

(1982) 03 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4480 of 1971

Hind Iron Stores	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 2, 4, 4B, 5

Citation : (1983) 53 STC 337

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Advocate : R.P. Sahney, for the Appellant; R.L. Sharma, for Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bains, J.—The petitioner is a registered partnership firm engaged in the business of selling and supplying of iron and steel of all types and iron scraps at Mandi Gobindgarh, District Patiala. The firm is registered as a dealer under the Punjab General Sales Tax. Act, 1948 (hereinafter called the Act), and also under the Central Sales Tax Act, 1956.

2. The petitioner-firm purchased two lots of cut up materials of condemned wagon, namely, scraps, amounting to Rs. 2,44,300 from Northern Railway Workshop, Jagadhri. The Assessing Authority, Yamuna Nagar, respondent No. 2, sent a notice in form S.T. XIV purported to have been issued u/s 4B of the Act dated 20th July, 1971, to the petitioner by registered post to app ar before him at Yamuna Nagar on 3rd August, 1971, with complete account for the purchase of scrap. A copy of the notice is attached with the petition as annexure A-1. The petitioner's representative appeared before respondent No. 2 on 3rd August, 1971, and the petitioner was asked to deposit the tax at 3 per cent on all the iron scrap so purchased at Jagadhri. He also issued a memo for assessment

refixing the case on 7th September, 1971. It is alleged in the petition that in the meantime, the Assessing Authority was transferred. The petitioner started taking delivery of the said scrap from the Railway Workshop, Jagadhri, for taking it to his place of business at Mandi Gobindgarh. Three trucks numbering HRA 5397, PNQ 3503 and HRK 3199 loaded with the aforesaid material were stopped at the check barrier G. T. Road, Ambala, and were made to pay Rs. 170, Rs. 180 and Rs. 185. Similarly, respondent No. 3 also realised a sum of Rs. 1,330 from the petitioner on the scrap transported to Mandi Gobindgarh after 3rd September, 1971, out of the aforesaid purchases. It is in these circumstances that the present petition has been filed under Articles 226/227 of the Constitution of India.

3. The constitutional validity of Section 4B of the Act was challenged but both the learned counsel for the parties conceded that the same was held valid. Mr. Sahney, the learned counsel for the petitioner, urged that the petitioner is not a "dealer" as defined in Section 2(d) of the Act and he cannot be assessed and that no purchase tax could be levied on the petitioner u/s 4B which itself is subjected to the second proviso to Section 5(1) of the Act, because the petitioner is not selling any iron scrap which is categorised as declared goods u/s 14 of the Central Sales Tax Act, 1956, and tax in respect of this declared goods could be levied only either on sales or purchases and that respondent No.3 is not the Assessing Authority under the Act. Hence he had no jurisdiction to levy and collect the tax at the barrier.

4. Reply has been filed on behalf of the respondents by Shri H.B. Gandhi, Assessing Authority, Yamuna Nagar. So far as the question that the petitioner 1983 is not a dealer, I am of the opinion that this is a question of fact and cannot be gone into in writ proceedings. The respondents in their reply to sub-para (i) of para 15(a) have to pay tax u/s 4B of the Act on the purchases made by him in the State of Haryana from an unregistered dealer. The petitioner has not filed any counter-affidavit to this averment in the reply. Thus, I am of the view that the petitioner is a "dealer".

5. So far as the charging of tax levied on the petitioner u/s 4B is concerned, it was amended, as is clear from the reply filed by the respondent and tax was charged u/s 4B of the Act which reads as follows:

Notwithstanding anything contained in this Act or the Rules made thereunder if the goods leviable to tax under this section are exported, tax shall be levied, charged and paid at the station of despatch or at any other station before the goods leave the State of Haryana.

6. It is not disputed that the goods were exported out of Haryana and that according to the provisions of Section 4(5)(a) of the Punjab General Sales Tax Act, as amended by Haryana, taxable quantum in relation to any dealer who exports any goods, is nil, which means that if a person exports goods worth only a rupee, he will be liable to pay tax. In this view of the matter, the petitioner was liable to pay tax on purchase of those goods. Thus, I am of the view, that the

notice issued and the tax charged on the dealer was perfectly legal.

7. The third objection that respondent No. 3 was not competent, it is averred in the reply that respondent No. 3 was competent to realise the tax which was not paid by the petitioner. As observed earlier, no counter-affidavit has been filed to these assertions of the respondents. The tax was realised on the value of goods voluntarily declared by the petitioner's representative after passing requisite assessment orders at the spot after hearing the petitioner's representatives. The tax is chargeable on the purchase of goods which are exported from the State of Haryana and this tax is payable only if the goods had been exported out of Haryana and tax on the purchase of goods will not be payable, if the goods are sold in the State of Haryana or in the course of inter-State trade or commerce.

8. There is another impediment in the way of the petitioner that he failed to avail of the remedies of appeals available to him under the Act. Admittedly, the petitioner did not file the appeal although that remedy was available under the Act. He could file an appeal to the Deputy Excise and Taxation Commissioner and a second appeal to the Sales Tax Tribunal. In such a situation where the machinery provided under the Act is not availed of; the Supreme Court in *Bhopal Sugar Industries Ltd., Madhya Pradesh and Another Vs. D.B. Dube, Sales Tax Officer, Bhopal Region, Bhopal and Another*, observed as follows :

...The taxing officer is invested with authority to determine the nature of the transaction and its liability to tax, and against his decision there is an appeal to the appellate authority and a further right of revision to the Commissioner. It is true that the jurisdiction of the High Court under Article 226 is extensive, but normally the High Court does not exercise that jurisdiction by entertaining petitions against the order of taxing authorities, when the statute under which tax is sought to be levied provides a remedy by way of an appeal or other proceeding to a party aggrieved and thereby by-pass the statutory machinery....

9. Moreover, it is a very petty matter involving an amount of Rs. 2,330, and no injustice is done to the petitioner-firm. Thus I am of the opinion that no case is made out for invoking extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India. The petition is, therefore, dismissed with costs. Counsel fee 500.