(1985) 12 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 348 of 1982

Babu Ram Narain Parshad APPELLANT

Vs

The Sales Tax Tribunal and Another RESPONDENT

Date of Decision : 17-12-1985

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 21

Citation : (1986) 2 ILR (P&H) 328 : (1987) 64 STC 468

Hon'ble Judges : Prem Chand Jain, C.J;I.S. Tiwana, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajai Mittal, for the Appellant; G.S. Grewal, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—This judgment disposes of two Letters Patent Appeals Nos. 348 and 349 of 1982 as these are directed against the common judgment of the learned single Judge dismissing the two writ petitions filed by the appellant firm. The appellant M/s. Babu Ram Narain Parshad, a partnership firm, was engaged in the business of crushing of oil-seeds of sarson, toria and til at Jullundur and was a registered dealer under the Punjab General Sales Tax Act, 1948 (for short, the Act). For the assessment years 1961-62 and 1962-63, it submitted the requisite return claiming exemption from tax on the sale proceeds of edible oils. The Assessing Authority vide two different but similar orders dated January 20, 1965 and February 28, 1965, while making observation that the dealer had claimed the abovenoted exemption, subjected it to tax. The firm preferred two appeals before the Deputy Excise and Taxation Commissioner who vide his two similar orders dated May 12, 1966, accepted the appeals and remanded the cases with the following observation :

I have heard both the parties and have gone through the assessment record. The appellant was not assessed to tax as regards the sale of sarson oil and no demand notice was served upon him. The orders in this regard are vague and the cases are therefore remanded to the Assessing Authority for framing the assessment orders in proper way. While doing so, the Punjab High Court judgment in the case of Ganga Ram Suraj Parkash [1963] 14 STC 476 may be kept in view.

2. The judgment of this Court referred to in this order has since been reported as Ganga Ram Suraj Parkash v. State of Punjab [1963] 14 STC 476 . The firm felt aggrieved by these orders and preferred two respective revision petitions before the Joint Excise and Taxation Commissioner. Before these could be disposed of by the said authority, the Act was amended and a provision for the appointment of a Sales Tax Tribunal was made and the orders passed by the Deputy Excise and Taxation Commissioner were made appealable to the said Tribunal. Consequently the revisions filed by the firm before the Joint Excise and Taxation Commissioner were transferred to the Tribunal for disposal. On March 29, 1966, when the matter came up for hearing before the Tribunal, the petitionerfirm made a request for the dismissal of those petitions as withdrawn. The Tribunal vide its common order dated March 29, 1966, dismissed the petitions as withdrawn. Later the Joint Excise and Taxation Commissioner exercising powers u/s 21 of the Act in the light of the Supreme Court judgment in The Punjab State, Chandigarh Vs. Sansari Mal Puran Chand, overruling the judgment of this Court in Ganga Ram Suraj Parkash [1963] 14 STC 476 took up the matter suo motu and vide his two different but similar orders dated January 6, 1972, quashed orders of the Deputy Excise and Taxation Commissioner dated May 12, 1966, remanding the cases to the Assessing Authority. The Joint Excise and Taxation Commissioner was of the view that since the judgment in Ganga Ram Suraj Parkash Vs. State of Punjab, in the light of which the cases had been remanded by the Deputy Excise and Taxation Commissioner to the Assessing Authority had been overruled, there was no necessity of sending the cases back and rather framed the final assessment himself. The appellant impugned these two orders of the Joint Excise and Taxation Commissioner before the learned single Judge and, as already indicated, has remained unsuccessful.

3. The solitary contention raised before us by Mr. Ashok Bhan, learned Senior Advocate for the appellant, is that the impugned orders of the Joint Excise and Taxation Commissioner passed as a result of suo motu proceedings were totally without jurisdiction as the orders of the Deputy Excise and Taxation Commissioner dated May 12, 1966, stood merged in the order of the Tribunal dated March 29, 1966, even though the Tribunal had only dismissed the petitions before it as withdrawn and with this affirmance of the impugned orders of the Deputy Excise and Taxation Commissioner by the Tribunal, the Joint Excise and Taxation Commissioner could not go into the validity of this order of the Tribunal. Having given our thoughtful consideration to this submission of the learned counsel we, however, find no merit in the same.

4. It is no doubt true that when an order is assailed before an appellate or a revisional authority, the latter can do one of the three things, namely, (i) it may

reverse the order under appeal or revision ; (ii) it may modify that order and (iii) it may merely dismiss the appeal or revision and thus confirm the order without any modification, but this theory of merger of the decree of the lower court in the decree of the appellate court applies only if the appellate court reverses, modifies or confirms the original decree in its own judgment, i. e., does any of the three things on merits. To our mind, this principle cannot be applied when the appellate court dismisses the appeal as withdrawn as we are of the opinion that to withdraw a suit, appeal or a lis, is the unquestionable right of the plaintiff or the appellant. The effect of a petition dismissed simpliciter or as withdrawn has been considered by a Division Bench of the Delhi High Court in Ashoka Marketing Ltd. v. B.L. Gupta 1975 Lab IC 1715. This is what has been opined :

Whatever may be the stage at which the petition is withdrawn, the effect of the order dismissing the petition depends upon the order passed by the court or the tribunal and not the stage of its withdrawal. The court or the tribunal would be free to dismiss the petition on merits. If the order were simply ''dismissed'' then it would be a dismissal on merits. If the order does not give reasons, the order may not act as res judicata on the principle underlying the decision of the Supreme Court in Daryao and Others Vs. The State of U.P. and Others, . But nevertheless it would be a final order which is appealable on the principle of Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, . But if the court chooses not to decide the merits and expressly passes the order ''dismissed as withdrawn'', the order is neither res judicata nor final. No appeal lies from it. On the contrary, a fresh petition would be maintainable in the absence of a provision like Order XXIII, Rule 1, Civil Procedure Code.

5. We fully agree with this enunciation of law and thus repel the abovenoted contention of the learned counsel.

6. For the reasons recorded above, these appeals fail and are dismissed but with no order as to costs.

