
(1972) 10 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 541 of 1972

Arjan Radio House

APPELLANT

Vs

Assessing Authority (Excise and Taxation Officer) and Another

RESPONDENT

Date of Decision : 06-10-1972

Acts Referred:

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

Citation : (1973) 31 STC 49

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : R.C. Dogra, for the Appellant; R.K. Chhibbar, for Advocate-General, for the Respondent

Judgement

M.R. Sharma, J.—The petitioner is a partnership firm (hereinafter called the petitioner-firm) registered as a dealer under the Punjab General Sales Tax Act (hereinafter referred to as "the Act"). It filed the necessary returns for the year 1967-68. On the basis of these returns, the Assessing Authority framed the assessment. It is stated that the sales tax payable by the petitioner-firm had already been deposited along with the returns. The Assessing Authority filed the case on 27th October, 1969. There after, the Assessing Authority served another notice upon the petitioner firm in form S.T. XIX in which it was mentioned that the sales amounting to Rs. 1,32,038.76 made to different registered dealers were wrongly allowed because those dealers were not genuine dealers in terms of the definition of the word "dealer" as given in "Section 2(d) of the Act. The petitioner-firm was called upon to show cause why the exemption granted to it u/s 5(2)(a)(ii) of the Act in respect of the sales made to the alleged ungenuine dealers be not withdrawn. In response to this notice, a representative of the petitioner-firm appeared before the Assessing Authority and submitted that the sales had, in fact, been made to the genuine dealers and that the order of reassessment could not be made on the ground mentioned in the notice. The representative of the petitioner-firm also submitted a written representation dated 13th September, 1971, copyannexure "B" to the petition, in which it was

prayed that the District Excise and Taxation Officer be directed to produce the record relating to the alleged ungenuine dealers. The Assessing Authority disregarded this prayer on the ground that letter No. 7121/SRC dated 8th October, 1971, addressed by the Excise and Taxation Officer, Amritsar, to the Assessing Authority was clear and that an attested copy of the same having been made a part of the file of assessment, it was not necessary to summon the Excise and Taxation Officer, Amritsar. Consequently, vide its order dated 2nd December, 1971, the order of reassessment was framed against the petitioner-firm and an additional liability of Rs. 10,523.50 was created against it.

2. The learned counsel for the petitioner-firm has addressed only two arguments in this petition. Firstly, because the entire material, including the returns, had already been placed on the record, so the Assessing Authority could not be deemed to have come into possession of any new information and the order of reassessment could not be framed u/s 11A of the Act as it stood on the material time. Secondly, it was urged that when the registration certificate of a dealer is cancelled, the particulars regarding the cancellation order have to be mentioned in the official Gazette as soon as possible as laid down under Rule 12(2) of the Rules framed under the Act. The publication of this cancellation, being a mandatory requirement of law, could not entail penal consequences upon the selling dealers unless the same had been complied with.

3. About the first ground urged by the learned counsel for the petitioner firm, I may add that the assessments are usually framed by the Assessing Authorities in a hurried manner. At that stage the gross turnover of a dealer and the certificates given by the purchasing dealer in form S.T. XXII are usually examined and the assessments are framed. The Assessing Authorities are not called upon to view every certificate with suspicion for, otherwise lot of public time would be wasted and even the assesseees would be made to suffer great inconvenience. If at some subsequent stage it comes to the notice of the Assessing Authority that the "C" forms had either not been furnished by a registered dealer or the same had been furnished by a dealer whose registration certificate stood cancelled in accordance with law at a time earlier than the one when he signed the declaration form, it could not be said that the receipt of this information would not entitle the Assessing Authority to frame the reassessment, in order to prevent loss of revenue. The information entitling the Assessing Authority to frame reassessment includes information on points of fact and on points of law. With these observations, I overrule the first contention advanced by the learned counsel.

4. On the second point, however, the petitioner-firm has a good case. Rule 12(2) of the Rules framed under the Act runs as under :

12. (2) The particulars of all registration certificates cancelled under the Act shall be notified by the authority cancelling the registration certificates in the official Gazette as soon as possible thereafter.

5. This rule has been framed for a good purpose. A busy dealer is not supposed to know whether the registration certificate of a purchasing dealer has been cancelled or not unless he can be fixed with the knowledge of this fact. The above rule contemplates that as soon as the particulars regarding the cancellation of a registration certificate are published in the official Gazette, then the selling dealer could not be allowed to say that he had no knowledge about the cancellation of the registration certificate of the purchasing dealer. In that case, it would not be in his own interest to receive and act upon the certificate given in form S.T. XXII by such a dealer. Where the revenue is itself negligent and does not perform its statutory duties of publishing the requisite information in the official Gazette, it cannot turn round and demand tax from the selling dealer on the ground that the certificates produced for getting exemptions u/s 5(2)(a)(ii) of the Act were signed by ungenuine dealers. The Assessing Authority exercises quasi-judicial functions. When a dispute about the genuineness or otherwise of a purchasing dealer is raised before it, then it has to decide it in accordance with the known principles of fair play and natural justice. The elementary requirement of such principles is that when a dealer wants to adduce evidence in support of his claim, then that evidence should be allowed to be produced and weighed on its merits. In the instant case, the petitioner-firm prayed that the Excise and Taxation Officer be summoned with records so that the question regarding the cancellation of the registration certificates of the purchasing dealers and the publication of this information in the official Gazette could be ascertained. The Assessing Authority ignored this legitimate prayer made by the petitioner-firm even though the petitioner-firm was prepared to pay the diet money of the Excise and Taxation Officer to appear as a witness. In my considered opinion, the Assessing Authority was ill-advised to act merely on a departmental communication without allowing the assessee to make a probe into the basis on which this information was supplied. The procedure adopted by the Assessing Authority stands vitiated on account of non-compliance with the principles of natural justice.

6. For the reasons mentioned above, I quash the order dated 2nd December, 1971, passed by the Assessing Authority, Gurdaspur, respondent No. 1 and remand the case back to it for decision afresh in accordance with law. The petitioner-firm will have its costs which are assessed at Rs. 100.