

(1965) 02 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 364 of 1963

International Cotton (Waste) Corporation	APPELLANT
Vs	
The Assessing Authority and Others	RESPONDENT

Date of Decision : 05-02-1965

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 20, 21, 5

Citation : (1965) 16 STC 1045

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : H.L. Sibal and S.C. Sibal, for the Appellant; M.R. Agnihotri, for Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

1. The facts giving rise to the present civil writ petition under Article 226 of the Constitution of India are as follows:--

Messrs International Cotton (Waste) Corporation is a partnership-firm (hereinafter referred to as the firm) with its head office at Bombay and branch office at Bhatinda. Their main business is to buy cotton and cotton waste and to export the same outside India. The main area of their operation is in the Punjab and Rajasthan. The firm got registered under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act) at Bhatinda. The registration number is BAT. III. 6000. The assessment for the year commencing from 7th December, 1961, and ending on 31st March, 1962, came up for consideration before the Assessing Authority, Bhatinda. The petitioner-firm claimed before the Assessing Authority that during the above period cotton had been purchased for about four lacs for the purpose of export from India to other countries and also furnished evidence in support of this contention, They prayed that the amount spent on the purchase of cotton might be deducted from their

gross turnover u/s 5(2)(a)(vi) of the Act but the same was declined by the Assessing Authority and they were directed to pay Rs. 7,937.00 as the sales tax for this period: vide assessment order dated 1st February, 1963 (copy annexure A). The petitioners in this petition have prayed for quashing of the said assessment on the ground that the branch office at Bhatinda was not a separate legal entity from the head office at Bombay and that the registration of the firm at Bhatinda was merely a procedural matter and did not change the legal entity of the main buying firm. It was further pleaded that since the cotton was purchased for export outside India and was in fact exported outside India, the mere fact that the branch office at Bhatinda made the purchases and the head office at Bombay exported it outside India did not matter at all. In the circumstances the exemption claimed should have been allowed in terms of Section 5(2)(a)(vi) of the Act.

2. The Assessing Authority while assessing the firm separated the item of baled cotton into two parts, one cotton pure and second part packing material comprised of hessian cloth. The tax on the hessian cloth has been levied at the rate of 5 per cent., and on cotton at the rate of 2 per cent. The petitioners alleged that the hessian cloth should also have been taxed at the same rate as the cotton because according to Section 14 of the Central Sales Tax Act, 1956, tax could not be more than 2 per cent. on the baled cotton as a whole. The order of the Assessing Authority is, therefore, alleged to have contravened the provisions of the Central Sales Tax Act and, that being so, was void in law.

3. The Assessing Authority is said to have proceeded to levy the tax in the manner it did on the basis of the instructions received from the Excise and Taxation Commissioner, Punjab. The firm, therefore, thought that no useful purpose could have been served by filing an appeal or revision against the order of the Assessing Authority and so instituted the present petition straightaway.

4. The Assessing Authority, Bhatinda, the Excise and Taxation Commissioner, Punjab, and the State of Punjab--respondents--in their written statement admitted that Messrs International Cotton (Waste) Corporation, Bhatinda, stood registered under the Punjab General Sales Tax Act, 1948, and added that the branch office at Bhatinda was a separate entity and local agent of the firm was the dealer for all purposes under the Act and not the head office at Bombay. Further, the purchases and sales of cotton on the strength of the registration certificate were to be made by the branch office at Bhatinda and not by the Bombay office. They further pleaded that the Bhatinda office of the firm transferred the cotton purchased in the territory of Punjab to their head office at Bombay which subsequently sold the same in the course of export out of the territory of India. According to them only the sales made by the branch office in the State of Punjab were to be taken into account while making the assessment because the same was a dealer under the Act in respect of the business done by this branch only and not of any other branch outside the State. As regards the levying of tax on the hessian cloth at a higher rate, it was contended that cotton

only was liable to tax at the rate of 2 per cent., and not the packing material. They finally urged that the writ petition was incompetent because the petitioners had failed to avail of the remedies provided under Sections 20 and 21 of the Act.

5. There is no manner of doubt that in law, a partnership has no existence distinct and independent of the members composing it. The name under which a firm carries on business is in point of law a conventional name applicable to the persons who are members of the firm. If any authority for this proposition is necessary, reference may be made to the case of Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, , where the Supreme Court observed that:

Under the law of partnership a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners but it is also equally true that under that law there is no dissolution of the firm by the mere incoming or outgoing of partners.

6. The Assessing Authority in this case for reasons so obvious did not properly appreciate that the head office and branch office of the firm were one and the same entity. If a person carries on business at two places under the same name he will continue to have one entity and not two simply because he has business centres at two places. The respondents admitted, as is also clear from the impugned assessment order (copy annexure A), that the cotton purchased by the Bhatinda branch office was exported by the head office at Bombay to foreign countries. The Bhatinda branch office can be said to have purchased the cotton in the course of export out of the territory of India. It was, therefore, not proper for the Assessing Authority to hold that since the purchases of cotton were made by the branch office at Bhatinda and the cotton was then transferred to the head office at Bombay which in turn exported it outside India, the exemption claimed by the petitioners u/s 5(2)(a)(vi) of the Act could not be granted. In view of the matter, the Assessing Authority should have allowed the exemption claimed by the petitioners from their gross turnover u/s 5(2)(a)(vi) of the Act and the omission to do so invalidated the impugned order.

7. The respondents' objection that the writ petition did not lie because the petitioners had failed to avail of the remedies open to them by way of appeal and revision under Sections 20 and 21 of the Act cannot prevail. The petitioners alleged in paragraph 7 of the writ petition that the Assessing Authority had disallowed their claim in accordance with the instructions received by him from the Excise and Taxation Commissioner. This has not been controverted by the respondents and so has to be accepted as correct. In these circumstances the right of appeal had been reduced to a mere formality, if not rendered farcical. The petitioners would not have gained anything substantial by preferring an appeal. Their failure to file the appeal or revision is no bar to the filing of the present writ petition. This finds support from the decision in the case, New Rajasthan Mineral Syndicate, Nizampur v. The State of Punjab and Anr. 67 P . L.R. 155.

8. For the reasons given above, the civil writ is allowed with costs and the assessment order dated 1st February, 1963, (copy annexure A) is quashed.