(1996) 01 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 43 of 1986

Hotel Oberoi Mountview APPELLANT

Vs

The Assessing Authority, U.T. RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 21, 22(3)

Citation : (1996) 113 PLR 585

Hon'ble Judges : N.K. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Pritam Singh Saini, for the Appellant; Rakesh Garg, for the Respondent

Judgement

N.K. Sodhi, J.—Whether the Commissioner empowered to exercise suo moto powers of revision u/s 21 of the Punjab General Sales Tax Act, 1940 (for short the Act) could act on an application filed by an assessee is the short but interesting question of law which arises for determination in this Sales Tax Reference made by the Sales Tax Tribunal, Punjab on a mandamus issued by this Court u/s 22(3) of the Act.

2. Facts giving rise to this reference are that M/s. Hotel Oberoi Mountview, Chandigarh (now defunct and hereinafter referred to as the assessee) was registered as a Hotel and Restaurant under the Act and had been carrying on its business as such. As part of its business as a hotelier, the assessee received guests to whom, besides furnishing lodgings it also provided several other amenities such as bath with hot and cold running water, linen, meals during fixed hours etc. The bill given to the guests was an all-inclusive one i.e. a fixed amount for the stay in the hotel for each day and did not specify different items of each of the facilities that were provided. The Assessing Authority, Union Territory, Chandigarh charged Sales Tax by bifurcating the .contract and the fixed amount charged for board and lodging for the purpose of taxing that part of the amount which according to the Assessing Authority represented the sale of good

to the customers. Such assessments were made for the assessment year 1953-54 upto 1961-62. It was contended by the assessee that the business of the Hotel was mainly of providing boarding and lodging to its resident customers who stayed there and enjoyed all the amenities provided by the Hotel and in return a comprehensive and all inclusive charge was being made from them and that there was no agreement for the sale or purchase of food when the same was supplied to the customers in the form of meals. In other words what was argued was that the contract between the assessee and the customers was an indivisible one and the Assessing Authority could not tax the same by bifurcating-it. These contentions were not accepted by the Assessing Authority. The assessee did not file an appeal against any of the assessment orders. In January, 1972 the "Apex Court in The State of Himachal Pradesh and Ors. v. Associated Hotels of India Ltd. 29 S.T.C. 474 held that the transaction of receiving a customer in the hotel to stay was" essentially one and indivisible and the same could not be split up into two parts, one of service and the other of sale of food-stuffs and not could the sale of food-stuffs be brought to tax in respect of meals served to the quests in the Hotel. It was observed that such a contract was essentially one of service by the hotelier in the performance of which and as a part of the amenities incidental to the service, the hotelier served meals at fixed hours. After this judgment was delivered the assessee filed applications in regard to each of the assessment years before the Commissioner with a request to exercise his suo-moto powers u/s 21 of the Act and revise the orders of the Assessing Authority as according to the assessee the order charging tax on food-stuffs by bifurcating the indivisible contract was an illegality committed by the Assessing Authority. The Department opposed the applications it being contended that the Commissioner could not exercise his powers u/s 21 of the Act on an application made before it by the assessee. It was also contended by the departmental representatives that before the amendment of Section 21 by Act 7 of 1967 the Commissioner could exercise the power of revision on his own motion or even on an application made to him for taking action u/s 21 but after the amendment the words" or on an application made to him" had been deleted and, therefore, the Commissioner had no option but to dismiss the application filed by the assessee. The Commissioner upheld the preliminary objection raised by the departmental representative and dismissed the application holding as under :-

" I agree with the contention of the representative of the Department that this Court cannot legally take action u/s 21 of the amended Act on the basis of application made before it. The application is, therefore, dismissed."

Feeling aggrieved by the order passed by the Commissioner the assessee filed revision petitions in respect of the assessment years 1953-54 to 1961-62 before the Sales Tax Tribunal, Chandigarh. All the revision petitions were heard and disposed of by an order dated August 18, 1980 whereby the same were dismissed and the order of the Commissioner declining to act on an application filed by the assessee affirmed. Thereafter on a mandamus issued by this Court u/s 22(3) of the Act, the Tribunal has referred the following question of law for the opinion of this Court :-

"Whether the assessee can invoke the jurisdiction of the Commissioner, Excise and Taxation for the exercise of the suo moto powers u/s 21 of the Punjab General Sales Tax Act, 1948?"

3. Before we deal with the aforesaid question, it is necessary to refer to the provisions of Section 21 of the Act the relevant part of which reads as under :-

"(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by. any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit."

A perusal of the aforesaid provision shows that the Commissioner has been given the power to send for the records of any proceedings which are either pending before him or have been disposed of by any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings. Of course, he has to act ''of his own motion''. He can indeed exercise this power whenever he receives any information about any illegality or impropriety committed by any of his subordinate authorities. This information may come from any source-whether it be the department or any other person including an assessee. The object of giving this power of revision to the Commissioner is for proper administration of the Act and it is his duty to see that neither the assessee should be allowed to escape from the tax net nor should he be required to pay tax which he is not liable to pay under the law. Whenever he receives any relevant information even though from the assessee he can exercise his powers if he thinks that the information is such warranting his interference. If on receipt of the information he feels that he need not take any action in the matter, it is open to him not to take cognizance of that information and leave the matter there. Where he decides to initiate action even though he has received information from the assessee or from any other source, he will nevertheless be acting of his own motion and his action will not be allowed to be called in question merely because he received information for proceeding in the matter through an application form an assessee. We, however, make it clear that even though the Commissioner is justified in initiating action on receipt of information even from an assessee, Section 21 of the Act is not to be construed as giving statutory right to the assessee to prefer a revision petition. In other words the assessee cannot require/compel the Commissioner to act on the information supplied by him and if the Commissioner chooses not to act on that information the assessee will have no right to make a grievance of it before any higher authority. It is true that the Section does not contemplate the filing of an application by either party i.e. Revenue or the assessee but nevertheless when any application is filed bringing some information to the notice of the Commissioner he may take a note of that information and proceed suo moto. The view that we are taking finds support from the observations of the Apex Court in The Board of Revenue v. Raj Brothers

Agencies (1973) 31 S.T.C. 434. Similar view has been taken by the two Division Bench Judgments of the Andhra Pradesh High Court in re: State of Andhra Pradesh (1983) 54 S.T.C. 132 and Gill and Co. v. Commissioner of Commercial Taxes (1987) 65 S.T.C. 232.

4. In view of the aforesaid discussion, we answer the question referred to as under :-

It is open to an assessee or even to the Department to bring to the notice of the Commissioner any relevant information and if the Commissioner is of the opinion that the information is such which warrants initiation of action u/s 21 he may proceed of his own motion to examine the legality or propriety of any order or proceedings taken by any authority subordinate to him.

5. Before concluding, we may mention that this Court had directed the Tribunal to refer the aforesaid question of law pertaining to all the nine assessment years in question but the Tribunal has referred the question only in one case and declined the reference in the other connected eight cases observing as under :-

"There is no wisdom in making eight references to the Punjab and Haryana High Court because the order passed on one of such application which has already been referred to the Punjab and Haryana High Court vide this Tribunal''s order dated 29.1.1986 will automatically be applicable to all the eight revision petitions."

6. In view of the aforesaid observations made by the Tribunal, it is directed that the answer given by us to the question referred by the Tribunal would be applicable to the other eight cases as well.

7. The reference is thus answered as above and Civil Misc. 5005-CII of 1988 also stands disposed of. There is no order as to costs.