
(2003) 09 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17304 of 1991

Hari Chand Ramesh Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Haryana General Sales Tax Rules, 1975 — Rule 35(1)

Citation : (2004) 136 PLR 127 : (2003) 4 RCR(Civil) 644 : (2004) 136 STC 508

Hon'ble Judges : V.K. Bali, J; Jasbir Singh, J

Bench : Division Bench

Advocate : R.K. Jain, for the Appellant; Ritu Bahri, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Petitioner herein seeks issuance of writ in the nature of mandamus directing the respondents to make payment of interest on delayed refund of tax amounting to Rs. 17019/- deposited by it from June 1, 1986 to December 16, 1986, while challenging the assessment order dated July 4, 1986 passed by the Assessing Authority, Sales Tax, 4th respondent herein, which has since been set aside by the Joint Excise and Taxation Commissioner-second respondent arrayed in this petition, vide orders dated December 31, 1990. Petitioner also seeks issuance of writ in the nature of mandamus declaring Rule 35(1)(b) of the Haryana General Sales Tax Rules, 1975 as unconstitutional, ultra-vires Articles 14, 19(1)(g) and 265 of the Constitution of India, in this petition filed by it under Article 226 of the Constitution of India.

2. Brief facts of the case, as projected in the petition, reveal that the petitioner is a registered firm and its books were assessed for the assessment year 1984-85 by the fourth respondent and vide his assessment order dated July 4, 1986 the said authority disallowed the sale to the registered dealers as not genuine and assessed the same to tax and showed the balance tax of Rs. 17019/- and issued a demand notice thereof. It is pleaded that the petitioner was not in a position to

make the lump sum payment of tax of Rs. 17019/- due to dull seasons and huge stock of goods in hand and, thus, made a request to the third respondent to allow them to make payment of tax due in monthly instalments of Rs. 1000/- each. The request of the petitioner for payment of tax amount in instalments was allowed and the entire tax was deposited in the manner indicated below:-

OCR No. Date Amount deposited

8. 1.9.1986 Rs. 2019/- 2. 27.9.1986 Rs. 5000/- 2. 16.10.1986 Rs. 5000/- 16. 16.12.1986 Rs. 5000/-

Total Rs. 17019/-

3. Aggrieved, however, from the order of assessment mentioned above, petitioner preferred an appeal before the Joint Excise and Taxation Commissioner, which was allowed on December 31, 1990. After the appeal was allowed; petitioner moved an application to the second respondent on April 23, 1991 for issuance of a refund adjustment order for the tax amount of Rs. 17019/-. On the application aforesaid, the third respondent issued a refund adjustment order on Form ST-34 in compliance with Rule 37 of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as "the Rules of 1975") on July 26, 1991 intimating the petitioner that the amount of tax deposited under the Assessment Order dated July 4, 1986 for the assessment year 1984-85 shall be adjusted towards the amount of tax due for the period April 1, 1991 to June 30, 1991 or any subsequent month/quarter.

4. It is the case of the petitioner that the tax amounting to Rs. 17019/- was deposited with the fourth respondent w.e.f. 1.9.1986 to 16.12.1986 on which interest calculated @ 18% comes to Rs. 20900/- approximately. The petitioner represented to the fourth respondent for payment of interest as per their calculation on the amount of tax illegally retained and enjoyed by the department but its request was turned down.

5. It is further the case of the petitioner that Rule 35(1)(4) of the Rules of 1975 does not provide for payment of interest on the amount illegally retained by the department-State, whereas on the contrary, there are provisions in the Act which provide for payment of interest by the assessee in case of delay. With a view to show that the assessee in case of delay payment has to pay interest, reference has been made to Sections 25 and 59 of the Haryana General Sales Tax Act, 1973.

6. On the strength of language employed in the said Sections, as mentioned above wherein whereas assessee has to pay interest in case of delayed payment and there being no provision of interest in case extra tax is retained by the department Mr. R.K. Jain learned counsel for the petitioner vehemently contends that Rule 35(1)(b) is an unequal provision and, thus, unreasonable, arbitrary, illegal, unfair and violative of Articles 14, 19(1)(g) and 265 of the Constitution of India. It is urged that Article 14 of the Constitution guarantees equal treatment

of law between a citizen and citizen and State. It also enshrines complete lack of arbitrariness and unreasonableness. Rule 35(1)(b), it is urged, is an unequal provision and is directly hit by Article 14 of the Constitution of India, because it only provides for the payment of interest if the order or refund of excess amount is not made within 60 days of the receipt of application by the dealer claiming such refund which is payable as a result of the order of any appellate or revisional authority or any Court. This provision, it is further urged, does not provide for the interest on the amount which the dealer had to deposit in pursuance of the illegal order of assessment and which has been retained and used by the Department/State for as many as four years, in the present case. It is then urged that Article 265 of the Constitution of India provides that no tax shall be levied or collected except by the authority of law and as such it hits Rule 35(1)(b) of the Rules because the tax was imposed by the fourth respondent vide order dated 4.7.1986 after which the tax was deposited by 16.12.1986 and the order of the Assessing Authority was set aside being illegal by the second respondent on 31.12.1990, against which no further appeal was filed. By implication, it shall have to be held that the tax collected by the fourth respondent was without jurisdiction and authority of law, further contends the learned counsel,

7. We have heard learned counsel for the parties and gone through the records of the case. In our view, that there is basic fallacy in the contentions raised by learned counsel and the same is that it is being pre-supposed that the tax collected or ordered to be paid while making the assessment of the petitioner, was illegal and on setting aside of such an illegal order, tax has to be returned with interest. When the authorities, constituted under the Act, proceed to make an assessment order and while determining the payment of tax, some mistake is made, either on law or facts, in consequence whereof an assessee is asked to pay the tax it can not be said to be payment illegally demanded by the said authorities. Setting aside of such an order either on facts or law would further not be indicative of the fact that the demand made on the basis of an order passed by the concerned authority, while proceeding in accordance with the provisions of the Act, would be illegal. Once it is to be held that order demanding tax from the petitioner on the basis of an assessment order even though there may be a factual or legal defect in the same cannot be termed to be illegal the question of refund of the said tax amount with interest would not arise.

8. The contention of learned counsel that in case an assessee has retained the amount or made delayed payment of tax, he is liable to pay interest, whereas in the case of refund, in the manner, referred to above, State is not to pay interest, would be violative of Article 14 of the Constitution of India, is concerned, same also does not appear to be based on any solid foundation.

9. A defaulter of tax, who does not pay it within the prescribed time and the State in; the matter of refund of amount of excess tax paid, in our considered view, do not stand on the same footing. There is a difference between a

defaulter, who does not pay tax within the prescribed time and the State which has to refund the amount of excess tax paid, either voluntarily by the assessee or as a result of an assessment order, The assessee and the State can not be said to be equally situated and if that be so, there would be no question of discrimination, based upon Article 14 of the Constitution of India. The Hon''ble Supreme Court in Saghir Ahmad Vs. The State of U.P. and Others, held that "mere differentiation does not make a legislation obnoxious to the equal protection clause and that even when the State ceases to function as a State and engages itself in a trade like ordinary trader, it can be treated in a different manner if such a differentiation has a rational relation to the object of the statute". In Manna Lal and Another Vs. Collector of Jhalawar and Others, , the Hon''ble Supreme Court held as follows:-

"The last point argued was that in so far as the Act enables moneys due to the Government in respect of its trading activities to be recovered by way of public demand, it offends Article 14 of the Constitution. It is said that the Act makes a distinction between other bankers and the Government as a banker, in respect of the recovery of moneys due. It seems to us that the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of entire people of the State. This being the position, a law giving special facility for the recovery of such dues can not, in any event, be said to offend Article 14 of the Constitution".

10. Once again, the Hon''ble Supreme Court in Nav Rattanmal and Others Vs. The State of Rajasthan, , held that distinction can be drawn between the claims of the State and the claims of the individual in the matter of a provision of a bar of limitation for enforcing them". The Government, in our view, is a distinct class and can not be compared with an assessee in the matter of payment or rate of interest on delayed payments and refund by the Government if the assessment is found to be incorrect in an appellate forum.

There is, thus, no merit in the contention of learned counsel that Rule 35(1)(b) of the Haryana General Sales Tax Rules, 1975, is an unequal provision and, thus, unreasonable, arbitrary, illegal, unfair and violative of Articles 14, 19(1)(g) and 265 of the Constitution of India.

11. Finding no merit in this petition, we dismiss the same, leaving, however, the parties to bear their own costs.

Sd/- Jasbir Singh, J.