(1982) 01 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 740 of 1973

Amin Lal Ishar Ram — APPELLANT

Vs

The State of Punjab and Another — RESPONDENT

Date of Decision : 19-01-1982

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1983) 52 STC 308

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Advocate : S.C. Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

A.S. Bains, J.—The petitioner is a partnership concern and carries on its business in the name and style of Messrs. Amin Lal Ishar Ram at Jaitu Mandi. It deals in the sales of foodgrains and oil-seeds along with other commodities. The petitioner''s case for assessment pertaining to the assessment year 1969-70 came up for consideration before respondent No. 2, i. e., the Excise and Taxation Officer (Assessing Authority), Faridkot, on 19th January, 1973. The petitioner claimed deductions on the sales of foodgrains worth Rs. 7,80,167.31 and also on the sales of oil-seeds worth Rs. 2,04,894.00. Both foodgrains and oil-seeds were sent to various places outside the State of Punjab through commission agents on consignment basis but the deductions were not allowed by the Assessing Authority, who vide his assessment order dated 19th January, 1973 (copy annexure A to the writ petition), levied tax on foodgrains under the second proviso to Section 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948, and purchase tax on the oil-seeds. In view of the aforesaid order, an additional demand of Rs. 19,826.76 was created against the petitioner-firm. It is against this order that the present writ petition has been filed.

2. Return has been filed on behalf of the respondents.

3. Mr. Goyal, the learned counsel for the petitioner, canvassed that the petitioner-firm could not be assessed under the the second proviso to Section 5(2)(a)(ii) of Punjab General Sales Tax Act as the foodgrains and oil-seeds had been sent on consignment basis and, thus, were not the sales. I do not find any merit in this contention. It is true that the goods sent on consignment basis are not sales, but admittedly the petitioner made purchases of the foodgrains and oil-seeds on the strength of its registration certificate free of tax and instead of selling the same sent them to other places outside the State of Punjab on consignment basis in order to avoid sales tax, which could not be permitted in view of the second proviso to Section 5(2)(a)(ii) of the Punjab General Sales Tax Act. Thus, I am of the considered view that the petitioner did misuse the registration certificate by first purchasing the commodities on its strength and did not pay purchase tax and then tried to evade sales tax by sending those goods outside the Punjab State on consignment basis, and in such a situation, the Assessing Authority has rightly levied tax on such goods for the misuse of the registration certificate under the second proviso to Section 5(2)(a)(ii) of the Punjab General Sales Tax Act.

4. No other point is urged.

5. For the reasons recorded, this petition is dismissed. As there is no representation on behalf of the State, there will be no order as to costs.

