

(2006) 05 P&H CK 0179
In the Punjab And Haryana At Chandigarh

Chaudhary Tractor Company	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 29-05-2006

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (2007) 10 VST 253

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. This order shall dispose of two petitions bearing S.T.C. Nos. 17 and 19 of 1992. For the sake of convenience, facts are being taken from S.T.C. No. 19 of 1992.

2. This is a petition u/s 42(2) of the Haryana General Sales Tax Act, 1973 (for short, "the Act") seeking a direction to the Sales Tax Tribunal, Chandigarh (now known as Haryana Tax Tribunal) to refer the following questions of law to this court for opinion:

(i) Whether, on the facts and circumstances of the case, revisional authority can or cannot revise the assessment or it was a case of escapement of turnover ?

(ii) Whether, on the facts and circumstances of the case, sales tax can or cannot be levied on the material supplied free of cost during warranty period ?

(iii) Whether, on the facts and circumstances of the case, additional sales tax can or cannot be levied on spares supplied used during warranty on account of difference of rate of tax on contractor and its spares ?

(iv) Whether, on the facts and circumstances of the case, interest u/s 25(5) can or cannot be charged ?

(v) Whether, on the facts and circumstances of the case, tax can or cannot be levied on sales against a valid and genuine ST-15 declaration where the purchaser is not even a dealer for the same ?

(vi) Whether, on the facts and circumstances of the case, the revisional authority can or cannot initiate the penalty proceedings afresh?

(vii) Whether on the facts and circumstances of the case, penalty proceedings can be initiated within eight years (the time-limit u/s 40) or it can only be initiated within five years (the period prescribed in the Act for the best judgment assessment ?

(viii) Whether on the facts and circumstances of the case, penalty Can Or Cannot be imposed in absence of mens rea ?

(ix) Whether, on the facts and circumstances of the case, penalty can or cannot be imposed for the alleged fault under bona fide belief of the dealer ?

3. However, at the time of hearing the counsel for the petitioner pressed only questions at serial Nos. (iii) and (iv), which are now being considered.

4. Brief facts of the case are that the petitioner being a dealer of tractors, was engaged in the business of sale and services thereof. As per the conditions of sales of tractors, certain number of free services were provided during the warranty period. certain spare parts were also required for free replacement. The contention of the petitioner was that these services and replacement of spare parts during warranty, were part and parcel of the consideration received for sale of tractor on which sales tax had already been paid and nothing extra was being charged on account of services or replacement of spare parts during warranty. At the time of assessment for the year 1984-85, vide order dated July 17, 1987, the Assessing Authority accepted the contention of the assessee and did not levy any tax on the value of lubricants utilised for free service of tractors and also the spare parts used for replacement during the warranty period. The revisional authority with a view to consider the legality of the order passed by the assessing authority, initiated proceedings u/s 40 of the Act and vide order dated January 23, 1989 created an additional demand of Rs. 11,395 which included tax of Rs. 6,838 and interest of Rs. 4,556. The order passed by the revisional authority was challenged by the petitioner by way of appeal before the Tribunal which was rejected vide order dated November 30, 1989. Even application of the petitioner seeking reference of questions of law to this court was also rejected by the Tribunal vide order dated December 9, 1991.

5. The facts of the case, as mentioned above are not in dispute as the same are borne out from the orders on record.

6. As far as question No. (iii) regarding levy of tax on the supply of lubricants and spare parts during warranty is concerned, learned Counsel fairly submitted that the issue involved therein is covered against the petitioner by the judgment of the honourable Supreme Court of India in Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax U. P. [2004] 136 STC 515 . In view of this, question No. (iii) does not arise for consideration by this court.

7. As far as question No. (iv) is concerned, the counsel submitted that the same

stands settled by the honourable Supreme Court of India in the case of J. K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422, Frick India Limited v. State of Haryana [1994] 95 STC 188 and Maruti Wire Industries Pvt. Ltd. v. Sales Tax Officer [2001] 122 STC 410 and a Full Bench of this court in United Riceland Limited v. State of Haryana [1997] 104 STC 362. In United Riceland Limited case [1997] 104 STC 362 it was held as under:

As noted in the earlier part of the judgment, the liability of the petitioners to pay the purchase tax was apparently in dispute and not clear even to the respondent-authorities. The issuance of notice u/s 40 of the Act proposing to take suo motu action with respect to the assessment years much prior to the date of issuance of the aforesaid notice is indicative, suggestive of the fact and strengthens the case of the petitioners so far as the demand of interest is concerned. Resort to the provisions of Section 40 of the Act unambiguously demonstrates that the petitioner had not earlier been held responsible for their tax liability and the revisional authority on its own decided to call for the records of the case supposedly disposed of by the Assessing Authority for the purposes of satisfying himself as to the legality or propriety of the proceedings or of the orders made therein before passing the order determining the liability of the petitioners to pay the tax.

Keeping in view the legal position and the admitted facts of the case, it cannot be said that the petitioner-assessee had mala fide or intentionally evaded to pay the tax thus incurring the liability to pay the interest within the meaning of Sub-section (5) of Section 25 of the Act. The demand regarding payment of interest is also vague, ambiguous and without the authority of law. The petitioners cannot be directed to make the payment of interest for any period prior to the actual demand made for the payment of purchase tax under the provisions of the Act. The impugned order in so far as it directs the payment of interest is liable to be quashed....

8. In the present case, the revisional authority had levied interest on the petitioner from May, 1985 to January, 1989 vide revisional order dated January 23, 1989. Meaning thereby that interest was levied for the period prior to raising of demand.

9. Now when on the facts found by the Tribunal and considering the settled position of law, as referred to above, the answer to the question is available, whether this court should still give a direction to the Tribunal to make a reference to this court as per Section 9(2) of the 1956 Act read with Section 22(2) of the 1948 Act, but in our view the same would not serve any purpose as it would result in avoidable loss of time and money without serving any public interest. As to whether this court can answer the question straightaway in a petition filed seeking a direction to the Tribunal to refer the question of law to this court, authoritative pronouncement by a division Bench of this court is already there in the case of Malik Iron & Steel Rolling Mills v. State of Haryana [2002] 126 STC 220. Relevant paras of which are extracted below:

7. It is undoubtedly correct that if the provision is literally construed, it would be right to require the Tribunal to state the case and then take a decision. This would be the normal course. However, in the present case, there is no dispute on facts. The issue of law has been authoritatively decided by the apex court. Should this court still issue a direction to the Tribunal to make a reference to this court? Would it serve any purpose? We think not. It would only mean an avoidable loss of time and money. It would not benefit either the assessee or the Revenue. Nor would strict adherence to the letter of law serve any public interest. In view of these facts, it does not appear to be necessary to direct the Tribunal to state the case and make a reference to this court.

8. It deserves notice that while dealing with the provisions of the Income Tax Act, 1922, their Lordships of the Supreme Court had considered a similar matter in the case of Commissioner of Income Tax, Punjab Vs. Jai Parkash Om Parkash Company Ltd., . It was held by their Lordships that while considering an application u/s 66(2) which corresponds to Section 256(2) of the 1961 Act, the High Court could not decide the case and answer the question without calling upon the Tribunal to make a reference. Similar view was also taken by their Lordships of the Supreme Court in the case of Commissioner of Income Tax, Ernakulam Vs. Managing Trustee, Jalakhabai Trust, . In the light of these decisions, even the Kerala High Court had interpreted the law in similar terms in the case of COMMISSIONER OF Income Tax Vs. WANDOOOR JUPITER CHITS (P.) LTD. (IN LIQUIDATION)., . In view of these authoritative pronouncements, we would have been normally bound to follow the course as required by the statute. However, we find that in two cases, their Lordships have made a slight departure. Reference in this behalf may be made to the cases of Commissioner of Income Tax, Lucknow Vs. Narang Dairy Products, Lucknow, and Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., . The honourable Supreme Court had given the decision without directing the High Court to call for the statement of the case.

9. Undoubtedly, their Lordships have much wider powers than this court. However, it appears that a similar course has also been adopted by the Delhi High Court in the case of COMMISSIONER OF Income Tax Vs. MAHARISHI VED VIGYAN VISHWA VIDYA PEETHAM., . It was held that it was not imperative to follow the "unnecessary and cumbersome part of the procedure" which in the opinion of their Lordships was "directory". Thus, the court had proceeded to "straightaway...answer the question". Similar view has also been taken by the Orissa High Court in State of Orissa v. Mahabir Prasad Agrawalla [1990] 79 STC 163 and Maharana and Maharana v. State of Orissa [1991] 82 STC 242.

10. We are also of the view that while construing the provisions of a statute, the principle of "updating construction" should be adopted. It means that "a construction that continuously updates" the working of an on-going Act has to be followed. In other words, it means that "in its application on any date, the language of the Act though necessarily embedded in its own time is nevertheless

to be construed in accordance with the need to treat it as current law". The principle has been quoted in (1999) 102 Tax 135 by Mr. Sanjay Bansal as under:

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred, since, the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as "a living Constitution", so an ongoing British Act is regarded as "a living Act". That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

10. To the similar effect are the judgments of Delhi and Andhra Pradesh High Courts in COMMISSIONER OF Income Tax Vs. MAHARISHI VED VIGYAN VISHWA VIDYA PEETHAM., , City Dry Fish Company, Vijayawada Vs. Commissioner of Income Tax, Visakhapatnam, A.P., and Commissioner of Wealth Tax Vs. Ajay Kumar Sood, .

11. Respectfully following the above pronouncement of law, we find that since the issue raised in the case is covered by the division Bench judgment of this court, it will not be in the fitness of things to direct the Tribunal to refer the question of law to this court and keep the matter pending. To avoid unnecessary wastage of time, in our view it would be appropriate to answer the question straightaway by converting the case into a reference.

12. In view of the above discussions, it is held that the assessee is not liable to pay interest u/s 25(5) of the Act for the period before the demand was raised against the assessee. Consequently, question No. (iv) raised above is decided in favour of the assessee and against the Revenue.