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(2003) 10 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No''s. 14659, 14666, 14667 and 14713 of 2003

Amritsar Beverage Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 14, 14(3)

Citation : (2004) 138 STC 527

Hon'ble Judges : Virender Singh, J;V.M. Jain, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; A.G. Masih, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—This order shall dispose of C.W.P. Nos. 14659, 14666, 14667 and 14713 of 2003, as common questions of law and facts are involved in these cases. For the purpose of convenience, reference may be made to the facts of C.W.P. No. 14659 of 2003.

2. The petitioner filed the present writ petition under article 226 of the Constitution, seeking issuance of a writ of mandamus directing the respondents to return the impounded books/documents/computer parts, seized on August 7, 2002 from the premises of the petitioner u/s 14 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act"). It was alleged in the petition that on August 7, 2002 various books/documents, etc., were seized by the officers of the sales tax department when they visited the business premises of the petitioner. It was further alleged that the aforesaid impounding was done by the officers of the sales tax department u/s 14 of the Act. It was alleged that u/s 14(3) of the Act, it is provided that officer seizing the books, accounts, registers or documents shall return the books, etc., which were being used at the time of seizing within a period of ten days from the date of seizure and in other cases within sixty days from the date of seizure. It was alleged that almost a year had

passed when the books, etc., were impounded and taken by the officers of the sales tax department but the same have not been returned to the petitioner inspite of the facts that petitioner had served notice dated November 21, 2002 followed by registered reminder dated January 11, 2003 copies annexures P2 and P3.

3. In the written statement filed on behalf of the respondents, the fact that the promises of the petitioner was checked on August 7, 2002 and various books of accounts, etc., were taken away by the officers of the sales tax department have not been disputed. Even the receipt of the notices dated November 21, 2002 and January 11, 2003 had not been disputed. In fact, this allegation of the petitioner was specifically admitted by the respondents. The only ground taken by the respondents in the reply was that petitioner was given various opportunities to appear and get the seized documents verified so that the same could be returned to it against proper receipt but inspite of that the petitioner had failed to appear before the concerned authorities. Copies of the notices dated June 23, 2003, July 16, 2003 and September 18, 2003 were attached with the written statement, calling upon the petitioner to appear before the Excise and Taxation Officer-cum-Assessing Authority, alongwith accounts books for verification of the impounded documents and also to provide trading account for the current financial year upto the date of inspection.

4. After hearing the counsel for the parties and after perusing the record, in our opinion, the respondents have deliberately failed to return the books/documents, etc., to the petitioner within the stipulated period as provided u/s 14 of the Act, inspite of the fact that the petitioner had issued notices to respondents in this regard. Section 14(3) of the Act reads as under :

''14. Production and inspection of books, documents and accounts.--(1) ....

(2) ....

(3) If any officer referred to in sub-section (1) has reasonable ground for believing that any dealer is trying to evade liability for tax or other dues under this Act, and that anything necessary for the purpose of an investigation into his liability may be found in any book, account, register or document, he may seize such book, account, register or document as may be necessary. The officer seizing the book, account, register or document shall forthwith grant a receipt for the same and shall :

(a) in the case of book, account, register or document which was being used at the time of seizing, within a period of ten days from the date of seizure ; and

(b) in any other case, within a period of sixty days from the date of seizure, return it to the dealer or the person from whose custody it was seized after examination or after having such copies or extracts taken there from as may be considered necessary, provided the dealer or the aforesaid person gives a receipt

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in writing for the book, account, register or document returned to him. The officer may, before returning the book, account, register or document, affix his signatures and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him that number of places where the signature and seal of such officers have been affixed on each book account, register or document.

(4) ....

(5) ....

(6) ...."

5. From a perusal of the above, it would be clear that the officer seizing the books, accounts, registers or documents, is required to give a receipt while seizing the books, etc., and is further required to return the books, etc., which were being used at the time of seizing, within a period of 10 days from the date of seizure and in other case, within a period of sixty days from the date of seizure. In fact, the officer seizing the books, etc., is required to return the same to the dealer or the person from whose custody it was seized, after examining or after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or such person gives a receipt in writing for the books, accounts, registers or documents having been returned to him. It is also provided that the said officer may, before returning books, etc., affix his. signature and his official seal at one or more places thereon.

6. In the present case, as referred to above, account books, etc., were seized on August 7, 2002. Neither the books, etc., which were allegedly being used and seized were returned nor the other books, etc., which were not being used were returned within a period of ten days or sixty days from the date of seizure as required u/s 14(3) of the Act. This was in spite of the fact that petitioner had issued notices dated November 21, 2002 and January 11, 2003 to the respondents for this purpose. Nothing has come on the record to show that in response to aforesaid notices any communication was addressed by the respondents to the petitioner, calling upon the petitioner to collect the books, accounts, etc., against receipt as required u/s 14(3) of the Act. The various notices, copies of which have been attached as annexure R1, are dated June 23, 2003, July 16, 2003 and September 18, 2003. Even these notices are only in respect of finalisation of proceedings which were initiated against the petitioner. In none of these notices, the petitioner was called upon to collect the books against receipt as required u/s 14(3) of the Act. It appears that the concerned officer had acted contrary to the mandatory provisions of section 14(3) of the Act and had failed to return the books in spite of the notices given to him by the petitioner. In Kesri Soda Water Factory and Sweet Shop v. State of Punjab [1977] 39 STC 122, a division Bench of this Court under similar circumstances had found that u/s 14(3) of the Act some documents were required to be returned within ten days and the other documents could be retained for a period upto sixty days

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only from the date of seizure and in the reported case it was found that it was not necessary to enter into a classification of documents because both the periods mentioned in the statute have long passed. It was held that the law provides that the Sales Tax Officer, may if he is so advised, retain copies of the documents but he is under no circumstances authorised to retain them beyond a period of sixty days. Accordingly the seized documents were ordered to be returned to the petitioner forthwith and it was also held that the petitioner would be entitled to costs.

7. In spite of the mandatory provisions of section 14(3) of the Act and the law laid down by a division Bench of this Court in Kesri Soda Water Factory''s case 1977 39 STC 122 the respondents failed to return the books and accounts, etc., to the petitioner within the stipulated period on unjustifiable grounds. The act of the person concerned who retained the books, accounts, etc., beyond the mandatory period of sixty days cannot be condoned especially when he did not bother to return the books in spite of issuance of notices by the petitioner. Furthermore, as referred to above, there is nothing to indicate that the petitioner had refused to issue receipt for the return of the documents or that the petitioner was ever called upon to come and collect the books, accounts, etc.

8. For the reasons recorded above, all the above mentioned four petitions are allowed with costs and respondents are directed to return the books, accounts, etc., which were seized from the petitioners, to them forthwith. The costs are assessed at Rs. 2,500 in each of the four cases, i.e., totalling Rs. 10,000. It is directed that costs shall be paid by the officer responsible for the non-return of the books, accounts, etc., personally from his own pocket and these costs shall not be a burden on the State exchequer.

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