
(1999) 04 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18725 of 1998

Ashok Kumar Garg

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-1999

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10C

Citation : (2000) 2 ILR (P&H) 173 : (1999) 122 PLR 370 : (1999) 4 RCR(Civil) 548 : (2002) 128 STC 442

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : D.D. Bansal, for the Appellant; Anil Rathee, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—Is the sales tax leviable on the supply of man-power by a contractor in view of the provisions of the Punjab General Sales Tax (Amendment) Act, 1997 ? A few facts as relevant for the decision of this case may be briefly noticed.

2. The Divisional Engineer, Telephones, invited tenders for the supply of labour. In response to this notice, the petitioner submitted a tender. Vide letter dated March 10, 1998, the petitioner was informed that the General Manager had conveyed approval of the rates quoted by him. He was called upon to execute an agreement. On March 18, 1998, the agreement was executed. It was, inter alia, provided that "the man-power shall be charged Rs. 84 per day per labour (or)". It appears that the petitioner was periodically submitting the bills. Respondent Nos. 2 and 3 sanctioned the payment after deduction of the Income Tax and the sales tax at 2 per cent each. To illustrate for the month of September, 1998, it was found that the petitioner has supplied 260 labourers at Rs. 84 per labourer. The petitioner was entitled to a payment of Rs. 21,840. However, deduction was ordered to be made at 2 per cent on account of Income Tax and sales tax. Thus, Rs. 437 were ordered to be deducted on account of sales tax. An equal amount

had also to be deducted on account of Income Tax. Accordingly, the bill was sanctioned for payment of Rs. 20,966. Similar was the position in regard to another bill. Copies of these two bills/payment orders have been produced as annexures P.5 and P.6 with the writ petition.

3. The petitioner complains that according to the agreement, he was "required to supply man-power and not any material on which sales tax is leviable nor...has supplied any goods on account of which sales tax could be deducted...". Thus, he prays that the action of the respondents in making the deduction be set aside and that they be directed "not to deduct sales tax from the labour bills...in future...". He also prays for the refund of the amount already deducted.

4. In the written statement filed on behalf of the respondents, it has been averred that "the sales tax deducted....in view of the amended provisions of the Punjab General Sales Tax (Amendment) Act, 1997". The Legislature had introduced Section 10-C in the Act according to which every person responsible for making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable "for the transfer of property in goods (whether as goods or in any other form) in pursuance of a works contract, shall, at the time of making such payment to the contractor either in cash or in any other manner, deduct the amount equal to 2 per cent of such sums towards part or as the case may be, full satisfaction of the tax payable under this Act on account of such works contract...". It has also been averred that the Department of Telecommunications has issued comprehensive instructions on September 2, 1998. In pursuance of these instructions, the amount due on account of sales tax was deducted from the payment made to the various contractors including the petitioner. On these premises, the respondents maintain that their action in levying and deducting the sales tax from the payment made to the petitioner is legal and valid.

Counsel for the parties have been heard.

5. The solitary contention raised on behalf of the petitioner is that no sales tax can be levied on the supply of labour. On behalf of the respondents, the claim is that the levy and the deduction are in conformity with the provisions of Section 10-C. Is it so ?

6. The levy of sales tax is regulated by the provisions of the Punjab General Sales Tax Act, 1948. The Act was enacted "to provide for the levy of a general tax on the selling or purchase of goods in Punjab". Section 2(h) defines "sale", inter alia, to mean "any transfer of property in goods". The taxable event is a sale "effected after the coming into force of the Act and purchases made...". The liability to pay tax is of the dealer "including a department of Government who in the normal course of trade sells or purchases any goods". The "goods", according to Section 2(e) mean "all kinds of movable property and goods consumed at business premises other than newspapers.... and includes all materials, commodities and articles including the goods (whether as goods or in some other

form) involved in the execution of a works contract...". In other words, sales tax is leviable only when there is a "transfer of property in goods". In case of a works contract, the law introduces a fictional sale. To illustrate : when a builder sells a built-up house, he is actually not selling the bricks, cement, sand and steel. However, by the amended definitions of "goods" and "sale", these materials shall be deemed to have been sold so as to attract the levy of tax. However, the taxable event is the transfer of property in goods. Unless there is transfer of property in the goods, sales tax cannot be levied.

7. Mr. Rathee, counsel for the respondents, contended that this position has changed in view of the amendment made vide notification dated July 15, 1997 (Punjab Act No. 7 of 1997). Is it so ?

8. Section 10-C(1) provides as under :

"Notwithstanding anything contained in any of the provisions of this Act, every person responsible for making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in any other form) in pursuance of a works contract shall, at the time of making such payment to the contractor either in cash or in any other manner, deduct an amount equal to two per centum of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such works contract."

9. The provision authorises "tax deduction from the amount payable to a works contractor". The payment should be "for discharge of any liability". This liability should have occurred on account of "the transfer of property in goods (whether as goods or in any other form) in pursuance of a works contract....." It is apparent that there is no liability to make any deduction till there is a "transfer of property in goods". The purpose of the amendment is to provide for deduction of tax at the time of making payment even in case of a contractor who is executing a works contract. As already mentioned above, in case of execution of a works contract relating to--for example-- a house, it shall be assumed that bricks, cement, sand and steel, etc., have been sold. It is true that the property does not pass in bricks or cement, etc., in their original form. However, in the process of the execution of the works contract, the goods acquire a new form. Still, the property is deemed to have been transferred in these goods though in a different form. It is this passing of property in the goods, which is made exigible to the levy of sales tax. A deduction of 2 per cent is required to be made by the person who makes the payment to the contractor.

10. What is the position in the present case ?

The petitioner is merely supplying labour. He is not supplying any goods. No material, commodity or article is transferred in any form. The supply of labour may be a service. However, it does not involve any transfer of property in goods. Thus, no sales tax or purchase tax is leviable. Consequently, none can be

deducted.

11. In the written statement filed on behalf of the respondents, a reference has been made to the instructions issued by the Department of Telecommunications to the different officers. Normally, instructions cannot provide for the levy of a tax. It was not even suggested that these instructions authorise the levy of sales tax. Consequently, these are of no relevance in the present case.

No other point was raised.

12. In view of the above, the question as posed at the outset is answered in the negative. It is held that the sales tax is not leviable on the supply of labour even under the provisions of Section 10-C as enacted by Act No. 7 of 1997.

13. As a result, the writ petition is allowed. The levy and deduction of sales tax are set aside. The respondents are directed to refund the sales tax already deducted or collected from the petitioner on account of the supply of labour. The impugned orders are quashed to that extent. The petitioner shall be entitled to his costs which are quantified at Rs. 2,000.