(1996) 12 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3876 of 1980

Amir Chand Sethi and Sons APPELLANT

Vs

Assessing Authority and Others RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 10(7)

Citation : (1997) 115 PLR 608

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : B.K. Jhingan, for the Appellant; P.S. Chhinna, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—M/s. Amir Chand Sethi & Sons carrying on business at Amritsar, has filed the present writ petition under Articles 226/227 of Constitution of India for the issuance of a writ in the nature of certiorari against the respondent-authorities praying for the quashment of the orders Annexures P-2, P-5 and P-8.

2. The case set up by the petitioner is that respondent No. 1, Assessing Authority, Amritsar illegally made sales-tax assessment for the year 1966-67 on the basis of best judgment assessment on 14.5.1975, vide which the request of the petitioner was declined to summon the proprietor of M/s. Hari Chand Narinder Kumar of Amritsar from whom the Department has alleged that the petitioner made purchases worth Rs. 11,60,917.17 P. Against the order of respondent No. 1 appeal was filed before respondent No. 2. Transfer application was also filed. In spite of the filing of the appeal and transfer application against respondent No. 1 a penalty u/s 10(7) of the Punjab General Sales Tax Act was imposed upon the petitioner firm creating an additional liability of rupees one lac by way of penalty. The petitioner filed an appeal against the orders Annexure P-1 and P-2 before respondent No. 2 who quashed the assessment order on the ground of limitation vide order Annexure P-3. Notwithstanding the fact that

assessment order were set aside and it was found that Assessing Authority was not justified in making the assessment, still respondent No. 2 dismissed the appeal of the petitioner against the imposition of the penalty vide order dated 8.1.1980 Annexure P-5. Against the order of respondent No. 2 another appeal was preferred before respondent No. 3 who passed orders dated 3.11.1980 calling upon the petitioner to deposit Rs. 40,000/- before his appeal could be heard on merit. Against the orders Annexure P-2, P.5 and P.8, the present writ petition has been filed on the grounds that the assessment order had already been set aside by respondent No. 2 in the appeal and in these circumstances the penalty could not be imposed upon the petitioner u/s 10(7) of the Act amounting to rupees one lac. The maximum jurisdiction to impose penalty could not exceed 1-1/2 times the amount of tax which had been assessed or liable to be assessed. The best judgment assessment of the Assessing Authority had been set aside and in these circumstances the levy of the penalty of rupees one lac was without jurisdiction.

3. The writ petition has been contested by the official respondents. It has been stated that the request of the petitioner to summon the proprietor of M/s. Hari Chand Narinder Kumar was not acceded to because the petitioner in his own statement dated 10.6.1967 made before Shri G.S. Luthra the then Assessing Authority, Amritsar had admitted the purchases worth Rs. 11,60,917.17 P. This statement was duly signed by the petitioner. He has duly confronted with the statement. During the course of penalty proceeding the dealer inter alia, requested that the matter regarding imposition of penalty should be kept pending till the decision of the appeal filed against the assessment order of 1966-67. Since the case regarding the imposition of penalty has been taken up separately and independently, the penalty proceedings had not been stayed by any competent authority. In para No. 6 of the written statement it has been pleaded that from the orders dated 8.1.1980 passed by respondent No. 2 it is very clear that assessment order dated 14.5.1975 passed by respondent No. 1 for the year 1966-67 was set aside only on technical grounds i.e. point of limitation and that the best judgment framed was considered to be warranted on merits. Respondent No. 2 in its order dated 8.1.1980 clearly held that the petitioner had been filing wrong return and had indulged in the evasion of tax and, therefore, the penalty has been rightly imposed. Mere fact that the decision of Assessing Authority passed on best judgment had been set aside by the Appellate Authority respondent No. 2 would not help the petitioner in view of the provisions of Section 10(7) of the Sales Tax Act because the petitioner was liable to be assessed for the purchases made from M/s. Hari Chand Narinder Kumar when he did not show this amount of purchased in his return. The order of the Assessing Authority had been set aside on technical grounds i.e. point of limitation. Therefore, the penalty u/s 10(7) of the Act still be imposed upon the petitioner for submitting wrong returns.

4. Rejoinder was filed by the petitioner in which he reiterated his averments made in the writ petition while denying those of the written statement and the

only point which survives for determination in the present writ petition is whether the impugned orders Annexures P-2, P-5 and P-7 can be set aside or not?''

5. For the adjudication of this point it will be necessary for me to refer to the order Annexure P-1 which was first in time was passed on 14.5.1975. The petitioner made purchases worth Rs. 11,60,917.17 P. from M/s Hari Chand Narinder Kumar but he did not show those purchases in his account books. A perusal of this order would show that petitioner himself was responsible in delaying the matters and he sought several adjournment right from 1973 to 1974 and finally in 9.9.1974 his request for summoning the proprietor of M/s. Hari Chand Narinder Kumar was declined. On that day, the petitioner did not produce his account-books. He tried for further adjournment which was declined as in the opinion of the Assessing Authority the petitioner wanted to prolong the case on one pretext or the other. The petitioner never produced any account-books and resultantly the Assessing Authority had to proceed ex parte against the dealer on best principles. It was also held in that order that though the dealer made an attempt and denied having made any purchase from Hari Chand Narinder Kumar but this contention of his was rejected in view of his own statement dated 10.6.67 given before the Assessing Authority Amritsar. But this statement was placed on the file of M/s. Hari Chand Narinder Kumar. The petitioner could not prove conclusively before the Assessing Authority that he never made purchases from M/s. Hari Chand Narinder Kumar. In these circumstances, orders Annexure P-1 was passed on 14.5.1975 on the basis of best judgment principle. Since this order under the law could be passed within three years, it was set aside. Nevertheless u/s 10(7) the Assessing Authority could proceed independently for the imposition of the penalty. The imposition of penalty is an independent act and has nothing to do with the assessment concerned. Even if that assessment, order has been set aside on technical ground of limitation by respondent No. 2.

6. Section 10(7) of the Punjab General Sales Tax Act, 1948 lays down that :-

"If a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stock of goods or has concealed any particulars of his sales or purchases or has furnished to, or produced before, any authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 may after affording such dealer, a reasonable opportunity of being heard direct him to pay, by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, a sum not exceeding two times but no less than fifty percentum of the amount of tax to which he has been assessed or is liable to be assessed excluding the amount to which he has been assessed or is liable to be assessed on the basis of the aforesaid false or incorrect accounts or concealed particulars or false or incorrect account, return or information."

7. The above provisions would show that irrespective of the fact that the appeal

of the assessee with regard to the assessment order has been set aside by respondent No. 2 his liability is not washed away because such assessee was liable to be assessed. The penalty could be resorted to even if the tax has not been assessed or if assessed, it no longer existed on technical grounds. The best order could be passed by the Assessing Authority within a particular time. It was not done so; hence the first order Annexure P-1 dated 14.5.1975 was set aside in appeal. The proceedings u/s 10(7) of the Act were independent and a perusal of the order Annexure P-2 would show that opportunity was granted to the petitioner and it was clearly held that the dealer''s denial regarding the purchase was obviously wilful and mala fide. It was also held that the dealer wilfully abstain from producing his account-books for the year 1966-67 despite having been allowed numerous opportunities in this connection. It was further held that furnishing of incorrect returns by the dealer had been proved by way of material evidence which with the dealer was confronted. Keeping in view all factors into view impugned order Annexure P-2 dated 16.6.1975 a penalty of Rs. 1,00,000/- was imposed which is in consonance with the provisions of the Act. A perusal of the order Annexure P-3 would show-that so far as the penalty is concerned, that order was not set aside. Only order Annexure P-1 was set aside because the assessment framed by the Assessing Authority was hit by limitation as provided u/s 11(4) of the said Act. Vide orders Annexure P-5 it was also held that by striking down the assessment order Annexure P-1 it did not in any way reflect upon the vires of the penalty of rupees one lac imposed u/s 10(7) of the General Sales Tax Act, 1948. Even this Court does not find any wrong in Annexure P-8.

8. Summing up the provisions of Section 10(7) are to be construed independently. By setting aside the assessment order on technical ground the petitioner''s liability to pay the penalty does not come to an end. Earlier assessment order Annexure P-1 was not set aside on merits. Rather findings of all the authorities are that petitioner purchased goods worth Rs. 11,60,917.17 F. but it did not show in its accounts books and in its turn out. He thus concealed a vital information and tried to evade his liability under the Act for which the proceedings u/s 19(7) of the Act could be initiated independently as the petitioner was liable to be assessed with regard to those concealment/purchases made from M/s. Hari Chand Narinder Kumar. The impugned orders Annexures P-2, P-5 and P-8 are totally justified and are in accordance with the Act. Therefore, this writ petition is devoid of any merit which is hereby dismissed leaving the parties to bear their own costs.

