(1993) 11 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1259 of 1993

Bharat Electronics Ltd. APPELLANT

Vs

The State of Haryana and Another RESPONDENT

Date of Decision : 25-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana General Sales Tax Act, 1973 — Section 25(3)

Citation : (1994) 106 PLR 262

Hon'ble Judges : N.K. Kapoor, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : M.L. Puri, for the Appellant; Arun Nehra, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Bharat Electronics Limited is a Government Company having its registered office at Bangalore and Regional Offices at Calcutta, Madras and Hyderabad. Its factory unit is situated in the Industrial Area, Panchkula, Haryana. The petitioner is a dealer registered under the Central and the State Sales Tax Acts. In the year 1988-89 the amount of sales tax due was deposited by the petitioner in the State Bank of India, Sector 17, Chandigarh (Treasury Branch) which was payable to the State of Haryana. Subsequently when notice was received by the petitioner from the Assessing Authority that the amount was not paid that an enquiry was made by the petitioner from the Bank. The amount was wrongly credited in the name of the Central Government taking it to be a tax under the Central Act. Thus the entries were reversed and the amount was credited to the State of Haryana. A notice was issued by the Assessing Authority to the petitioner and ultimately an order of assessment was passed on September 28, 1992-Annexure P-8 imposing a penalty on account of delayed payment of tax which is impugned in this writ petition by the petitioner inter alia on the ground that miscrediting of the amount was not on account of the fault of the petitioner but it was on account of the fault of State Bank of India, Sector 17, Chandigarh.

2. On notice of motion having been issued, written statement has been filed by the official respondent and thereafter replication was filed by the petitioner.

3. The petitioner''s case is that in accordance with the provisions of the Haryana General Sales Tax and the Rules framed thereunder he deposited the tax due within time and submitted the receipts alongwith the returns. The tax was paid in the State Bank of India, Sector 17, Branch who was authorised to accept the amounts due to the State of Haryana. In support of this contention Annexure P-9 has been produced along with the replication, a certificate issued by the State Bank of India, Treasury Branch, Sector 17, Chandigarh, dated August 13,1993, which reads as under:-

"This is to certify that State Bank of India, Treasury Branch is authorised to Collect Haryana ST/CST since its opening of the Branch, i.e. September, 85."

Seal of the Bank.

4. Since the State Bank of India, Sector 17, Chandigarh was authorised to receive amount of tax under the Act, the petitioner could not be fastened with the liability of penalty, if, for reasons best known to the Bank, the amount was miscredited in the name of the Central Government and subsequently on enquiry being made the entry was reversed and the amount was credited to the State of Haryana.

5. On the other hand Shri Arun Nehra, Additional Advocate General, Haryana, has argued that the amount of tax due from the petitioner was required to be deposited at Panchkula with the State Bank of Patiala who was authorised to do the work of Treasury. Since the actual amount was credited to the State of Haryana after great delay, the Assessing Authority was competent and justified in imposing penalty. After hearing counsel for the parties we are of the view that the Assessing Authority was legally not justified in passing the impugned order imposing penalty on the petitioner. Section 25(1) and (3) of the Haryana General Sales Tax Act, reads as under:-

"25. Submission of returns and payment of tax:- (1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals, as may be prescribed.

(2) xxx xxx xxx xxx xxx xxx (3) Before any dealer as mentioned in sub-section (2) furnishes the returns, he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India or the State Bank of India full amount of tax due from him under this Act according to such returns and shall furnish alongwith the returns receipt from such treasury or bank showing the payment of such amount.

Provided that every registered dealer who in the immediately preceding year paid aggregate tax exceeding rupees one lakh both under this Act and the Centra!

Sales Tax Act, 1956, shall pay tax every month in the manner prescribed."

6. The aforesaid provision in the Act imposes an obligation on the part of the assessee to deposit the tax payable under the Act and under sub-section (3) of Section 25 of the Act ibid the amount was payable in a Government Treasury or the Reserve Bank of India or the State Bank of India. Since the petitioner deposited the tax due with the State Bank of India, Sector 17, Chandigarh, which was authorised to act as Government Treasury for the State of Haryana, the provisions of the Act stood complied with. Rules framed under the Act are in the form of guidelines or to facilitate the deposit of tax at a particular treasury. Reference was made to Rule 30(1) of the Rules 1975 framed under the Act, which reads as under:-

"30. Payment of other dues:-

(1) Any amount payable by a dealer shall be paid either by depositing into the appropriate Government treasury or through a crossed Bank draft or pay order in favour of the assessing authority, drawn on Scheduled Bank with a branch at the headquarters of the assessing authority or at the head office of the business of the dealer."

7. No doubt in view of the aforesaid Rule the petitioner could deposit the amount of tax with the scheduled Bank dealing with the Treasury work at Panchkula or by sending a crossed Bank draft or pay Order to the Assessing Authority or at the head office of the Business of the Dealer. However, on account of breach of this Rule no penalty could be imposed, rather in the present case penalty has not been imposed because the tax was deposited at State Bank of India, Section 17'' Branch (Treasury Branch). The incidence of penalty is stated to be crediting of the amount by the Bank late in the account of the Haryana State. Thus, for the purposes of deciding this case it is immaterial whether the amount was deposited at Chandigarh, Haryana Treasury or in any other Treasury in the State of Haryana. No objection was promptly taken by the Assessing Authority when the returns were filed by the petitioner accompanied by receipt of deposit of tax in this respect.

8. The incidence of penalty, as stated above, is delay in crediting the amount of tax in the account of State of Haryana by the Bank. On that account the petitioner could not be liable to pay penalty. On the part of the petitioner whatever was required to be done u/s 25 of the Act was done within time i.e. he deposited the amount of tax due with the Haryana Treasury in time. The Assessing Authority thus was legally not justified in imposing penalty upon the petitioner on account of some fault on the part of the officials of the Bank in not promptly crediting the amount in the name of Haryana State and wrongly crediting it in the name of the Central Government treating it to be a tax payable under the Central Sales Tax Act.

9. For the reasons recorded above, this writ petition is allowed and order Annexure P.8 imposing penalty upon the petitioner is quashed.