(1972) 10 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3663 of 1971

Bhim Cotton Company — APPELLANT

Vs

Assessing Authority (Excise and Taxation Officer), etc. — RESPONDENT

Date of Decision : 06-10-1972

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 13(2), 5(2), 6

Citation : (1975) 1 ILR (P&H) 590

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : R.C. Dogra, for the Appellant; R.K. Chhibbar, for A.G., for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—This judgment will dispose of C. Ws. Nos. 3663 and 3717 of 1971.

2. For facility of reference, the facts given in C.W. No. 3663 of 1971 may briefly be stated as under. The Petitioner is a partnership firm (hereinafter called the Petitioner-Firm) carrying on the business of sale and purchase of cotton. The Petitioner-Firm-is registered as a Sales Tax dealer. It filed the returns under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act) for the year 1966-67. These returns were accepted by the Assessing Authority and the tax assessed was deposited by the Petitioner-Firm. The Assessing Authority, Sangrur, served a notice upon the Petitioner-firm in Form S.T. XIX in which it was mentioned that the Petitioner-Firm had sold goods to a person who was not a dealer within the meaning of the Act. So, the sales made to this dealer could not be deducted from the gross turn-over. In response to this notice the Petitioner-Firm appeared before the Assessing Authority. who vide its order dated March 29, 1971, came to the conclusion that the Petitioner-Firm sold cotton worth Rs. 99,720.75 to Messrs Basant Lal Banarsi Lal, a Registered dealer of Dhuri (hereinafter called the Purchasing-Firm), who transferred these goods to their

office at Kanpur. A Single Bench of this Court in Usha Cotton Ginning and Pressing Factory, Bhucho, district Bhatindq v. The State of Punjab etc. C.W. No. 511 of 1969 decided on 11th March, 1970 has held that a purchasing dealer, who exports the goods out of Punjab, did not come within the definition of a ''dealer'' qua the translations in respect of the exported goods. On this reasoning, the Assessing Authority held that the goods had not been, sold to a dealer within the meaning of the Act and so, the Petitioner-Firm as a selling dealer could not claim deductions in respect of these sales from its gross turn-over on the ground that these sales had been made to a registered dealer. Consequently, the Assessing Authority created an additional demand of Rs. 3060 against the Petitioner-Firm.

3. These facts have not been denied in the return filed on behalf of the Respondents. The learned Counsel for the Petitioner-

Firm has drawn my attention to second proviso to Section 5(2)(a)(ii) of the Act, which runs as under: --

Provided further that in the case of such sales, a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars and inscribed on the bill or cash memorandum referred to in Sub-section (2) of Section 13, is furnished by the dealer who sells the goods.

4. It is submitted that the Purchasing--Firm was a registered dealer under the Act and it had given the necessary declarations in Form S.T. XXII to the Petitioner--Firm and so the latter firm was entitled to claim deductions u/s 5(2)(a)(ii) of the Act. The relevant words of the certificate given by the Purchasing--Firm are reproduced below: --

(1) Use in the manufacture in Punjab of any goods other than goods declared tax-free u/s 6, for sale in Punjab; or

(2) resale in the State of Punjab, or

(3) sale in the course of inter-State trade or commerce, or

(4) sale in the course of export out of the territory of India.

5. It is not disputed that the Purchaing--Firm is having an office in Punjab and it is registered as a dealer under the Act. This firm purchased the goods from the Petitioner--Firm on the under-standing that either these goods will be used in the manufacture in Punjab of goods other than the goods declared tax-free, or for resale of these goods in the State of Punjab. The Purchasing--Firm does not fall under Clauses (3) and (4) reproduced above because a dealer by transferring its goods to its head-office or a sub-office outside the State of Punjab does not make the sale of such goods in the course of inter--State trade or commerce. Now, the Purchasing--Firm having purchased cotton on the positive undertaking that this cotton will either be re-sold in Punjab, or used for manufacture of goods which are not tax-free in the State of Punjab contravened the undertaking given by it in its declaration form. Second proviso to Section 5(2)(a)(ii), quoted earlier,

provides thai if a dealer uses the goods for a purpose other than that for which these were sold to him, he will be liable to pay tax equivalent to the purchase-tax on such goods obtaining in the State of Punjab. So far the Petitioner--Firm is concerned, it could claim deductions from its gross turn-over on proof of two conditions, namely, the person to whom the goods are sold should possess a valid registration certificate and the goods should be sold to such a purchaser after it had furnished a statement in Form S.T.X XIL The Petitioner--Firm has satisfied both these conditions. Under these circumstances, it was not open to the Assessing Authority tore-open the case of the Petitioner--Firm and to create an additional demand against it.

6. I may also mention that the reasoning given in Usha Cotton Ginning Factory''s case (1) (supra) no longer holds good in view of the fact that the ratio of the said judgment was reversed. in L.P.A. No. 267 of 1970, decided on October 5, 1971. The view that I have taken does not leave the Revenue without any remedy. If the Purchasing--Firm is guilty of violating any of the conditions mentioned in the declaration forms given by it, the Assessing Authority can, if it is so advised, proceed against it under the second proviso to Section 5(2)(a)(ii) and in accordance with the other provisions of the Act.

7. In view of what has been stated above, I allow this petition, set aside the order dated March 29, 1971, passed by the Assessing Authoriy, Sangrur, but in the circumstances of the case make no- order as to costs. Similarly, C.W. No. 3717 of 1971 is also allowed and the order dated February 26, 1971, passed by the Assessing Authority, Sangrur, is set aside, but without any order as to costs.