(1970) 12 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 941 of 1968

Kapoor Weaving Factory — APPELLANT

Vs

The Excise and Taxation Officer, Assessing Authority — RESPONDENT

Date of Decision : 07-12-1970

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 7

Citation : (1971) 28 STC 576

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhagirath Dass and S.K. Hirajee, for the Appellant; Satish C. Sibal for the A.G.., for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—The petitioner was registered as a dealer in 1959 under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act), and was allotted registration certificate No. AMR-III-7407 by the Assessing Authority, Amritsar. The certificate was for the sale and purchase of yarn and cloth as also for the manufacture of cloth. In 1955 a branch was started under the name and style of Lavindra Weaving Factory, outside Chatiwind Gate, Amritsar, and the certificate of registration was changed from S.T. III to S.T. IV and the certificate issued bore No. AMR-IV-11753. On the coming into force of the Central Sales Tax Act, 1956, the petitioner was also registered under that Act with No. AMR-CST-3391.

2. In October, 1964, the Assistant Excise and Taxation Officer, Amritsar, issued a notice to the petitioner stating :--

It has come to my notice that you are not carrying on business at the premises mentioned in the registration certificate granted to you. Presumably you are having no business premises.

You are required to appear before the undersigned on 30th October, 1964, at 10 A.M. sharp and to show cause as to why your registration certificate should not be cancelled.

3. The petitioner-firm sent a reply to this notice with the result that no further action was taken.

4. Again, on 17th December, 1965, the Excise and Taxation Officer, Amritsar, issued a notice to the petitioner-firm reading as under :--

Whereas it has been brought to my notice that you have closed your business and the premises previously occupied by you are being used by M/s. Steel Industries, outside Chatiwind Gate, Amritsar, you are, therefore, requested to return your registration certificate No. AMR-III-11753 within four days of the receipt of this memorandum, failing which I shall be constrained to cancel the same u/s 7(4) of the Act.

5. The registration certificate was wrongly mentioned as AMR-III-11753 instead of AMR-IV-11753. To this notice, the petitioner sent a reply on 20th December, 1965, denying the allegation that it has closed its business. It was stated that the concern had "for the time being suspended its manufacturing business and are carrying on the business of purchase and sale of goods at its old premises. The business premises are neither changed nor closed." It was then submitted that under the circumstances the question of returning the registration certificate did not arise nor was any action u/s 7(4) of the Act warranted. The department thereafter did not take any action in the matter and apparently accepted the contention of the petitioner.

6. Two years later, on 15th December, 1967, the Assessing Authority, Amritsar, issued a notice to the petitioner-firm to show cause why its registration certificate should not be cancelled. This notice was presented to Shri Anant Ram Kapur, father of Shri Laxmi Narain, who has styled himself as the proprietor of the petitioner-firm, but was refused by him on 5th January, 1968. He also refused to sign the notice in token of its receipt. When the notice was returned unserved to the Assessing Authority, he issued another notice by registered A/D. post on 11th January, 1968, which was received back on 18th January, 1968, with the report of the postal authorities that the addressee had refused to accept the same. The Assessing Authority then issued another notice on 19th January, 1968, and directed it to be pasted on the last known business premises of the petitioner concern. It was pasted as directed on 23rd January, 1968. By this notice, the petitioner was directed to show cause why its registration certificates under the Punjab Act as well as the Central Act should not be cancelled on the following grounds:--

(i) the business had been closed ;

(ii) M/s. Diamond Steel Industries were functioning"; and

(iii) they were misusing their registration certificates.

7. The date of hearing fixed was 30th January, 1968, and on that date Shri R. M.

Kapoor, Advocate, appeared on behalf of the petitioner along with the letter from the petitioner in which it was denied that the business of the concern had been closed. It was explained that the manufacturing part of the business had been suspended and the concern was doing the business of purchase and sale of goods. It was also stated that the premises had neither been changed nor closed. With regard to the part of the premises being occupied by M/s. Diamond Steel Industries, it was stated that the shed which had previously been used by the manufacturing unit of the branch office was being used by that firm as the manufacturing activity had been suspended, but that did not mean that the petitioner had closed its business or changed its premises. It was also denied that the registration certificates were being misused by the petitioner-firm.

8. The Assessing Authority passed the impugned order on the same date, that is 30th January, 1968, cancelling the registration certificate No. AMR-IV-11753, on the sole ground that--

enquiries got made through the inspectorate staff and from other sources disclosed that the dealer has closed the business premises and it is not actually making purchases of goods, but exclusively charging a small remuneration for the use of its registration certificate. In the transactions now conducted by the dealer the very element of sale and purchase is missing inasmuch as there is no agreement to sell movable goods for any price consideration and the property in goods does not pass in pursuance of the agreement.

9. It was concluded that the dealer had misused the registration certificate which needed cancellation u/s 7(4) of the Act as it was violating the provisions of the Act and the Rules by not furnishing its returns for the last more than three years. The order was passed cancelling registration certificate No. AMR-IV-11753 and nothing was said in this order about the registration certificate under the Central Sales Tax Act bearing No. AMR-CST-3391, but when this order was communicated to the petitioner-firm, mention was made of both the registration certificates as having been cancelled. The petitioner-firm then filed the present petition in this Court.

10. The principal argument of the learned Counsel for the petitioner is that no opportunity was afforded to the petitioner by the Assessing Authority to rebut the material collected by it. In fact, it is stated that the material collected by the Assessing Authority through its inspectorate staff was never brought to the notice of the petitioner-firm or its counsel who appeared before the Assessing Authority on 30th January, 1968. The order cancelling the registration certificate is a quasi-judicial order and has to be passed after observing the principles of natural justice which require that the material on which action is to be taken must be brought to the notice of the petitioner who shall also be afforded an opportunity to rebut the same as ruled by their Lordships of the Supreme Court in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal AIR 1955 S.C. 65 (paras, 8 and 9) and Raghubar Mandal Harihar Mandal Vs. The State of Bihar, The order needs to be quashed on this short ground.

11. The second objection of the learned Counsel for the petitioner is that although in the order dated 30th January, 1968, only the cancellation of the registration certificate bearing No. AMR-IV-11753 was decided upon, in the communication letter mention was also made of the registration certificate No. AMR-CST-3391 as having been cancelled. There is substance in this submission of the learned Counsel as it is clear that the registration certificate under the Central Sales Tax Act bearing No. AMR-CST-3391 is not mentioned as having been cancelled in the order of the Assessing Authority dated 30th January, 1968. The cancellation of that registration certificate was, therefore, neither proper nor legal.

12. The learned Counsel for the respondent has, however, submitted that the petitioner had the remedy of appeal and revision under the Act which it did not avail of and this petition, therefore, deserves to be dismissed on that ground. The remedy by way of appeal and revision provided under the Act is an adequate opportunity and the petitioner should have followed the same but in the circumstances of this case I find that the impugned order was passed by the Assessing Authority without observing the principles of natural justice and is, therefore, without jurisdiction. I have0 no hesitation in quashing the same in this writ petition even if the petitioner did not avail of the remedies provided under the Act.

13. For the reasons given above, this petition is. allowed with costs and the impugned order of the Assessing Authority dated 30th January, 1968, is quashed. It will, however, be open to the Assessing Authority to take action against the petitioner in accordance with law and the rules on the subject bearing in mind the observations made above. Counsel''s fee Rs. 100.