

(1963) 03 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1612 of 1962

Amar Hosiery Works

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-03-1963

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11A, 2, 21, 5

Citation : (1963) 14 STC 634

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; S.M. Sikri, General, for the Respondent

Judgement

Harbans Singh, J.—Facts giving rise to this petition may briefly be stated as under: Messrs Amar Hosiery Works (Regd.), Ludhiana (hereinafter referred to as the petitioner) carry on the business of the manufacture of the hosiery goods. It is registered as a dealer under the Punjab General Sales Tax Act (hereinafter referred to as the Punjab Act). The petitioner has a branch at Delhi, which, of course, is registered under the Delhi Sales Tax Act (hereinafter referred to as the Delhi Act). For the purposes of manufacture of the goods, the petitioner purchased woollen yarn and other raw material, which are specified in the certificate of registration under the Punjab Act. Some of the goods manufactured from the raw material so purchased were sold in the State of Punjab and the petitioner was assessed to pay the sales tax on the same and there is no dispute about that. The remaining manufactured goods were sent to the petitioner's branch at Delhi and were sold there, and, it is stated that for such sales in Delhi, the petitioner's branch was assessed to the Delhi sales tax. Under the Punjab Act, return was filed by the petitioner for the year 1960-61 and on 20th of January, 1962, the Assessing Authority passed an assessment order. The petitioner brought it to the notice of the Assessing Authority that out of the manufactured goods, the petitioner had despatched to its branch at Delhi goods worth Rs. 1,09,130-74 nP. during the assessment year. After allowing the

deductions of the amount already paid by him, the assessment order directed the petitioner to pay Rs. 8-81 nP., which amount was duly deposited. This order was passed by Mr. Vidya Parkash, Assessing Authority, Ludhiana. Subsequently, on 17th of August, 1962, Mr. A.L. Bhatnagar, who succeeded Mr. Vidya Parkash as the Assessing Authority, sent a notice (annexure C) to the petitioner to the following effect:-

Whereas, in consequence (of) definite information in my possession, (I) have reason (to) believe that turnover of your business assessable to sales tax for the year ending the 31st of March, 1961, has escaped levy of the appropriate fee, I, therefore, propose to reassess the said turnover that has escaped levy of appropriate (fee).

I hereby require you to show cause on 31st August, 1962, at 7.00 a.m. days of service of this notice on you why the contemplated action should not be taken in your case.

2. It may be mentioned here that the words reproduced by me above in brackets are not there in the original notice but should be there, and the words underlined by me should have been scored out, to make sense. This is only an indication of the slipshod manner in which the work is apparently being done. Anyway, the petitioner appeared before the Assessing Authority and vehemently submitted that there was no other information with the Assessing Authority that was not before that Authority at the time of the first assessment and that no part of the turnover of the business had escaped the levy of tax and no action could be taken u/s 11A of the Punjab Act. However, the Assessing Authority repelled this contention and this is what is stated by him :-

...whereas in the case before me, the transfer of goods to the Delhi branch have escaped assessment....In the instant case...the Assessing Authority (Shri Vidya Parkash) did not even discuss the item of transfer of goods to Delhi branch by his dealer while framing assessment. It completely escaped assessment as he never said in his assessment order that such transfer by the dealer to his Delhi branch had taken place but were not to be taxed. Had he made this mention, the question of reassessment at this stage would have been taken up suo motu by the Commissioner u/s 21 of the Act...but a reference to the assessment order passed by Shri Vidya Parkash...would reveal that he has neither taken into account the branch sales made by this dealer, nor the dealer included this huge amount in his gross turnover at the time of filing his four quarterly returns for 1960-61. The Assessing Authority has also not included this amount in the gross turnover and allowed its deduction as transfer of goods to its branch at Delhi nor he has specifically stated in his assessment order whether he considered the branch sales as tax-free or he proposed to exempt the branch sales as such. He only made a passing reference to it while justifying the fall in sales of the dealer....This clearly shows that the huge amount of Rs. 1,09,130-74 nP. on account of sales of manufactured goods made to Delhi branch has definitely escaped assessment....I, therefore, hold that I can reopen the case u/s 11A of

the Punjab General Sales Tax Act, 1948, and this is a definite information which has come in my possession subsequently.

3. He then considered the second proviso to Section 5(2)(a)(ii) of the Act and observed as follows :-

In the instant case the dealer purchased goods on the strength of his registration certificate, manufactured hosiery goods from it and instead of making sale thereof whether in Punjab or elsewhere he transferred the goods to his branch at Delhi and thereby infringed the specific condition of sale. The transfer of goods by a head office to its branch does not constitute a sale.

5. On this basis, after calculating the raw material used in the manufacture of the goods, which were sent to Delhi branch, the Assessing Authority assessed Rs. 1,853-60 nP. as tax.

6. Two points have been raised in this petition while impugning the above-mentioned order dated 31st of August, 1962. In the first place, it is urged that u/s 11A the Assessing Authority can reopen a case only if it comes into possession of some "definite information" and that, in the present case, as is clear from the order of the Assessing Authority passed on 20th of January, 1962, the fact that the goods worth Rs. 1,09,130-74 nP. had been transferred to the petitioner's Delhi branch was fully known to the Assessing Authority and this is the only point which has been taken into consideration by the Assessing Authority subsequently. It is not suggested that any new fact or judicial decision taken on the point had come to the notice of the Assessing Authority. There is a memorandum No. 4785-ST-1, dated 6th of December, 1961, from the Excise and Taxation Commissioner, Patiala, taking the view that if the manufactured goods are not sold "either within the State of Punjab or in the course of inter-State trade or commerce or in the course of export out of the territory of India" and the goods are merely transferred from the head office to the branch outside the State of Punjab, that would not be a sale as defined in the Indian Sale of Goods Act and Section 2(h) of the Punjab Act and that tax under the second proviso to Section 5(2)(a)(ii) becomes payable. Neither in the return nor in the assessment order has it been suggested that it was this circular giving the view of law that was the definite information which necessitated the reopening the assessment. Section 11A provided that "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", then the Assessing Authority can reassess the tax payable on the turnover after giving notice to the dealer. The words "any information which has come into his possession" are used in a corresponding Section 11-A in the C.P. and Berar Sales Tax Act, 1947. These words are substantially the same as used in Section 11A of the Punjab Act and were interpreted by a Division Bench of the Madhya Pradesh High Court in *Kanhaiyalal Bahadursingh v. Commissioner of Sales Tax* [1962] 13 S.T.C. 615. The relevant portion of the head-note runs as follows:-

The expression "any information which has come into his possession" means...information which has come into his possession subsequent to the making of the original assessment....If with the information in his possession at the time of passing the assessment order the Sales Tax Officer takes a certain view of facts, figures and of the prevailing law and holds that certain sale transactions are not liable to tax..., he cannot subsequently on the basis of information which was already in his possession and within his knowledge act u/s 11A even though the assessee had escaped assessment. Such a case would be a case of mere change of opinion on the same state of facts and not a case of finding as a result of new information that the dealer has escaped assessment in some respects.

7. As against this, the learned Advocate-General has relied on the interpretation of the word "information" as given by the Supreme Court in *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, where it was held that u/s 34(1) of the Income Tax Act, the word "information" may relate to information as to facts or "information regarding state of law or a decision on a point of law". This case was considered by the Division Bench of the Madhya Pradesh High Court in *Kanhaiyalal's case* at page 622 of the report and was distinguished on facts, and it was observed in paragraph 8 as follows :-

It is thus clear that if in fact or in law there is no information which has come into possession of the taxing authority subsequent to the assessment, then it has no jurisdiction to assess or reassess u/s 11A.

8. In the Supreme Court case there was a judicial decision which had come to the notice of the Assessing Authority after the assessment had been made in the first instance. The present case is more akin to the case decided by the Madhya Pradesh High Court. As I have detailed above, there was neither any fresh information about any fact nor of any judicial decision before the Assessing Authority and I am, therefore, inclined to take the view that this was a case which, if at all, could have been dealt with by the Commissioner under his revisional powers u/s 21 and that there was no jurisdiction in the Assessing Authority to proceed u/s 11A.

9. Otherwise, too, it is not quite clear whether the goods manufactured by a registered dealer can be said not to have been "manufactured for sale" within the meaning of Section 5(2)(a)(ii) if they are not sold within the State of Punjab or directly to another purchaser outside the State of Punjab but are sold to a purchaser outside the State of Punjab by the dealer himself going outside the Punjab with the goods and selling them there or by the dealer sending the same to his agent or branch outside the State of Punjab and such agent or branch selling them there. In all these cases, the goods manufactured have actually been sold and consequently, in plain meaning of the words, goods can be said to have been "manufactured for sale". The relevant portion of Section 5(2)(a)(ii), as it stood at the relevant time, was as follows :-

"5. (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) * * * * (ii) sales to a registered dealer of goods 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 or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for the use by him in the manufacture in the State of Punjab of any goods for sale....

Provided * * * *

Provided further that when such goods are used by the dealer to whom these are sold for purposes other than those for which these were sold to him, he shall be liable to pay tax on the purchase thereof at the rate of tax leviable on the sale of such goods....

10. It may be stated here that by Ordinance No. 2 of 1963, which has now been replaced by a Punjab Act, for the words "or of goods specified in his certificate of registration for the use by him in the manufacture in the State of Punjab of any goods for sale" the words "or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods,...for sale in Punjab" have been substituted. According to the amended Section, if a manufacturer purchases raw material, the seller of the raw material will not be liable to sales tax if two conditions are satisfied : (1) that the raw material is used in the manufacture of goods in Punjab, and (2) that the manufactured goods are sold in Punjab. If the manufacturer contravenes any one of these two conditions, then of course,, the second proviso definitely comes in and he will pay tax at the same rate on the purchases of the raw material made by him as the seller would have been liable if the sale had been made to an unregistered dealer. The learned Advocate-General urges that under the law, as amended, even if the goods manufactured are sold to a person outside the State of Punjab, such a sale would not be a sale in the Punjab and, consequently, the manufacturer would be liable to pay tax on the raw material used in the manufacture of these goods, under the second proviso. In other words, even in respect of sales of manufactured goods in the course of inter-State trade or commerce, the manufacturer would be liable to pay tax on the raw material used in the manufacture of such goods. This does appear to be the result of the amendment.

11. The question to be determined in the present case, however, is as to the effect of the law as it stood before the amendment. The words used then were "goods...for the use by him in the manufacture in the State of Punjab of any goods for sale." There is no dispute that the raw material was actually utilised for manufacture of goods in the State of Punjab. The sole question is whether these goods manufactured in the State of Punjab were for sale. The learned Advocate-

General urges that the word "sale", as used in this Section, means sale in the State of Punjab and for this he relies on the definition of "dealer" as given in Clause (d) of Section 2, which is to the following effect: -

"Dealer" means any person...who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Punjab,...

12. However, for looking at the meaning of "sale" we have to see the definition of "sale" itself as given in Clause (h) of Section 2, which is as follows:-

"Sale" means any transfer of property in goods...for cash or deferred payment...but does not include a mortgage....

13. This definition is similar to the definition as given in the Indian Sale of Goods Act and is general in nature not confined to sales in the State of Punjab. If the words used in the Section even before the amendment meant "sale in the State of Punjab" then inter-State sales could not be exempted because such sales are not sales in the State of Punjab by any stretch of imagination. Departmental memorandum, referred to above, (annexure B), however, clearly took the view that such sales would be exempted and that only transfer of goods to branch offices outside the State would not be within the definition because such a transfer did not amount to "sale" as defined either in Section 2(h) of the Punjab Act or in the Central Act. However, we are not really concerned with the view that was taken by the department, and I have mentioned this only to show that even the department did not take the view that the word "sale" meant sale in the State of Punjab.

14. The question then arises, if the goods are transferred by a manufacturer to its branch outside the State of Punjab for sale there, can it be said that the goods manufactured were not for sale? It may be that the Assessing Authority in the State of Punjab for satisfying itself, that the raw material purchased in the State of Punjab has been utilised for the manufacture of goods for sale, may call upon the manufacturer to produce proof of the fact that the goods transferred to its branch at Delhi were, in fact, sold. As has been stated in the petition itself, the petitioner's branch at Delhi is a registered dealer under the Delhi Act and it is further stated that on all the sales of goods transferred to Delhi, sales tax has been paid there. If these facts are correct-and these have not been denied-then it cannot be said that the goods manufactured were not for sale and in this view of the things, it is altogether incorrect to say that the conditions on which the raw material was purchased, have not been satisfied. As I have stated above, the relevant provisions of Section 5 have been sought to be differently interpreted on behalf of the petitioner and on behalf of the State and, consequently, the Assessing Authority, who made the assessment in the first instance took one view and did not impose the tax, while another Assessing Authority subsequently took a different view of the law without any judicial pronouncement having come to his notice. Thus the second assessment was not in view of any definite

information received by him but merely because he felt that the previous order was wrong, and this is beyond the scope of Section 11A.

15. For the reasons given above, therefore, I am of the view that the impugned order is without jurisdiction both on the ground that the Assessing Authority could not order a reassessment u/s 11A because there was no definite information which had come to his possession and also because u/s 5(2)(a)(ii), as it stood at the relevant time, the goods sent to Delhi branch and actually sold there, must be treated as goods manufactured for sale and the second proviso was in-applicable. The rule is, therefore, made absolute and the impugned order is quashed. In the peculiar circumstances of the case, there will be no order as to costs.