
(1966) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2991 of 1965

B.K. Bajaj and Another

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 18-08-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 21

Citation : (1967) 19 STC 274

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : M.S. Jain, for the Appellant; A.M. Suri, for Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Sharma, J.—B.K. Bajaj and K.K. Bajaj, proprietors of Messrs Eagle Laboratories, Patiala, in this writ petition under Articles 226/227 of the Constitution of India have prayed that the respondents, namely, the State of Punjab and the Excise and Taxation Commissioner, should be directed to refund the amount of sales tax recovered from them during the years 1957-58 onwards.

2. The facts alleged by them in support of their prayer briefly stated are these. The petitioners have been manufacturing spirituous medicinal and toilet preparation at Patiala for a long time. In pursuance of item No. 37 in Schedule "B" of the Punjab General Sales Tax Act, 1948, the medicinal (spirituous) preparations containing alcohol manufactured in Punjab were exempted from payment of sales tax under the Punjab General Sales Tax Act. Thus no sales tax was being levied on this medicinal preparation in Punjab. Subsequently the Union Parliament enacted the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, which came into force on 1st April, 1957, and this amongst other things also provided in Section 21 that, "if there is in force in any State any law corresponding to this Act that law is hereby repealed." With the coming into

force of the Central Act on 1st of April, 1957, the excise duty is levied on the spirituous medicinal and toilet preparations under the said Act. Respondent No. 2 started to recover sales tax under the East Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act) on the sales of spirituous medicinal and toilet preparations manufactured by the petitioners on the assumption that the exemption granted to the sale of medicinal and toilet preparations under item No. 37 in Schedule "B" of the Sales Tax Act was no longer available as the excise duty was not charged on such goods under the Punjab Excise Act. They paid Rs. 1,513.67 P., Rs. 1,711.73 P., Rs. 11,007.58 P., and Rs. 1,618.68 P. as State sales tax for the years 1957-58, 1958-59, 1959-60 and 1960-61 respectively. The total amount paid on this account came to Rs. 15,851.66 P. In addition they paid Rs. 700, Rs. 4,149.30 P. and Rs. 764.42 P. as Central sales tax for the years 1958-59, 1959-60 and 1960-61 respectively, the total came to Rs. 5,613.72 P. Subsequently the view of respondent No. 2 that with the coming into force of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the exemption from payment of sales tax on the goods manufactured by the petitioners came to an end was overruled by Harbans Singh, J., in Civil Writ No. 926 of 1964 (*Sukh Dev Samp Gupta v. The Punjab State and Ors.* 1965 Cur. L.J. 335 decided on 11th February, 1965). The Letters Patent Appeal against the order of Harbans Singh, J., was dismissed by a Division Bench of this Court. See the Punjab State and Ors. v. Sukh Dev Sarup Gupta 1966 Cri. L.J. 572. The petitioners relying on the rule laid down in the above case alleged that the respondents have unlawfully recovered the amounts in question and so they should be directed to refund the same.

3. The, respondents in their written statement explained that Rs. 7,473 were recovered from the petitioners under the Punjab General Sales Tax Act, 1948, and Rs. 14,992.33 under the Central Sales Tax Act, 1956. The learned counsel for the respondents in view of the rule laid down by this Court in *Sukh Dev Sarup Gupta's case*² had not much to say against the petitioners' plea that they were not liable to pay the State sales tax and the Central sales tax from 1957-58 onwards. He, however, maintained that the respondents could not pray for the refund of the State sales tax in a writ petition because the amounts alleged to have been paid by them under these two heads had not been admitted as correct by the respondents. Indeed such disputed questions of facts cannot be gone into in the exercise of writ jurisdiction. He also urged that the Union of India should have been made a party to the writ petition as refund of the amounts paid by the petitioners towards the Central Sales Tax Act from 1957-58 also had been claimed. He relied on *Suganmal Vs. State of Madhya Pradesh and Others*, which lays down-

Though the High Courts have power to pass any appropriate order in the exercise of the powers conferred on them under Article 226 of the Constitution, a petition solely praying for the issue of a writ of mandamus directing the State to refund the money alleged to have been illegally collected by the State as tax is not ordinarily maintainable for the simple reason that a claim for such a refund can

always be made in a suit against the authority which had illegally collected the money as a tax and in such a suit it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.

4. The other case referred to by him is Karam Chand Thapar and Bros. (Coal Sales) Ltd. v. The State of Punjab (1965) P.L.R. 1185 (P&H) which no doubt supports his viewpoint. The learned counsel for the petitioners, on the other hand, cited State of Madhya Pradesh Vs. Bhailal Bhai and Others, which inter alia lays down :

At the same time the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. The power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where a person comes to the Court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the Court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.

5. The above Supreme Court case also tends to enunciate that where facts are disputed as in the present case about the exact amount alleged to have been unlawfully recovered from the petitioners as State sales tax and Central sales tax a writ of mandamus for refund of taxes should not be allowed. The writ petition fails on this short ground and is hereby dismissed. The parties, however, are left to bear their own costs.