
(1964) 05 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1609 of 1961

Bajaj Electricals Ltd.

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 29-05-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Punjab Professions, Trades, Callings and Employments Taxation Act, 1956 — Section 3, 8(A)

Sales of Goods Act, 1930 — Section 24

Citation : AIR 1964 P&H 530 : (1964) 2 ILR (P&H) 759 : (1964) 66 PLR 923

Hon'ble Judges : Gurdev Singh, J;A.N. Grover, J

Bench : Division Bench

Advocate : B.R. Tuli and S.K. Tuli, for the Appellant; C.L. Lakhanpal, General, for the Respondent

Judgement

Gurdev Singh, J.—In this petition under Article 226 of the Constitution, Messrs. Bajui Electricals Limited. New Delhi dispute their liability to be taxed u/s 3 of the Punjab Professions. Trades, Callings and Employments Taxation Act, 1956 (hereinafter referred to as the Act), and pray for a writ of certiorari quashing the notices of demand, dated 3rd November. 1961, issued against them by the Assessing Authority Karnal (Respondent No. 2) appointed under the Act for the financial years 1960-61 and 1961-62.

2. The Petitioner is a Joint Stock Company Incorporated under the Companies Act with its registered head office at Bombay and its branches at various places, including New Delhi. Admittedly, it has neither any office, establishment, depot or factory in the State of Punjab nor has appointed any resident agent within this State. It has, however, been supplying from its branch office in Delhi goods to its various customers in the Punjab including some Government departments.

3. On 9th June, 1961, the Assessing Authority Karnal (Respondent No. 2) issued to the Petitioner a notice in form D calling upon it to file the return of its total

gross income in the years 1959-60 and 1960-61 and to appear before it on 21st July, 1961, for determination of its liability to assessment under the Act. The Petitioner-Company refused to file any return and contested its liability to assessment under the Act or the plea that it was not carrying on any trade or business in Punjab. The objections raised by the Petitioners were rejected on the ground that they had been supplying goods to their customers in Punjab and had been bearing freight charges for the same. In absence of any return the Assessing Authority, Karnal, by its order, dated 3rd November, 1961 acting under Section, 8(A) of the Act, Assessed the Petitioner-company to Rs. 250/-, the maximum provided under the Act, as tax for each of the financial, years 1960-61 and 1961-62. This was followed by the impugned notices of demand, E and E-1.

4. The contention of Shri B.R. Tuli, who appears for the Petitioners, is that the Petitioner-company is not engaging in any profession, trade, calling or employment within the State of Punjab as it has no place of business nor even a go-down or a warehouse in the State of Punjab, and the mere fact that from time to time it supplies goods to persons residing in the State of Punjab does not bring it within the ambit of Section 3 of the Act. It is not disputed by the Respondent that the Petitioner-Company has no place of business in this State and does not even have a resident representative in this area. It is, however, contended that since under the terms of the Rate Contract with the Controller of Stores, Punjab, the Petitioner-company had been selling goods to the Government Departments F.O.R. destination and the, inspection of the goods was also to take place in Punjab, the Petitioner-Company must be considered as carrying on a part of its trade in this State.

5. The charging provision in the Act is Section 3, which reads:

3. Every person who carries on trade, either by himself or by an agent or representative, or who follows a profession or calling or who is in employment, either wholly or in part, within the State of Punjab, shall be liable to pay for each financial year or a part thereof a tax in respect of such profession, trade, calling or employment:

Provided that for the purpose of this section a person on leave shall be deemed to be a person in employment.

6. The Petitioner-firm deals in electrical goods and is admittedly a trading concern with its head office at Bombay. It denies its liability to assessment under the above provision of law on the plea that it is not carrying on any business in the State of Punjab. In this connection it is asserted that the company has no branch office or any other place of business in Punjab nor has appointed any residents agent or representative within this State. These facts are not disputed by the Respondents. It is urged that since under the terms and conditions of the Rate Contract between the Petitioner and the Controller of Stores, Punjab, the company has been selling goods to Government departments F.O.R. destination and the inspection of the goods was also to take place on receipt in the State of

Punjab, the Petitioner-Company must be considered as carrying on a part of its trade in this State Reference in this connection is made to Section 24 of the Indian Sale of Goods Act, wherein it is provided that when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property (hereto passes to the buyer when he signifies his approval or acceptance to the seller or does any other act adopting the transaction, and if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. The provisions with regard to the passing of property in the Indian Sale of Goods Act, in my opinion, are not of much assistance in determining whether a trade or business is being carried on at a particular place.

7. In the affidavits of the employees of the Petitioner it is stated that the orders are accepted at Delhi, the goods are also despatched from that place, and the railway receipts taken in the company's name are presented to the purchasers duly endorsed in their favour through a bank simply to secure realization of the price of the goods. The important thing is the place of sale, and if the sale takes place outside the State of Punjab, it will be unreasonable to hold that the seller should be deemed to be carrying on his trade within the State of Punjab simply because the purchaser does not consider it expedient to take delivery at the place where the sale takes place and for his convenience wishes the seller to despatch the goods to his destination or does not pay cash on the spot or purchases the goods on credit. The question whether a person carries on a particular trade or follows a profession, calling or employment within a certain area is to be decided on the facts of each case, considering inter alia the nature of that trade or profession etc.

8. The cases that have been cited before at emphasize the fact that merely because a part of the activity of the person sought to be taxed happens to be at a particular place, it does not follow that that place must be considered as the place of business or profession. In *Lala Jagat Pershad v. District Board Ambala* AIR 1944 Lah 385 Division Bench of the Lahore High Court, consisting of Harries, C.J. and M.C. Mahajan, J., (as he then was), considered, the validity of the demand of profession tax made by the District Board, Ambala, on some of the lawyers, who though practising in the District Courts at Ambala had their offices or chambers at their places of residence outside the limits of the District Board of Ambala. It was contended on behalf of the Taxing Authority that since appearance and pleading in Court was an essential part of the profession of law, the lawyers concerned were engaging in the profession at Ambala where the District Courts were situate Their Lordships rejected this contention, and Harries, C.J., speaking for the Court, observed as follows:

The place where he actually does that work is not to my mind the place in which he carries on his business.... In the case of a lawyer it is the place where he can be engaged that matters, and that is his place of business. The place where the

contract is entered into and where the vakalatnama is signed appears to me to be where the lawyer carries on his profession or trade, and if his office or chambers are not within the municipal limits of Ambala, then it cannot be said that he carries on his profession within those limits. He might performing certain acts connected with his engagement within those limits, but that does not amount to following his profession within those limits.

9. In the District Board, Rohtak v. Master Jamna Das 58 Pun LR 293, this Court was called upon to deal with the validity of the profession tax imposed by the District Board, Rohtak, upon clerks and teachers employed in a school at Sonapat, who were, however, not residing within the limits of the Municipal Committee, Sonapat Harnam Singh, J., held that the tax had been validly imposed as the teachers and the clerks must be deemed to be carrying on business at the place where the school in which they were employed was situate.

10. A. similar question later came up before this Court in the District Board, Kangra v. E.D. Maneekna ILR (1959) P&H 2041. The District Board, Kangra, sought to impose profession tax on checkers residing at Pathankot within the district of Gurdaspur and employed in a transport company having its head office also at that place. The district Board, Kangra, justified the demand for tax on the plea that those checkers were actually engaged in checking and supervising the traffic on the road falling within the jurisdiction of the Distract Board, Kangra, Taking note of the fact that the checkers resided at Pathankot and the head office of their employers was also at Pathankot from where they obtained instructions and received their emoluments. Dua, J., rejected this agreement and held that merely because the checkers had been ordered by their employer to check or supervise the various buses plying on the P.W.D. road within the jurisdiction of the District Board. Kangra they would not be liable to be taxed by that Board.

11. In the case before us when the Petitioner-company does not have any place of business or a representative in Punjab and has not entered into any contract of purchase or sale within this State the mere fact that it despatches goods to its customers, living in Punjab would not justify the conclusion that it has been engaging in trade within the area of Punjab State. It well settled, as laid down in A.V. Fernandez Vs. The State of Kerala, . that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute on the substance of the law Bhagwati delivering the judgment of the Court, in this connection observed:

It the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed; it, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute no tax can be imposed by inference or by analogy of by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.

12. According to the clear language of Section 3 of the Punjab Professions,

Trades, Callings and Employments Taxation Act, 1956, the Petitioners could not be taxed as it has been found that the trade in which they engage is not being carried on within the State of Punjab. I would, accordingly, accept the petition, quash the notices of demand and assessment orders on which they are based, and direct that appropriate writ shall issue to the Respondents. In view of the nature of the questions involved, I would, however, leave the parties to bear their own costs.

A.N. Grover, J.

13. I agree.