
(2009) 04 P&H CK 0382
In the Punjab And Haryana At Chandigarh
Case No : G.S.T.R. No. 1A of 1998

Doaba Co-operative Sugar Mills Ltd.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 1(2), 10(4), 10(6), 22(1)

Citation : (2011) 44 VST 80

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

Bench : Division Bench

Advocate : G.R. Sethi, for the Appellant; Sudeepti Sharma, Deputy Advocate-General, Punjab, for the Respondent

Judgement

M.M. Kumar, J.—The petitioner-dealer has filed an application u/s 22(1) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act") with a prayer for referring the question of law. The petitioner-dealer had claimed that those questions emerge out of the order of the Tribunal, dated October 28, 1996, passed in Appeal No. 459 of 1995-96 in respect of the assessment year 1982-83. The Tribunal has accepted the prayer and has referred the following questions of law for determination of this court: (i) In the facts and circumstances of the case, is Tribunal justified in law in sustaining penalty imposed u/s 10(6) of the Punjab General Sales Tax Act, 1948, when tax according to the turnover disclosed in the returns had been deposited before filing the returns?

(ii) In the facts and circumstances of the case, and in view of the judgment of the honourable Supreme Court in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, is the Tribunal justified in law in sustaining imposition of interest amounting to Rs. 18,190 u/s 11D, when the tax according to the returns as contemplated u/s 10(4) of the Punjab General Sales Tax Act, 1948 had been deposited before filing the returns?

In order to appreciate the aforesaid questions of law, few facts may be noticed.

The petitioner-dealer is a cooperative sugar mill under the control and management of the Punjab State Sugarfed. Its unit is registered under the provisions of the Act and the Central Sales Tax Act, 1956. In the financial year 1982-83, the petitioner-dealer filed its quarterly returns in form ST-XIII showing sales turnover and also deposited sales tax for the taxable sales in terms of the said returns. Being dissatisfied with the correctness of the returns, the Assessing Authority issued notice u/s 1(2) of the Act in form ST-XIV, which was served upon the petitioner-dealer on July 28, 1987. Ultimately, the assessment was framed and the Assessing Authority vide his order dated January 18, 1988 added excise duty of Rs. 2,57,636.78 paid by the petitioner-dealer in respect of molasses, to the sales turnover. The Assessing Authority also made assessment in respect of purchases worth Rs. 42,000 u/s 4B of the Act besides assessment of purchase of sugarcane worth Rs. 4,30,12,042.38 to purchase tax but stayed realisation of the purchase tax amounting to Rs. 30,71,060 in respect of sugarcane and issued demand notice for Rs. 21,309, which was paid. The Assessing Authority further ordered that penal action under sections 10(6) and 11D of the Act would be taken later on separately for non-payment of tax on the sale of molasses and for misuse of registration certificate. After issuing show-cause notice, the Assessing Authority vide order dated September 16, 1988, imposed penalty of Rs. 2,150 u/s 10(6) and interest of Rs. 18,190 u/s 11D for the period May 1983 to January 1988 alleging short-payment of Rs. 21,309.

2. The petitioner-dealer filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), who dismissed the same (annexure C). The petitioner-dealer then filed further appeal before the Tribunal, which met the same fate vide order dated October 28, 1996 (annexure E). Thereafter, the petitioner-dealer filed an application u/s 22(1) of the Act for referring the aforementioned questions of law for determination of this court.

3. Mr. G.R. Sethi, learned counsel for the petitioner-dealer, has argued that question No. (ii) has already been answered by this court in favour of the petitioner-dealer in the case of *Desh Vijay Hosiery Factory Vs. State of Punjab*, . In that case this court has held that the petitioner-dealer was not liable to pay interest for the period before the demand was raised. We have placed reliance on a judgment of another Division Bench of this court rendered in the case of *Chaudhary Tractor Company Vs. State of Haryana*, and the judgment of honourable the Supreme Court in the case of *J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another*, . It has come on record that the tax according to the return as contemplated u/s 10(4) of the Act was deposited by the petitioner-dealer and no interest could be imposed.

4. Question No. (i) concerns imposition of penalty u/s 10(6) of the Act. Once Question No. (ii) has been answered in favour of the petitioner-dealer, namely, no interest was payable as the tax was deposited before filing the returns then the question of imposition of any penalty u/s 10(6) of the Act would not arise.

Accordingly, question No. (i) is also answered against the Revenue and in favour of the petitioner-dealer. In view of the above, both the questions are answered against the Revenue-respondent and in favour of the petitioner-dealer.