
(2009) 05 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : G.S.T.R. No. 3 of 1996

Aggarwal Iron Store

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 9(2)
Punjab General Sales Tax Act, 1948 — Section 10(6), 10(7), 11, 11(1), 11(2)
Punjab General Sales Tax Rules, 1949 — Rule 20, 22, 23

Citation : (2010) 35 VST 200

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—At the instance of the dealer-Assessee, this Court, vide order dated April 15, 1996, directed the Sales Tax Tribunal, Punjab (for brevity, "the Tribunal"), to refer the following questions of law for determination by this Court, which have emerged from the order dated January 21, 1994, passed by the Tribunal in Appeal No. 505 of 1989-90 in respect of assessment years 1980-81:

(i) Whether, on the facts and circumstances of the case, the Tribunal is correct in law in holding that assessment framed falls u/s 11(3) of the Act and not u/s 11(4) or 11(5) so as to attract bar of limitation ?

(ii) Is Tribunal correct in law in upholding assessment for the financial year when the unit of assessment is a return period and a quarter in the case in question ?

2. Brief facts of the case are that the dealer-Assessee is a registered dealer under the Punjab and Central sales tax laws and engaged in the business of iron and steel. For the assessment year 1980-81, the dealer-Assessee filed four quarterly returns with gross turnover of Rs. 1,05,65,751.20. Not satisfied with the returns, the Assessing Authority issued a notice dated March 10, 1983, in form STXIV u/s 11(2) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act"). After initiating assessment proceedings, the Assessing Authority raised an additional demand of Rs. 7,26,753 including penalty of Rs. 70,000 u/s

10(7) and penalty of Rs. 100 u/s 23 of the Act, vide its order dated March 17, 1987 (annexure A).

3. Against the order dated March 17, 1987 the dealer-Assessee preferred an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, who reached the conclusion that the Assessing Authority was justified in making addition of Rs. 65,19,411.56 to the declared turnover for the purpose of assessment attracting penal action u/s 10(7) of the Act. The first appellate authority also affirmed the penalties imposed under Sections 10(7) and 23 of the Act. However, the case was remanded back to the Assessing Authority for considering afresh the claim of deduction on account of sales made to the registered dealers, after allowing an opportunity to produce the declaration in form ST-XXII (annexure B), vide order dated February 28, 1989.

4. Feeling aggrieved, the dealer-Assessee filed further appeal before the Tribunal. The Tribunal while setting aside penalties imposed under Sections 10(7) and 23 of the Act, directed the dealer-Assessee to appear before the Assessing Authority on March 25, 1994 for producing record for consideration of form ST-XXII as directed by the first appellate authority, vide order dated January 21, 1994 (annexure D). Thereafter, the dealer-Assessee filed an application u/s 22 of the Act for referring questions of law for opinion of this Court (annexure E). The Tribunal declined the application vide order dated April 3, 1995, against which the dealer-Assessee approached this Court for directing the Tribunal to draw up the statement of the case and refer the questions of law arising out of the order dated January 21, 1994. The Tribunal in compliance with the direction issued by this Court vide order dated April 15, 1996, has referred the aforementioned question of law for opinion of this Court. The view of the Tribunal is discernible from the following extracted position, which reads thus:

5. . . . The assessment framed by the Assessing Authority is fully justified in this case as it is based on the material available on record which was confronted to the Appellant during assessment proceedings and the Appellant failed to explain the vast variation in the purchase and sale of finished goods as well as rolling material. As per record the variation stood fully established and the gross turnover has been enhanced to the limited extent which has been found between the purchases and sales of finished goods only and no adverse view has been taken in so far as the variation in the purchase and sale of rolling material is concerned, there is no logic behind the plea of the counsel for the Appellant that finished goods purchased by the Appellant were sold as scrap or rolling material. Even a layman would not agree with this argument.

As regards the plea of the counsel for the Appellant that the assessment has been framed u/s 11(4) or 11(5) and it is, thus, barred by limitation, I have examined this point and have seen the record also. In my opinion, the assessment framed falls u/s 11(3) as the Appellant filed II and III returns also though late for which the assessing authority has taken action as provided u/s 23 of the State Act and also u/s 9(2) of the Central Act read with Section 10(6) and

11D of the State Act. Further, the Appellant has complied with the notice issued u/s 11(2) as he has been appearing before the Assessing Authority and has also produced the relevant account books. Assessment has been framed by accepting returns filed and record. Even otherwise there is no addition on guess work or estimate. So, it is not best judgment assessment as held in The State of Madras Vs. S.G. Jayaraj Nadar and Sons, . . .

(emphasis1 added)

5. We have heard learned Counsel for the parties and have perused the record with their able assistance.

Re : Question No. (i)

6. In order to answer the first question it would be necessary to first read the relevant provisions of Section 11 of the Act, which are extracted as under:

11. Assessment of tax.-(1) If the assessing authority is satisfied without requiring the presence of 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 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 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 a dealer having furnished returns in respect of a period, fails to comply with the terms of notice issued under Sub-section (2), the assessing authority shall within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the assessing authority shall within five 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) to (9) . . .

7. It is pertinent to mention that Section 11 along with various subsections, as it stood before 1998, has been noticed above. That section was subject to comprehensive amendment in the year 1998 and for the purpose of this case we

are not concerned with the amended provisions. The questions of law, as referred, have also been based on the unamended provisions and pertains to the assessment year 1980-81.

8. A close analysis of Sub-section (1) of Section 11 of the Act shows that where a dealer has filed his return and the Assessing Authority feels satisfied that presence of the dealer would not be necessary or the production by him of any evidence was not required to prove that the return was correct and complete in respect of any period then he is required to assess the amount of tax due from such a dealer on the basis of such return. The sub-section is not relevant in deciding the controversy raised.

9. Sub-section (2) provides for a situation where the Assessing Authority is not satisfied with the filing of the return and require the presence of the dealer or production of evidence by him to prove that the returns furnished in respect of any period are correct and complete. The significant feature of Sub-section (2) is that it involves the element of lack of satisfaction on the part of the Assessing Authority and the association of the dealer who had furnished the return in further proceedings before the Assessing Authority. It may also require furnishing of evidence to prove that the returns filed by the dealer in respect of any period are correct and complete. Another significant feature of the provision is that it involves issuance of a notice in the prescribed manner to such a dealer requiring him to attend in person or to produce or to cause to be produced any evidence on which such dealer may like to rely in support of such return.

10. Sub-section (3), in fact, is the composite part of Sub-section (2), inasmuch as, it provides for passing of assessment order on the day specified in the notice issued under Sub-section (2) or any day thereafter, after hearing such evidence as the dealer may produce and any such other evidence as the Assessing Authority may require on specified points. There is no provision made with regard to time within which the assessment order is required to be passed.

11. However, under Sub-sections (4) and (5), the best judgment assessment is contemplated in cases where a dealer after furnishing returns in respect of a period, fails to comply with the terms of notice issued under Sub-section (2), then the Assessing Authority within a period of five years could proceed to assess to the best of his judgment the amount of tax due from such a dealer. Under Sub-section (5) the cases of such dealers who have not filed returns, have been dealt with and the Assessing Authority is required to pass orders within five years of such period after giving the dealer a reasonable opportunity of being heard.

12. The other sub-sections are not relevant for the purposes of answering the questions of law raised.

13. The attempt of learned Counsel for the dealer-Petitioner is to bring the case within Sub-sections (4) and (5) of Section 11 of the Act so as to succeed in arguing that it was best judgment assessment because therein maximum period of five years has been specified where a dealer after filing of return has failed to

comply with the terms of notice issued under Sub-section (2). However, numerous attributes of Sub-sections (2) and (3) show that a return is required to be filed by the dealer and in order to finalise the assessment, his presence or production of evidence to prove that the return was correct and complete, according to the Assessing Authority is required. A notice is required to be then served on such dealer.

14. The facts of the present case shows that not only the returns were filed and notice was issued but the dealer-Petitioner had produced his books of account, which did not accord with the returns. There was no explanation furnished for the vast variation in the purchase and sale of finished goods as well as rolling material. The variation as per the record stood established and accordingly additions were made. The dealer-Petitioner has complied with the notice issued u/s 11(2) and it cannot be concluded that he did not comply with the terms of notice issued under Sub-section (2) as is required by Sub-section (4). The basic feature of Sub-section (4) is that a dealer after filing of return has failed to comply with the terms of notice issued under Sub-section (2). In other words, if there is no compliance with the terms of the notice issued under Sub-section (2) then the Assessing Authority, within a period of five years, could proceed to assess to the best of his judgment, the amount of tax due from the dealer. The Tribunal has recorded a categorical finding that the dealer-Petitioner "has complied with the notice issued u/s 11(2) as he has been appearing before the Assessing Authority and has also produced the relevant account books. Assessment has been framed by accepting returns filed on record. Even otherwise there is no addition on guess-work or estimate. . .". The Division Bench judgment of this Court in the case of Avtar Singh Ranjit Singh v. State of Punjab [1983] 52 STC 44, has no application to the facts of the instant case because in that case there were categorical findings by the Financial Commissioner showing that terms of show-cause notice were partly complied with. Therefore, the argument that the assessment should be considered to have been framed on the basis of best judgment assessment of the Assessing Authority within the meaning of Section 11(4), is wholly unsustainable and is liable to be rejected. Accordingly, the first question is liable to be answered against the dealer-Petitioner and in favour of the Revenue.

Re : Question No. (ii)

15. The second question has to be answered by referring to the definition clause 2(i) and Section 5(1A) and (2) of the Act, which are as under:

2(f) Turnover" includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period, less any sum allowed as cash discount and trade discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or before, delivery thereof.

...

Section 5. Rate of tax.-(1) . . .

(1A) The State Government may by notification direct that in respect of such goods other than declared goods and with effect from such date as may be specified in the notification, the tax under Sub-section (1) shall be levied at the first stage of sale thereof, and on the issue of such notification the tax on such goods shall be levied accordingly:

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the registered dealer, from whom the goods were purchased:

Provided further that in the case of a dealer whose gross turnover does not exceed five lac rupees in a year or a sum as may be notified by the State Government from time to time in this behalf, and whose amount of tax is assessed under Sub-section (1) of Section 11 of this Act, the certificate referred to in the preceding proviso, shall not be required.

(1B) . . .

(2) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom,-

(a) his turnover during that period on:

(i) the sales of goods declared tax-free u/s 6;

(ii) Sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under Sub-section (1A) declared by him in a prescribed form as being intended for resale in the State of Punjab or sale in the course of inter-State trade of commerce or sale in the course of export of goods out of territory of India, or of goods specified in his certificate of registration for use by him in the manufacture in Punjab or any goods, other than goods declared tax-free u/s 6, for sale in Punjab, or sale in the course of inter-State trade or commerce, or sale in the course of export of goods out of the Territory of India and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that in case of such sales other than those made on commission basis by a commission agent to the registered dealer a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods:

Provided further that in the case of a dealer whose gross turnover does not exceed five lac rupees in a year or a sum as may be notified by the State Government from time to time in this behalf, and whose amount of tax is assessed under Sub-section (1) of Section 11 of this Act, the declaration referred to in the preceding proviso shall not be required.

(iii) . . .

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy;

(v) sales or purchases of goods falling u/s 29;

(vi) the purchases of goods which are sold not later than six months after the close of the year to a registered dealer, or in the course of inter-State trade or commerce or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold is furnished by the dealer claiming deduction;

(vii) Such other sales or purchases as may be prescribed;

(b) The amount of sales tax included in the gross turnover.

16. According to the provisions of Section 2(i), the expression "turnover" has been defined to include aggregate of the amount of sales and purchases and parts of sales and purchases actually made by any dealer during the given period, less any sum allowed as cash discount and trade discount, etc. Likewise Clause (a) of Sub-section (2) of Section 5 of the Act specifies various items for which deduction is allowed. However, it is pertinent to notice that in the second proviso to Section 5(1A) and second proviso to Section 5(2)(ii) the expression "year" has been used, which in turn has been defined by Section 2(j) of the Act to mean "the financial year". The unit of assessment is not quarter but is the financial year whereas quarterly returns are required to be filed by the dealer.

17. It is pertinent to notice that Rule 20 of the Punjab General Sales Tax Rules, 1949 (for brevity, "the Rules"), deals with furnishing of return quarterly as well as in specified cases annually. But there is no prohibition in Section 11 of the Act for making assessment at the end of the financial year particularly when no assessment has been framed at the end of the quarter. The scheme of the Act as well as that of the Rules would show that the power vests in the Assessing Authority in specific cases to fix a different return period. In that regard reference may be made to Rules 20, 22 and 23 of the Rules. Therefore, it cannot be concluded that unit of assessment is only one quarter and not the year. The question, thus, deserves to be answered against the dealer-Petitioner and in favour of the Revenue.

18. The aforesaid question appears to have emerged from the Division Bench judgment of this Court rendered in the case of Niamat Rai Milkh Raj Ahuja v. State of Punjab [1968] 22 STC 365. According to Mr. G.R. Sethi, learned Counsel for the dealer-Petitioner, the Division Bench while answering question No. 3 in the aforesaid case has noticed an argument of the Assessee that Section 5(3) as

it stood then be declared violative of Section 15 of the Central Sales Tax Act, 1956. The argument appears to be that Section 5(2)(a) of the Act was not amended and, therefore, it was not possible to determine the taxable turnover. The Division Bench has repelled the argument by making reference to Section 5(3) of the Act, which has used a non obstante clause. However, the aforesaid observation would not have any bearing because in that case the Division Bench was dealing with the question as to whether Section 5(3) is violative of Section 15 of the Central Sales Tax Act, 1956. The observation of the Division Bench cannot be construed to mean that it was opining on the question which has been raised in the instant reference, namely, whether the unit of assessment is financial year or the quarter. We find no merit in the aforesaid submission made by Mr. Sethi and answering the question against the dealer-Petitioner and in favour of the Revenue.

19. The reference is answered in the above terms.