(1990) 01 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2273 of 1989

Bathinda Chemicals and Banaspati Pvt. Ltd. APPELLANT

Vs

Excise and Taxation Commissioner and Another RESPONDENT

Date of Decision : 15-01-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Punjab General Sales Tax Act, 1948 — Section 11, 21(1)

Citation : (1990) 79 STC 204

Hon'ble Judges : J.V. Gupta, Acting C.J.;M.S. Liberhan, J

Bench : Division Bench

Advocate : H.L. Sehal and H.S. Sawhney, for the Appellant; D.S. Brar, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, Ag. C.J.—At the time of the motion hearing, this writ petition was directed to be heard with Letters Patent Appeal No. 1091 of 1984 which has been disposed of by a separate order Reported as Chhatar Extractions Private Limited v. Excise and Taxation Commissioner [1990] 79 STC 200 supra of today.

2. The challenge in this writ petition is to the order, (copy annexure P. 5) dated August 13, 1988, passed by the Assistant Excise and Taxation Commissioner (Inspection), Ferozepur, exercising the powers of the Commissioner, u/s 21(1) of the Punjab Genera! Sales Tax Act, 1948, read with Section 9(2) of the Central Sales Tax Act, 1956, whereby the order reassessing the petitioner to sales tax for the year 1978-79 was passed. Admittedly, the petitioner filed Civil Writ Petition No. 1116 of 1982, for quashing the three notices dated February 24, 1982, issued by the Assessing Authority, Bhatinda, u/s 9(2) of the Central Sales Tax Act, read with Section 11 of the Punjab General Sales Tax Act, for reassessment of the petitioner relating to the turnover on account of sale of rice bran oil in the course of inter-State trade and commerce pertaining to the years 1978-79, 1979-80 and 1980-81, respectively. The said writ petition was allowed by this

Court on February 10, 1983, vide judgment Reported in Bhatinda Chemicals and Vanaspati Private Ltd. Vs. Excise and Taxation Commissioner and Another,) (copy annexure P. 3) wherein it was held :

"So, there was no definite information before the Assessing Authority, which may induce the belief that the turnover of the petitioner-firm had been under-assessed. The notices are illegal and without jurisdiction."

In view of that finding, the other contentions raised on behalf of the petitioner therein were not gone into and consequently, the writ petition was allowed and the notices dated February 24, 1982, were quashed. The department did not file any appeal against the said judgment of the learned single Judge and in spite of that judgment having become final between the parties, again reopened the case u/s 9(2) of the Central Sales Tax Act read with Section 21(1) of the Punjab General Sales Tax Act. Objection was raised on behalf of the assessee that the matter had already been decided by the High Court in the said writ petition and, therefore, the matter could not be reopened unless the said order was got set aside by way of filing an appeal, etc. However, this did not find favour with the Assessing Authority and relying upon the judgment of this Court in Chhatar Extractions Pvt. Limited v. Excise and Taxation Commissioner, Punjab [1986] 61 STC 374 (Civil Writ Petition No. 1972 of 1983, decided on September 14, 1984), respondent No. 2, came to the conclusion that the rice bran oil sold by the assessee was not edible oil and as such, the inter-State sales of rice bran oil with effect from January 11, 1979, were leviable to tax at the rate of 4 per cent, especially when the refinery was registered by the Government of India, vide letter dated November 20, 1979. Therefore, the taxable turnover of Rs. 30,95,400 will be subject to tax at the rate of 4 per cent, at the foot of this order.

3. The learned counsel tor the petitioner submitted that the Assessing Authority had no jurisdiction to reassess the sales tax for the year 1978-79 in the presence of the order passed by this Court in the earlier writ petition filed by the assessee (copy annexure P.3). According to the learned counsel, by passing the impugned order (annexure P. 5) the said order of this Court has been rendered non est and, therefore, the impugned order, on the face of it, is wrong and illegal and without jurisdiction. The learned counsel further submitted that as a matter of fact, this is an indirect method of avoiding that order without challenging the same in any appeal, etc., which could have been filed on behalf of the Assessing Authority.

4. After hearing the learned counsel for the parties, we find merit in this contention. Admittedly, earlier, the notices issued by the Assessing Authority for reassessment of the petitioner-firm relating to the years 1978-79, 1979-80, 1980-81 and 1981-82 were challenged successfully and once the said notices were quashed by this Court then the same could not be reopened in view of any subsequent judgment in Chhatar Extractions Pvt. Limited Vs. The Excise and Taxation Commissioner and Another,). Apart from that, letters patent appeal against that judgment, i.e., Letters Patent Appeal No. 1091 of 1984 has been disposed of today in which it has been directed that the matter be decided afresh

by the appellate authority on merits in accordance with law without taking into consideration the finding given by the learned single Judge on merits. In these circumstances, the writ petition succeeds. The impugned order (annexure P. 5), dated August 13, 1988, is, therefore, quashed.

