
(2009) 01 P&H CK 0015
In the Punjab And Haryana At Chandigarh

Desh Vijay Hosiery Factory

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22(2)

Citation : (2010) 28 VST 162

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—In pursuance of order dated July 30, 1996, passed by this Court in S.T.C. No. 28 of 1994, filed by the applicant u/s 22(2) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act") the Sales Tax Tribunal, Punjab, Chandigarh (for brevity, "the Tribunal") has referred the following question of law for adjudication of this Court:

Whether, in the facts and circumstances of the case, the petitioner was liable to pay interest from the date of filing of return or from the date of revising the assessment when the tax had become actually due?

2. The brief facts of the case as discernible from the reference order dated October 14, 1996 passed by the Tribunal, are that the case of the applicant-dealer, who is a registered dealer under the sales tax laws deals in hosiery goods, in respect of assessment year 1982-83 was taken up for assessment and the assessment proceedings were commenced on October 11, 1984. It is alleged that the dealer wilfully sought adjournments on 59 occasions from October 29, 1984 to February 20, 1987. Later on the case was transferred to the Assessing Authority, Ludhiana-II, who also granted various opportunities to the dealer from August 5, 1987 to February 23, 1988. On October 28, 1982, a surprise inspection was conducted at the business premises of the dealer and some documents were impounded for verification by the Assessing Authority. The dealer failed to produce the account books despite availing of opportunities. A notice was given for making addition of Rs. 2,00,000 on account of suppressed sales. Ultimately,

an addition of Rs. 2,00,000 was made to the declared turnover of Rs. 6,45,098.19 and an additional demand of Rs. 24,557 was raised including a penalty of Rs. 10,000 u/s 10(7) of the Act, vide order dated February 23, 1988, passed by the Assessing Authority, Ludhiana-III.

3. The applicant filed an appeal and the Appellate Authority-Deputy Excise and Taxation Commissioner (A) remanded the case to the assessing authority, vide order dated September 23, 1988, with a direction to proceed afresh after confronting the impounded documents to the applicant and establishing on record the ownership of those documents with the applicant as well as actual suppression of sale as per entries in the impounded documents in relation to the account books of the applicant. This time, the Assessing Authority did not make any addition due to surprise inspection and framed assessment vide order dated January 18, 1989 with refund of Rs. 14,523.67. It was concluded that the documents are not connected with the business of the applicant.

4. During scrutiny of order dated January 18, 1989 passed by the Assessing Authority, the Assistant Excise and Taxation Commissioner, Ludhiana-III, exercising the powers of the Commissioner, found that the addition due to surprise inspection has been wrongly waived. Accordingly, the revisional authority initiated suo motu revision proceedings to revise the assessment order.

5. On October 20, 1991, an additional demand of Rs. 54,794 including tax of Rs. 17,606, penalty of Rs. 200 u/s 23 and penalty of Rs. 8,500 u/s 10(7) and interest of Rs. 20,688 u/s 11D of the Act was raised. Against order dated October 20, 1991 revision was filed before the Tribunal. The Tribunal considered the question "whether the Assistant Excise and Taxation Commissioner can proceed u/s 21 of the Act when the order of the assessing authority had merged with the order passed by the Deputy Excise and Taxation Commissioner (A)". After considering the matter, vide its order dated September 30, 1992, the Tribunal rejected the plea of merger raised by the applicant. The Tribunal, however, recorded a finding in favour of the applicant that the "labour bahi" impounded by the Department indicates that the applicant paid wages worth Rs. 53,340 only while the "half day book", which serves as "mini cash book" indicates the cash in hand of Rs. 37,360. The Tribunal, thus, reduced the addition of Rs. 4,50,000 made by the revisional authority to Rs. 3,00,000. The penalty u/s 10(7) was also reduced from 8,500 to Rs. 6,000. The Tribunal, however, refused to interfere with regard to charging of interest and ordered that the same be calculated and charged on the amount of tax which may be found due on the basis of addition of Rs. 3,00,000.

6. Against the order dated September 30, 1992, passed by the Tribunal, the applicant filed a reference application before the Tribunal, which was declined vide order dated October 11, 1993. Feeling aggrieved, the applicant filed S.T.C. No. 28 of 1994, u/s 22(2) of the Act, in this Court, which was allowed vide order dated July 30, 1996 and accordingly the question of law mentioned in para 1 above has been referred by the Tribunal for our adjudication.

7. After hearing learned State counsel for the Revenue and perusing the paper book with her able assistance we are of the considered view that the matter is no longer res integra. A similar question of law has already been answered by a Division Bench of this Court in favour of the assessee and against the Revenue in the case of Chaudhary Tractor Co. v. State of Haryana [2007] 8 VST 10, holding that the assessee is not liable to pay interest for the period before the demand was raised against him. The Division Bench also referred to the judgments of the honourable Supreme Court rendered in the cases of J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422, Trick 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 judgment of this Court in the case of United Riceland Limited v. State of Haryana [1997] 104 STC 362 wherein it has been concluded that "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". In the case of Chaudhary Tractor Co. [2007] 8 VST 10 (P & H) the revisional authority had levied interest on the petitioner for the period prior to raising of demand.

8. Respectfully following the above enunciation of law, the question of law raised in the instant case is decided in favour of the applicant and against the Revenue.