
(1982) 11 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2850 of 1975

Haryana Spun Pipe Construction Co.	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 08-11-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Punjab General Sales Tax Act, 1948 — Section 10

Citation : (1983) 53 STC 112

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : R.N. Narulu, for the Appellant; B.L. Bishnoi, Additional Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The matter here concerns proceedings under the law relating to sales tax and pertains to the assessment year 1972-73.

2. The Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Punjab Act), was repealed by the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Haryana Act). There was a provision for appeal under the Punjab Act which has been retained in the Haryana Act but such appeal can now be entertained only on payment of admitted or assessed tax in terms of Section 39(5) thereof which reads as under :

No appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority is satisfied that the amount of tax assessed on, and the penalty and interest, if any, recoverable from the person has been paid :

Provided that the said authority, if satisfied that the dealer is unable to pay the whole of the amount of tax assessed or the penalty imposed or the interest due, he may, if the amount of tax or interest admitted by the appellant to be due has

been paid, for reasons to be recorded in writing, entertain the appeal subject to the furnishing" of a bank guarantee or adequate security for the payment of the amount finally determined to be due.

3. On 14th November, 1974, an ex parte assessment was framed on "best judgment" basis by the Assessing Authority, Kalka, respondent No. 3 (annexure P-1), whereby the petitioner-firm was taxed to the extent of Rs. 16,800 and was also imposed upon a penalty of Rs. 2,400. Besides this a penalty of Rs. 500 was imposed upon the petitioner u/s 9(3) of the Central Sales Tax Act, 1956, read with Section 10(6) of the Punjab Act. Appeals were filed against both these orders which were dismissed by the appellate authority, the Deputy Excise and Taxation Commissioner, Ambala, by his orders of 20th January, 1975 (annexures P-2 and P-3). A further appeal was then filed before the Sales Tax Tribunal which was dismissed on 22nd April, 1975 (annexure P-5), on the ground that it could not be entertained in view of the non-compliance with the provisions of Section 39(5) of the Haryana Act as no tax had been deposited as was required thereunder. It is this order which is challenged in this writ petition.

4. The point sought to be urged by the counsel for the petitioner was that as the "assessment in this case related to a period prior to the coming into being of the Haryana Act, and one appeal having already been filed and decided under the Punjab Act, the appeal to the Sales Tax Tribunal was also governed by the provisions of the Punjab Act. The counsel in this behalf adverted to the proviso to Sub-section (1) of Section 65 of the Haryana Act, which is in the following terms :

65. (1) The Punjab General Sales Tax Act, 1948 (hereinafter referred to as the repealed Act), is hereby repealed :

Provided that such repeal shall not affect the previous operation of the repealed Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject thereto, anything done or any action taken, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due under the repealed Act at the commencement of this Act, may be recovered as if they had accrued under this Act.

5. The counsel for the petitioner contended that as it was specifically provided in the above proviso that, any right already acquired under the Punjab Act would not be affected by the Haryana Act, the right of appeal being such a right, could not be said to have been intended to be fettered by the provisions of Section 39(5) thereof. The argument being that the condition regarding deposit of tax and penalty prior to the entertainment of the appeal was so onerous in nature that it virtually took away the right of appeal, which would be contrary to the saving provided in the proviso to Section 65 of the Haryana Act. In other words, the petitioner had a right of appeal to the Tribunal without fulfilling the precondition of deposit of tax as required u/s 39(5) of the Haryana Act.

6. The basic fallacy in the argument of the counsel for the petitioner is that it is only the right of appeal which can at best be said to be a right saved by the proviso to Sub-section (1) of Section 65 of the Haryana Act but not the procedure relating to the entertainment thereof. It is well-settled that a right of appeal is a mere creature of statute and the legislature which confers such a right can equally take it away or prescribe conditions for the exercise of this right which may be onerous or otherwise. Reference may in this connection be made to the Division Bench ruling of this Court in *Subhash Chander and Co. Vs. The State of Punjab and Another*, where it was held that the right of appeal was neither a fundamental nor a constitutional right. There was no inherent claim or right of appeal from an original forum, and in particular, against an assessment of tax. The right of appeal was a mere creature of the legislature and the legislature which confers such a right can equally take the same away, if necessary. The legislature would, thus, be perfectly within its right to regulate the right of appeal conferred by it while imposing conditions or restrictions on its exercise, including the requirement of the deposit of a tax or penalty before the entertainment of the appeal. A question similar to the one raised in the present case arose before the Supreme Court in *Hardeodas Jagannath Vs. State of Assam and Others*, . This was again a matter relating to sales tax. The relevant provision for appeal before its amendment required payment of admitted tax before the appeal could be entertained. By the amendment, the pre-condition for the entertainment of the appeal was changed to payment of the assessed tax and penalty, if any, levied thereon. It was held that the provisions of the amending Act applied even to assessments relating to earlier years which had not yet been completed. Similar would be the case here.

7. In view of the matters which have been discussed above, no infirmity can be imputed to the order of the Sales Tax Tribunal holding that the appeal filed by the petitioner could not be entertained on account of the non-compliance with the provisions of Section 39(5) of the Haryana Act. There is, thus, no merit in this petition which is accordingly hereby dismissed with costs. Counsel's fee Rs. 300.