
(1999) 10 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3929 of 1999 (O and M)

Byford Leasing Limited

APPELLANT

Vs

Excise and Taxation Officer

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Delhi Sales Tax Act, 1975 — Section 67
Haryana General Sales Tax Act, 1973 — Section 62

Citation : (2002) 126 STC 89

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.L. Sibal and Rajiv Kataria, for the Appellant;

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This revision is directed against the order dated May 29, 1999 passed by the learned Additional District Judge, Gurgaon. Vide impugned order, the learned Judge dismissed the appeal preferred by the plaintiff-petitioner and affirmed the order dated November 27, 1995 passed by the learned Senior sub-Judge, Gurgaon.

2. Mr. Sibal, learned Senior Advocate, appearing for the petitioner, while relying upon the case of Ashok Leyland Limited Vs. Union of India (UOI) and Others, , contended that the learned subordinate courts have fallen in error of jurisdiction in declining the injunction prayed for, to the plaintiff. The contention is that the provisions of the Delhi Sales Tax Act, 1975 have been misconstrued and the facts pleaded misappreciated, resulting in the passing of the impugned orders.

3. The principal contention on behalf of the petitioner is that they have different offices and sale distribution centres of the cars in all over India and the car sold by them in places other than Delhi could not form subject-matter of payment of sales tax in Delhi. This has resulted in double taxation and is violative of Article 286 of the Constitution of India.

4. In order to appreciate these contentions, reference to some undisputed facts would be necessary. The plaintiff is a company carrying the business of leasing and hire-purchase of motor vehicles and equipments, etc. It has various offices in major towns of India including the cities of Delhi, Gurgaon and Chandigarh. For the purpose of sales tax, the plaintiff has been registered as dealer in Delhi under the provisions of the Delhi Sales Tax Act, 1975 and is assessed in Ward No. 5. Certain dispute arose between the parties, i.e., the sales tax and Assessing Authorities and the plaintiff-company for imposition of tax in regard to the vehicles, which were sold by the different offices of the plaintiff-company outside Delhi for the years 1990-91 and 1991-92. The assessment order was passed by the Assessing Authority, Delhi, creating a demand and liability of sales tax to the extent of Rs. 2,93,56,367. Under the provisions of the Sales Tax Act, the plaintiff choose to file an appeal against the order of assessment. In the appeal, the plaintiff was directed to deposit a sum of Rs. 33 lacs as condition precedent for entertaining the appeal. Aggrieved from the said order, the plaintiff-petitioner preferred an appeal before the Sales Tax Appellate Tribunal, who varied the condition precedent for hearing of the appeal to the extent that it directed the plaintiff to pay Rs. 23 lacs. This order was challenged in the Delhi High Court by way of the Civil Writ Petition No. 1947 of 1994, wherein the plaintiff was directed to pay Rs. 16 lacs, vide order dated 26th May, 1994, as condition precedent for hearing of the appeal. Ultimately, the writ petition stood dismissed in the same terms.

5. It is contended by the counsel for the petitioner-plaintiff that the plaintiff was not in a position to comply with the condition precedent imposed by the various authorities under the Delhi Sales Tax Act, 1975 for hearing the appeal and thus instituted the present suit challenging the very validity and enforcement of the assessment order passed by the sales tax authority creating a demand of Rs. 2,93,56,367.

6. It is a settled principle of law that relief of injunction is a discretionary relief in equity and good conscience. The court could exercise its judicial discretion in favour of a party, only if the said party has approached the court fairly in accordance with law and action does not lack bona fides on his part. In the present case, the order of assessment was passed by the sales tax authorities for the year 1991-1992. The plaintiff-comapny with its option elected to take recourse to the remedies available to it under the provisions of the Delhi Sales Tax Act. Having exercised that option, the plaintiff, in the facts of the case, in fact, would be estopped from challenging the correctness of the validity of the assessment order on the ground of lack of jurisdiction. At the first instance, without protest and demur, the plaintiff took chance of seeking order from the Commissioner and Sales Tax Appellate Tribunal. Having acceded to that jurisdiction, the plaintiff could hardly justify his action in approaching the civil court now in the State of Haryana.

7. The Delhi High Court in Civil Writ Petition No. 1947 of 1994 passed the order

affirming the order passed by the Sales Tax Tribunal except to the extent of varying the amount to be deposited as condition precedent for hearing of the appeal to Rs. 16 lacs. This order was never assailed by the plaintiff-company before the honourable Supreme Court of India and permitted to become final between the parties. In other words, Us and dispute in regard to the demands raised by the Sales Tax Department attained finality, in any case, to the extent of interim order. The honourable Supreme Court of India in somewhat similar circumstances in the case of Kamala Mills Ltd. Vs. State of Bombay, , while interpreting Section 20 of the Sales Tax Act held as under :

"Even an erroneous conclusion of the appropriate authority on the question about the character of the sale transactions on which a dealer has been taxed cannot be said to be without jurisdiction. If while exercising its jurisdiction and powers under the relevant provisions of the Act, the appropriate authority holds erroneously that a transaction, which is an outside sale (within the meaning of Article 286 of the Constitution as it was in 1956), is not an outside sale and proceeds to levy sales tax on it, the decision of the appropriate authority cannot be said to be without jurisdiction. For the purpose of construing Section 20, an assessment based on an erroneous finding about the character of the transaction, cannot be held to be an assessment made without jurisdiction and as such, outside the purview of Section 20 of the Act.

Dictum : Whether or not such a conclusion can be challenged under Article 226 or under Article 42 of the Constitution, and if yes, under what circumstances, are matters with which we are not concerned in the present proceedings. AIR 1962 SC 1621, Rel. on : The Provincial Government of Madras Vs. J.S. Basappa, ; State Trading Corporation of India Ltd. Vs. State of Mysore, doubted."

8. There is serious doubt and which has rightly been expressed by the learned courts below in the impugned order relating to the very jurisdiction of the civil court to entertain and decide such suit. The order has been passed by the Delhi sales tax authorities and admittedly the plaintiff-company is an assessee before that authority for the purpose of sales tax. It does not stand to reason that such orders could be assailed before the learned Senior Sub-Judge, Gurgaon, by means of the present suit. Section 67 of the Delhi Sales Tax Act and for that matter Section 62 of the Haryana General Sales Tax Act, 1973 imposes a complete bar to the very maintainability of the suit. However, in order to avoid prejudice to either parties to the suit, I do not consider it appropriate, at this stage, to finally determine this question either way.

9. The claim for interim injunction of the plaintiff-company even lacks bona fide. Having exhausted its statutory remedies under the Act and even having approached the Delhi High Court, now the plaintiff turns back to challenge the same orders ignoring all these proceedings in the court of learned Senior Sub-Judge, Gurgaon. The intention of the plaintiff lacks bona fide and the methodology adopted is apparent infringement upon the process of law.

10. In the case of Ashok Leyland Limited Vs. Union of India (UOI) and Others, , the honourable Supreme Court clearly held that such inter-State trade, does not preclude assessing authority from re-opening assessment order under the Central Sales Tax Act and examine the tax liability of an assessee in relation to goods transfer from one State to another and sold there on lesser tax. However, on the facts of that case, the honourable apex Court, while dismissing the appeal of the assessee, stayed the recovery of demand for eight weeks subject to the condition precedent contained in the said judgment. On facts, the present case is totally different. It must be noticed that their Lordships in paragraph 12 of the judgment clearly rejected the contention that Section 6-A of the Act raises no conclusive presumption based on the declaration form "F". While in the present case, the facts are different. All the authorities concerned have applied their mind in relation to the interim order and even the Delhi High Court upheld those orders except to the extent of varying the amount to be deposited as condition precedent for hearing the appeal. The amount of Rs. 16 lacs, which were directed to be deposited as condition precedent for hearing the appeal, could hardly be stated to be not in proportionate to the liability, i.e., Rs. 2,93,56,367.

11. The sales tax authorities in the assessment order dated September 24, 1993 after examining the complete record produced before it, observed as under :

".....Non-productions of documents by the dealer also clearly prove that had the documents been produced, as asked for, then these would also have gone against his contention and would have further established the fact that the sales had actually been conducted from Delhi only but wrongly shown to have been made from branches outside Delhi.

From the above discussions, it is clear that sales to Delhi customers from Daman, Chandigarh, Gurgaon, Jaipur, Jammu, Noida and Gwalior branches are nothing else but sales of Delhi and have been made from Daman, Chandigarh, Gurgaon, Jammu, Jaipur, Noida and Gwalior and also it is a fact that the sales tax of these States is lesser than the sales tax of Delhi."

12. Keeping in view the orders of various authorities, the facts narrated above and the conduct of the plaintiff, I have no hesitation in affirming the concurrent view taken by the learned courts below that the plaintiff has no prima facie case nor balance of convenience is in favour of the plaintiff.

13. The learned courts below have exercised their: judicial discretion in consonance with the settled principle of law. Thus, such exercise of jurisdiction by the learned courts below would hardly justify interference by this Court, within the limited scope of its revisional jurisdiction u/s 115 of the Code of Civil Procedure. However, nothing observed in this order would affect the rights and contentions of the either parties to the proceedings.

14. For the reasons aforesaid, this revision petition is dismissed in limine. However, without order as to costs.