(1981) 10 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2971 of 1971

Grover Brothers APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 29-10-1981

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 20

Citation : (1982) 49 STC 224

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : I.K. Mehta, for the Appellant; A.S. Kharia, for Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Kang, J.—Messrs. Grover Brothers is a partnership firm, which was carrying on the business in partnership, but has since been dissolved. The Assessing Authority, Ludhiana, assessed Messrs. Grover Brothers, the petitioner, to pay sales tax to the tune of Rs. 11,346.84 vide an ex parte order dated 4th March, 1971, for the assessment year 1965-66. Dissatisfied with this order the petitioner filed an appeal.

2. An application u/s 20 of the Punjab General Sales Tax Act, 1948 (hereinafter called "the Act"), was made for entertaining the appeal without prior payment of the tax assessed as the petitioner was not in a position to pay the amount of tax due to his weak financial position. After hearing the petitioner, the Deputy Excise and Taxation Commissioner, Patiala, ordered that the petitioner should make payment of Rs. 4,000 in cash and should furnish security for the balance amount. This order was passed on 26th May, 1971, and the copy of the same is annexure A. Aggrieved by this order, the petitioner preferred an appeal before the Joint Excise and Taxation Commissioner, Punjab, u/s 20(1) of the Act. The appeal was partly allowed and it was ordered on 23rd June, 1971, that the petitioner should pay a sum of Rs. 4,000 and the condition of furnishing security

was set aside. Vide order dated 23rd June, 1971, he partly allowed the appeal and set aside the demand for furnishing security for the balance amount (a copy of the order is appended as annexure B to the petition). On appeal by the petitioner, the Presiding Officer of the Sales Tax Tribunal directed that the petitioner should deposit Rs. 2,000 instead of Rs. 4,000. He also ordered that the petitioner should furnish security for the balance amount. Dissatisfied with this latter portion of the order, the petitioner has filed the present writ petition.

3. Mr. I. K. Mehta, the learned counsel for the petitioner, has argued that u/s 20(5) of the Act, the appellate authority can entertain an appeal, if it is satisfied that the tax or penalty has been paid or can exempt the party in full or in part from the payment of the tax and penalty before entertaining the appeal, if it is satisfied that the dealer is unable to pay the tax assessed or penalty imposed or both. In the present case, taking into account the weak financial position of the petitioner, the Sales Tax Tribunal had ordered that the petitioner should pay Rs. 2,000 in advance and furnish security for the balance amount. However, there is no provision in the Act, which may authorise the Tribunal to demand security from the dealer. At this stage, it will be useful to extract the relevant statutory provisions:

4. Section 20(5) of the Act :

No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the tax or of the penalty, if any, imposed or of both as the case may be :

Provided that if such authority is satisfied that the dealer is unable to pay the tax assessed or the penalty, if any, imposed or both, he may, for reasons to be recorded in writing, entertain an appeal without the tax or penalty or both having been paid or after part payment of such tax or penalty or both.

5. Section 20(6) of the Act :

Subject to such rules of procedure as may be prescribed, an appellate authority may pass such order on appeal as it deems to be just and proper.

6. A bare perusal of the above statutory provisions makes it manifest that the appellate authority can, if satisfied regarding the inability of the dealer to pay the tax, entertain the appeal without the payment of such tax or after the part payment of such tax. However, there is no provision for demanding security.

7. Mr. A.S. Khaira, the learned counsel appearing for the State, has referred to Sub-section (6) of Section 20 of the Act, reproduced above, and argued on that basis that the appellate authority can pass any order in an appeal. This argument is based on a misconception. Section 20(6) of the Act comes into play when an appeal has been entertained, whereas Sub-section (5) of Section 20 of the Act takes care of the situation before the entertainment of the appeal. To that stage only Sub-section (5) of Section 20 of the Act applies. The appellate authority has not been given any powers to demand any security therein. Sub-section (6) of

Section 20 of the Act is not applicable at this stage.

8. Consequently, I allow this writ petition and quash the order of the Sales Tax Tribunal demanding security. There shall be no order as to costs.

