed the return at a time when he was a "registered dealer". We, therefore, answer the question referred in the affirmative. The department will have its costs of these proceedings from the assessee.