
(1974) 05 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 36 of 1973

Kapurthala Northern India Tanneries Ltd.

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 08-05-1974

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22

Citation : (1975) 35 STC 375

Hon'ble Judges : Bhopinder Singh Dhillon, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : H.L. Sibal, Kapil Sibal and S.C. Sibal, for the Appellant; Harphul Singh Brar, Deputy Advocate-General, for the Respondent

Judgement

Bal Raj Tuli, J.—This reference u/s 22(1) of the Punjab General Sales Tax Act, 1948, has been made to this court by the Presiding Officer, Sales Tax Tribunal, Punjab, and the following questions of law arising out of the order of the Tribunal have been referred to us for adjudication :

(1) Whether, on the facts and circumstances of this case, sales of the goods in dispute by the petitioner-company to Messrs. Leiner Overseas Limited, Bombay, and the further export of these goods to outside India were transactions in the course of export of these goods from India to places outside India and consequently exempted from the levy of Central sales tax under the Central Sales Tax Act, 1956 ?

(2) Whether, on the facts and circumstances of this case, the alleged transactions between the petitioner-company and Messrs. Leiner Overseas Limited, Bombay, are in the course of export of the goods from India to places outside India and hence exempt from the levy of Central sales tax under the Central Sales Tax Act ?

(3) Whether, on the facts and circumstances of this case, the petitioner-company is not liable to pay Central sales tax on the goods in dispute because if the goods are deemed to have been sold in the State of Punjab, the petitioner-company

was entitled to deduction from its gross turnover of the value of these goods since these have been ultimately exported by Messrs. Leiner Overseas, Bombay, to places outside India. These deductions from the gross turnover are permissible under the Punjab General Sales Tax Act read with Rule 29(v) of the Rules framed under the Act ?

(4) If the reply to question No. (3) is in favour of the assessee, then, whether, on the facts and circumstances of this case, the petitioner-company is not liable to pay Central sales tax under the Central Sales Tax Act because ultimately they have not charged sales tax on the sales of the goods in dispute and by virtue of the Ordinance as the sales are exempt from the tax if the dealer had not charged sales tax between 10th November, 1964, to June, 1969. This proposition of law is clear by Section 10 of the Ordinance.

(5) Whether, on the facts and circumstances of this case, duplicate copies of declaration in form C in respect of sales worth Rs. 22,347.68 having been produced before the Assessing Authority, the Assessing Authority is justified in levying tax at 10 per cent instead of 2 per cent thereon ?

2. We have gone through the statement of the case and find that it has not been drafted in the proper manner. The Tribunal, while making a reference to this court, has to draw up the statement of the case wherein the findings of fact are analysed as far as possible in the language used by the Sales Tax Tribunal in its appellate or revisional order. Relevant findings so recorded should be incorporated in its own words in the statement of the case. It should also be indicated on what materials or evidence its findings of fact were recorded. It is essential to do so because the findings of fact properly arrived at by the Tribunal are binding on the parties and the questions of law arising out of the appellate order or revisional order of the Tribunal have to be answered on the facts as found by that Tribunal. The proper procedure to be followed is to draw up the statement of the case and give notice of the same to the parties inviting their objections to that statement, so that if any matter has been left out, it may be included, if held to be relevant by the Tribunal. It was observed by their Lordships of the Supreme Court in *Agarwal and Co. Vs. Commissioner of Income Tax*, as under :

We consider it necessary to add that the statement of the case made by the Appellate Tribunal is unsatisfactory and gives no information whatever about the arguments respectively advanced by the parties or the findings recorded by the Appellate Tribunal. The statement of the case is not intended to be a mere copy of the order sheet in a litigation, but it must set out the points raised by the aggrieved party, the reply thereto, if any, and the authorities or statutory provisions relied upon for the view taken by the Appellate Tribunal together with an intelligible summary of the facts found by the Appellate Tribunal. A statement of the case should fully, clearly and precisely set out all the relevant facts, or if the facts have been fully set out in the judgment of the Tribunal, they may be incorporated in the statement of the case by a reference to particular paragraphs

of the judgment in which the facts are so set out. In any event, it is important that the Appellate Tribunal should state clearly its conclusions and findings of fact and should not leave it to the High Court or this Court to deduce the findings or to collect the facts from a large number of documents, which are part of the record of the case. A statement of the case which does not set out precisely the findings of the Appellate Tribunal on the questions of law and fact serves no useful purpose. It merely gives an opportunity to the parties to put forward arguments at the stage of reference which are often untenable.

3. It is also well-settled that in the statement of the case, the Tribunal may refer to materials and evidence to which it had not been referred in its appellate order, if such materials and evidence were before it when it heard the appeal. The Tribunal cannot, however, support its order by requisitioning to its aid materials and evidence which were not before it when it heard the appeal, but which were discovered by investigation after the appellate order was passed ; if the Tribunal refers to such materials or evidence, it would be the duty of the High Court to ignore them. All the necessary facts should be found by the Tribunal at the appellate stage ; the Tribunal should not attempt to find facts at the stage of reference or incorporate additional findings of fact in the statement of the case. The findings of fact should be set out in the statement of the case as far as possible in the same language in which they are stated in the Tribunal's appellate order. It is desirable that the Tribunal should submit to the High Court an agreed statement of the case so that the contesting parties may have no grievance when the reference comes up for hearing before the court and there may be no room for the contention that a material fact is omitted or is wrongly stated. The statement of the case is binding on the parties and they are not entitled to go behind the facts found by the Tribunal in the statement. The High Court has to pronounce its judgment on the agreed statement of the case and it would be committing an error if it takes the arguments of counsel as if they were facts and bases its conclusions on those arguments. The Tribunal should, in the case stated, distinguish carefully between the facts admitted or found, the conclusions of fact deduced by it from the facts admitted or found, and its findings in accordance with what it conceives to be the law, for a debate on the meaning of a case stated is an unsatisfactory, prelude to a debate on the general law applicable. Paper books in references to the High Court should contain not only the statement of the case but also the appellate order of the Tribunal and all necessary papers and documents having a bearing on the questions referred. In considering whether there is any evidence to support the Tribunal's findings of fact, the court is entitled to look at the documents and proceedings contained in the paper book, even if there is no specific reference to them in the statement of the case.

4. In the light of the above observations, we find that the statement of the case is not complete. Paragraph 7 states "the facts are not in dispute", but the facts found have not been stated at any place. The various contentions of the parties have been noticed and, ultimately, it is stated in paragraph 10 as under :

After considering the arguments of the learned counsel for the applicant as well as the learned counsel for the State, I am convinced that important questions of law have arisen in this case which need reference to the High Court. It is true that the High Court cannot go into the facts of the case. But here even on the given facts where the contract note itself speaks of both "purchase" as well as "for the purpose of export", it would be difficult to maintain that such a document does not occasion export. It is certainly an important question of law whether this integrated document leads to the inference that the transfer of goods from the applicant-firm to the Bombay firm has occasioned the export . or not. The fact that the port stock registers are maintained by the applicant-firm and advantages of export like the tax credit drawback are coming back to the applicant-firm, makes it even more difficult to say that this transfer did not occasion the export.

5. This paragraph sums up the view of the Tribunal at the stage of reference. It has no reference to the facts found in the appellate order of the Presiding Officer of the Sales Tax Tribunal. The Tribunal has not to find facts at the stage of reference. The facts have to be stated as found by the Tribunal in its final order, appellate or revisional, which is the subject-matter of reference to the High Court on the ground that certain questions of law arising out of that order require determination by the High Court. We are, therefore, constrained to remit the case back to the Presiding Officer of the Sales Tax Tribunal, Punjab, for drawing up a complete and proper statement of the case for the adjudication of the questions of law referred to this court. While drawing up the fresh statement of the case, the Tribunal will be well-advised to keep the above observations in view. The costs will abide the events.

B.S. Dhillon, J.

6. I agree.