
(2010) 03 P&H CK 0082
In the Punjab And Haryana At Chandigarh

Bhaskar Ceramics (P) Ltd.	Vs	APPELLANT
State of Punjab and Another		RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 21, 26, 5

Citation : (2010) 30 VST 385

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner-assessee, Bhaskar Ceramics (P) Ltd. (for brevity "the assessee") was a dealer registered under the Punjab General Sales Tax Act, 1948 (for short, "the Act") and was holding registration certificate No. 67898311. In the wake of scrutiny of return for the relevant assessment year 1992-93, it was revealed that the declaration of Rs. 49,33,358 was not genuine. So, suo motu proceedings were initiated and show-cause notice was issued to the assessee.
2. The assessee remained unsuccessful to prove the genuineness of the declaration despite adequate opportunities. Then the revisional authority confirmed the demand of tax and imposed a penalty u/s 10(7) of the Act, vide order dated June 27, 2001 (annexure P2).
3. Aggrieved by the order (annexure P2), the assessee filed a revision petition, which was accepted by the Sales Tax Tribunal and the case was remanded to the revisional authority for passing a fresh order, after making appropriate enquiry, vide order dated July 8, 2002 (annexure P4). In pursuance of the remand order, again adequate opportunities were granted to the assessee to explain as to why tax on sales on wrong declaration be not levied, besides penalty, but none appeared on its behalf in spite proper service. Then, the revisional authority again decided the case on the merits, reiterated its earlier decision and confirmed the demand, vide order dated January 9, 2004 (annexure P5).

4. Although the assessee did not contest its claim before the revisional authority at the time of passing the order (annexure P5), but again filed a petition u/s 21 of the Act before the Sales Tax Tribunal, Punjab. Instead of contesting the matter on the merits, the assessee sought one opportunity for leading evidence against the material collected by the Department, which was agreed to by the learned Counsel for the Revenue. Consequently, the case was again remanded back to the Assessing Authority for providing one more opportunity for producing evidence, vide order dated January 18, 2005 (annexure P7).
5. Having received the order (annexure P7), the revisional authority again provided adequate opportunities to the assessee to prove the genuineness of the declaration, but it (assessee) sought adjournments time and again. The revisional authority reiterated its earlier order and re-confirmed the demand of tax, vide third order dated September 25, 2006 (annexure P8).
6. The assessee filed a revision petition before the Vat Tribunal, Punjab, which was partly accepted. The order (annexure P8) of the revisional authority imposing penalty of Rs. 2,25,000 u/s 10(7) of the Act was set aside, whereas the order imposing tax on account of deductions allowed against ST-XXII forms, which could not be allowed as deductions u/s 5(2)(a)(ii) of the Act, was maintained, vide order dated June 9, 2008 (annexure P10).
7. The assessee still did not feel satisfied with the impugned order (annexure P10) and filed the present revision.
8. Having heard the learned Counsel for the petitioner and having gone through the record, we are of the considered opinion that this is a case of misuse of process of law by the assessee.
9. A bare perusal of the record would reveal that originally, the revisional authority confirmed the demand of tax and imposed the penalty u/s 10(7) of the Act as back as on June 27, 2001 vide order (annexure P2). In the wake of revision, the case was remanded back to the revisional authority by the Sales Tax Tribunal, Punjab, vide order (annexure P4). The assessee did not appear before the revisional authority, in pursuance of the remand of the case despite proper service of notice and it again decided the matter, vide order (annexure P5). Again, the assessee filed the petition before the Sales Tax Tribunal, Punjab, which remanded the case to the revisional authority for providing one more opportunity to it (assessee) to prove its case. But again, the assessee sought adjournment of the case and the revisional authority again confirmed the demand of tax and imposition of penalty, vide order (annexure P7). The assessee again filed the appeal, which was partly accepted by the Tribunal, vide order (annexure P10).
10. Meaning thereby, the assessee first sought the remand of the case from the Tribunal to enable it to prove the genuineness of the indicated declaration, but it (assessee) repeatedly did not appear before the revisional authority and considerably delayed the matter, for the reasons best known to it.

11. The main argument of the learned Counsel for the assessee that no adequate opportunity was provided to it to prove its defence, is neither tenable nor are the observations of the honourable Supreme Court in the case of *Gopiram Bhagwandass v. State of Bihar* [1971] 28 STC 322 and judgments of this Court in cases of *Sons Knitwears v. State of Punjab* [1998] 109 STC 251, *Arjan Radio House v. State of Punjab* [1978] 41 STC 360 and *Ram Pal Madan Gopal, Chaura Bazar, Ludhiana v. Punjab State* [1968] 22 STC 79 at all applicable to the facts of this case.

12. In *Gopiram Bhagwan Dass Vs. State of Bihar*, , it was observed that:

Where the dealers to whom the assessee had made sales were duly registered, the registration number was shown against the name of each dealer and they had given the requisite declaration, the question whether, in the event of the purchasing dealers being found to be bogus and fictitious persons, the assessee would lose the benefit of the deductions claimed by him is not one of fact but one of law.

13. Sequelly, in *Sons Knitwears*" case [1998] 109 STC 251 (P&H), the applicant, a dealer registered under the Punjab General Sales Tax Act, 1948, claimed deduction of sales made to seven registered dealers u/s 5(2)(a)(ii) of the Act which was disallowed by the Assessing Authority. The order of the Assessing Authority showed that in spite of repeated efforts made, summons could not be served on the purchasing dealers as they were not available. Efforts were made to serve the purchasing dealers through the Taxation Inspector as well but without success. The dealer was then asked to produce the purchasing dealers and also to produce them of his own. The dealer took the stand that it was the responsibility of the Department to produce the concerned persons for the purposes of cross-examination. The plea of the dealer was declined by the Assessing Authority after holding that it was not at all necessary to give an opportunity to the dealer of cross-examining the purchasing dealers. The findings recorded by the Assessing Authority were upheld by the first appellate authority as well as the Tribunal. The Tribunal refused to refer questions holding they were not of law. On the peculiar facts and in the circumstances of that case, the Tribunal was directed to refer the questions of law to the High Court.

14. Likewise, in *Arjan Radio House Vs. The State of Punjab and Others*, , it was held as under (at page 361):

(i) that the copies of affidavits on the basis of which reassessment proceedings were initiated could not have been denied to the petitioner on the basis of Section 26. That Section is meant entirely for a different purpose and gives a sort of immunity to a dealer that third parties may not start probing into his affairs on the basis of returns filed by him;

(ii) that since the petitioner was not allowed an opportunity to proving its case on account of the fact that the documents, copies of which it was entitled to receive, were withheld from it, the order of reassessment was illegal in the eyes of law. If

the Department could not effect service on those dealers, whose affidavits were the basis for the reassessment proceedings, it was not open to the Department to insist that the petitioner should get their service effected on receipt of dasti summonses from the Department. The Department could not press into service its own negligence to serve a witness for calling upon the petitioner to do so on its behalf.

15. Sequelly, in Ram Pal Madan Gopal Vs. The Punjab State and Another, , no doubt, it was observed that "in order to claim the deduction u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948, on account of sales stated to have been made to registered dealers, the production of the declaration under that Section read with Rule 26 of the Punjab General Sales Tax Rules, 1949, is prima facie proof that the sales have been made to the registered dealers". But at the same time, it was held that "the Sales Tax Authorities can refuse to allow the deduction if there is evidence that the sales are not genuine".

16. Possibly, no one can dispute about the aforesaid observations, but the same would not come to the rescue of the assessee in the instant case. Rather, the above underlined here italicised observation supports the case of the Revenue in this regard.

17. It is not a matter of dispute that in the wake of scrutiny and audit objection, in the original assessment order dated September 16, 1996 (annexure P1), it was found that the declaration of Rs. 49,33,358 made by the assessee was not genuine and initially the revisional authority confirmed the demand of tax and imposed the penalty u/s 10(7) of the Act after following the due procedure.

18. As is evident from the record/order (annexure P10) that the matter was got enquired by the Department and it was concluded in the report that the declarations in the cases of Amar Die Steel Co., Ludhiana RC No. 45090814 for Rs. 26,78,477, Mrs. Jatindra Auto Ludhiana RC No. 45517419 for Rs. 90,300 and Naveen Mechanical Works Ludhiana RC 45101214 for Rs. 11,10,581, etc., were not on prescribed forms ST-XXII, issued by the AETC, Ludhiana to those firms. It was also reported that registration No. of M/s. Atul Steel Industries had already been cancelled and declaration forms were not issued to that dealer by Assessing Authority, Ludhiana. Therefore, ST-XXII forms submitted in respect of Rs. 49,33,358 were not genuine. Thereafter, the assessee was charged tax in respect of ST-XXII forms to that extent and penalty was also imposed on account of bogus and ingenuine forms.

19 As indicated earlier, more than sufficient opportunities were granted to the assessee on many occasions to produce the record to prove the genuineness of the declaration form ST XXII in support of the claim u/s 5(2)(a)(ii) of the Act, but it (assessee) utterly failed to furnish the same and considerably delayed the matter despite adequate opportunities. Once, it is proved on record that the assessee has miserably failed to produce the record to prove the genuineness of the indicated declaration despite adequate opportunities, therefore, the assessee

cannot possibly be heard to say that no opportunity was granted to it. The authorities below have recorded a categoric finding of fact that as the declaration made by the assessee based on bogus and ingenuine forms, therefore, determination of any substantial question of law did not arise at all, in the obtaining circumstances of the case.

20. For the reasons recorded above, we, therefore, find no merit in the 20 instant appeal, which is hereby dismissed.