

(1971) 05 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2665 of 1970

Khosla Rice Mills	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 25-05-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 10, 11, 5

Citation : (1972) 29 STC 232

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : D.S. Nehra and O.P. Sood, for the Appellant; D.N. Rampal, Assistant Advocate-General and M.R. Sharma, Sr. Deputy Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Sodhi, J.—The petitioner is a partnership firm working under the name and style of Messrs Khosla Rice Mills. It is registered as a dealer under the Punjab General Sales Tax Act (46 of 1948) (hereinafter called as the Act) and is running a rice sheller at Sarna in the District Gurdaspur for the last several years. A penalty to the tune of Rs. 1,25,000.00 was imposed on the petitioner by the Assessing Authority on 14th February, 1969, u/s 10(7) of the Act, vide annexure B, for having allegedly furnished a false return with a view to suppressing purchases of goods for which purchase tax was leviable. An appeal by the petitioner was dismissed by the Deputy Excise and Taxation Commissioner, Jullundur Division, on 4th August, 1969, vide order, annexure C. A further appeal to the Sales Tax Tribunal, Punjab, respondent 2, met with this much success that the amount of penalty was reduced to Rs. 20,000.00 only whereas findings of the Assessing Authority, as affirmed by the Appellate Authority, were maintained. A copy of the order of the Tribunal is annexure D to the petition. It is in these circumstances that this court was moved under articles 226 and 227 of the Constitution to get the impugned orders, annexures B, C and D quashed. A few

facts necessary for the disposal of the writ petition may be stated. The petitioner has been purchasing paddy regularly at different intervals from various dealers for use in the rice mill. Schedule C to the Act gives a list of goods, the acquisition whereof for consideration amounts to a purchase within the meaning of the Act. Rice and paddy are shown as two distinct commodities at serial Nos. 8 and 9 of this Schedule. They were included as separate items vide Punjab Government Notification No. S. O. 7/P.A. 46/48/S. 31/68 dated 15th January, 1968, with the obvious result that with effect from that date tax was payable separately on the purchase of either of these two types of goods. Every dealer is required under the Act to submit to the Assessing Authority returns in the prescribed form S.T.VIII-A annually, quarterly or monthly, as the case may be, showing the purchases made by him for the relevant period. The petitioner submitted his return for the quarter ending 31st December, 1968, and the purchases were shown therein as nil. With the return was appended a covering letter dated 30th January, 1969, wherein it was stated that the petitioner has acquired paddy through commission agents with whom he had relationship as principal and agent. In spite of the notification treating paddy and rice as two distinct commodities, the petitioner chose to consider them as one. It was stated in the letter that since the petitioner was not the last purchaser, no tax was payable by it. Some further reasons were also advanced in the covering letter in support of the position taken up by the firm that no purchases had been made by it for the return period and one of these was that the firm had acquired the goods only to be sold to the Food and Supplies Department and that its case fell within the exemptions enumerated in Section 5 of the Act. It appears that the petitioner had purchased paddy worth lacs of rupees during the period 1st of October, 1968, to 31st of December, 1968, and the Excise and Taxation Officer, respondent 4, was on the look out to check up if the petitioner would show purchases in the quarterly return or not. Soon after the filing of the return, a notice was issued to the petitioner on 10th February, 1969, to show cause why a penalty u/s 10(7) of the Act be not levied for submitting an incorrect return. It was stated in this notice that the Assessing Authority had information with it that the paddy worth lacs of rupees had been purchased during the period in question. Shri S. K. Khosla, partner of the firm, was directed to appear before the Assessing Authority on 13th February, 1969, at Camp Pathankot. He did appear along with his counsel and they were confronted with the information. They were told that, paddy worth Rs. 89,009.07 had been purchased locally at Sarna and that worth Rs. 33,44,368.88 had been purchased from certain dealers in the District of Gurdaspur. It was further told to them that these purchases had been made against furnishing declarations in form S.T. XXII. A dealer, who wishes to deduct from his gross turnover the amount in respect of any purchase on the ground that his case is covered by the provisions of Sub-clause (vi) of Clause (a) of Sub-section (2) of Section 5, has to append with his return a declaration in form S.T. VIII-A as required by Rule 27-A of the Punjab General Sales Tax Rules, 1949 (hereinafter described as the Rules). A reply dated 12th February, 1969, to the show cause notice was given to the Assessing Authority

on 13th February, 1969. It was pleaded that Section 19(7) of the Act was not applicable and that if the Assessing Authority was of the opinion that the return in form S.T. VIII-A was in any way incorrect or incomplete, the only course open to it was to make best judgment assessment u/s 11(2) of the Act for which notice in form S.T. XIV was required to be served. When Shri Khosla and his counsel appeared before the officer on 13th February, 1969, they were asked to produce the accounts on the following day. Sarna is not much distant being only 4 miles from Pathankot and no objection was taken by the representative of the petitioner-firm that the time granted to them was in any way insufficient. None appeared on 14th February, 1969, in spite of having undertaken to do so and respondent 4 then passed an order imposing a penalty of Rs. 1,25,000.00 as it worked out on the basis of the tax which was leviable on the purchases said to have been made by the petitioner. As already stated, an appeal against the order of the Assessing Authority failed and the Tribunal reduced the amount of penalty to Rs. 20,000; hence the present writ petition challenging the validity of the orders, annexures B, C and D passed by the various authorities upholding the finding that the petitioner-firm submitted a false return.

2. Mr. D. S. Nehra, learned counsel for the petitioner, has raised the following points:-

(1) The acquisition of paddy through commission agents does not amount to purchase so as to attract liability to pay purchase tax;

(2) Section 10(7) was not attracted in the instant case as no penalty under the said provision of law could be imposed unless an assessment had actually been made.

3. The argument is that if the return was false and incorrect within the meaning of Section 10(7), the only legal and proper course for the Assessing Authority was to have proceeded to assess to the best of its judgment the amount of tax due from the petitioner and in order to determine the quantum of punishment by way of penalty, it is necessary to make an assessment and it is then alone that it can be known as to what is the amount of tax to which a dealer is liable. In this very context further argument is that in the Act there is no provision for refund of penalty and for ought we know at the time of the final assessment it may be found that the tax actually assessed is much less which was thought by the Assessing Authority to be leviable at the time of the consideration of the matter of penalty u/s 10(7). According to the learned counsel, it could not be intended by the Legislature that a penalty is recoverable but the same cannot be refunded if ultimately it turns out that it cannot be lawfully imposed. For all these reasons, it is urged that proceedings relating to assessment and imposition of penalty have to be taken together;

(3) that, at any rate, the petitioner acted bona fide inasmuch as there was a controversy going on in those days as to whether paddy and rice were to be treated as separate commodities or only as one commodity for the purpose of

sales tax, and

(4) that the petitioner was not afforded reasonable opportunity of being heard against the charge of submitting a false return inasmuch as the Assessing Authority hastened to pass the impugned order, annexure B, on 14th February, 1969, when the petitioner failed to appear on that date for sufficient cause.

4. I have given my thoughtful consideration to the various contentions of the learned counsel but I have not been able to persuade myself to hold that the return, as submitted by the petitioner, was not false so as to attract penalty. The only question before the Assessing Authority was whether the return filed by the petitioner contained any information which was false or incorrect in any material particular within the meaning of Section 10(7) and there can be no manner of doubt that relevant information about the purchases made by the petitioner during the quarter in question had been withheld. As a matter of fact, the purchases were shown as nil.

5. Before taking up the other contentions of the learned counsel, I shall first deal with the last one relating to the alleged want of reasonable opportunity to defend himself against the charges as levelled in the show cause notice. What is a reasonable opportunity depends on the facts and circumstances of each case and no hard and fast rule can be laid down. The petitioner challenged the validity of the notice and submitted his reply dated 12th February, 1969, in which Shri S. K. Khosla, partner of the firm, undertook to appear personally or through an authorised agent. On 13th February, 1969, when he was present before the Assessing Authority along with his counsel, Shri M. C. Sood, he was asked to produce on the following day the books of account showing particulars of the transactions entered into by him. The details in possession of the Assessing Authority about the alleged purchases were disclosed to the petitioner and his counsel, but no protest was lodged by either of them that the time given was short. No appearance was put in on the next day as promised by Mr. S. K. Khosla and his counsel. What happened was that instead of appearing personally on 14th February, 1969, and producing the books of account, a registered letter acknowledgment due, was sent to the Assessing Authority in which a request was made to adjourn the case to some other date either at Batala or at Gurdaspur as the counsel, Shri M. C. Sood was not in a position to appear on that day. The letter though bearing the date 14th February, 1969, was received in the office of the Assessing Authority at Gurdaspur on 21st February, 1969. I have looked into the original file and the postal stamp also bears the date of its receipt at Gurdaspur as 21st February, 1969. In this letter a mention is made that a telegram asking for adjournment had been sent but no such telegram of that date is traceable on the record. The conduct of the partner of the firm leaves no room for doubt that there was an attempt to avoid producing the record, and the letter of 14th February, 1969, was an excuse for the omission to comply with the orders of the Assessing Authority as made on 13th February, 1969. The Assessing Authority waited for someone to appear on behalf of the petitioner till

4.30 P.M. on that date and it was after that, that the ex parte order was passed. No grievance can, in my opinion, be made by the petitioner on the ground that no opportunity was afforded to the firm to establish its defence. In such circumstances, no fault can be found with the Assessing Authority in relying upon the information in its possession about the value of the goods purchased for the assessment period in dispute or in regard to the nature of transactions, more so, when the details of those transactions had been disclosed to the petitioner and his counsel by the Assessing Authority on 13th February, 1969. As already stated, the Assessing Authority was camping at Pathankot, and Sarna where the rice sheller is installed is hardly four miles from there. If the counsel was not available, the partner who appeared the previous day could have presented the application himself to the Assessing Authority and made a request for adjournment but instead he chose a circuitous course of sending letter by registered post.

6. In the background of this conduct of a partner of the petitioner-firm, no value can be attached to the other contentions. It was open to the petitioner to establish by production of records or other evidence that the transactions as a result whereof he acquired goods did not amount to purchases but he did not avail of the opportunity given to him. The records were withheld and no other evidence was produced. Mr. D. S. Nehra, learned counsel for the petitioner, vehemently argued that the transactions did not amount to purchases but the learned counsel failed to appreciate that it is a matter of evidence and in the absence of there being any data to that effect it is not possible for this court to pronounce as to the nature of the transactions. The argument of the learned counsel is that the petitioner acted bona fide inasmuch as in the covering letter dated 30th January, 1969, with which the return was submitted, reasons were given as to why purchases had been shown as nil. The learned counsel loses sight of the fact that even in this letter no details are stated as to the quantity and quality of goods acquired and from whom they were acquired. All that is said therein is that return in form S.T. VIII-A shows turnover as nil for the following reasons :-

(a) That we have acquired the paddy through commission agents, with whom our relationship is that of principal and agent and not that of purchaser and seller.

(b) That the bulk of our purchases is not in the normal course of business but in the course of enforcement, of Essential Supplies Act/Punjab Procurement Price Control Order. The ultimate object of the so-called purchase is the compulsory acquisition of rice by the Government. The purchase not being in the normal course of business is not purchase for the purposes of the Punjab General Sales Tax Act, 1948.

(c) That rice/paddy is one commodity and u/s 5(3)(a)(ii) of the Punjab General Sales Tax Act, 1948, tax is leviable on the last purchaser. Since in our case we are not the last purchasers, no tax is payable by us on the rice/paddy which as submitted above are not different commodities.

(d) That we have not exhausted the entire paddy and as such, we have not acquired the character of last purchaser. This position will depend upon the mode of final disposal of the paddy/rice.

(e) That if compulsory acquisition of rice by Food and Supplies Department is treated as sale then we have sold it to Food Corporation of India, Food and Supplies Authorities, who are registered under the Punjab General Sales Tax Act, 1948. We are entitled to deductions u/s 5(2)(a)(vi) on that account.

7. Reasons or arguments could not take the place of facts which had to be stated. It was a different matter if the alleged transactions were mentioned and particulars stated but instead of doing so only reasons were given for not treating them as purchases on which tax could be levied. It was all a talk in the air without any basis and obviously with a deliberate intention to avoid giving correct information.

8. The next contention that requires to be examined is as to whether it was obligatory on the part of the Assessing Authority to have issued notice in form S.T. XIV in order to make best judgment assessment u/s 11(5) of the Act and not to have taken action u/s 10(7) by way of imposition of penalty for an allegedly incorrect or false information in the return. However desirable it may be for an Assessing Authority, in the circumstances of a particular case, to wait till the assessment is finalised and the falsity of the return finally established, but an Assessing Authority is not under the law prevented from taking action u/s 10(7) if the circumstances of the case so warrant. Sections 11 and 10 are independent of each other and the Legislature could not have intended that no action can be taken u/s 10 till assessment has been completed u/s 11. These two sections deal with separate subjects and the Assessing Authority has to exercise its discretion in each case in a reasonable manner in determining whether it should impose penalty before the assessment is completed or stay hands till then. If it finds that the incorrectness or falsity of the information as given in the return is writ large it is not bound to defer action u/s 10(7). The mere fact that the Act contains no provision for returning money wrongly imposed as penalty does not warrant the assumption that action u/s 10 is dependent on Section 11. No doubt, the previous record of the petitioner was unblemished, but for reasons best known to the firm, in the return in dispute no transaction was shown at, all, though, according to the Assessing Authority, purchases involving several lakhs of rupees had been entered into. Some arguments were, however, raised as to the liability for the payment of purchase tax. Whether the purchases are leviable to purchase tax or some deductions are legally claimable by the assessee in the matter of payment of tax are all matters to be proved by the assessee to the satisfaction of the Assessing Authority but raising of such contentions does not by itself give a right to the assessee not to show those transactions in the return. The transactions in the present case were mostly of paddy and it is not understandable how the petitioner could bona fide believe that paddy and rice constitute one commodity. A perusal of Schedule C cannot leave any room for

doubt that rice and paddy are two separate and distinct commodities shown differently at serial Nos. 8 and 9 of the said Schedule.

9. In the result, the order of the Tribunal upholding those of the appellate and Assessing Authorities imposing penalty on the petitioner for submitting a false return u/s 10(7) of the Act is unexceptionable. It is not open to this court to sit in appeal on the quantum of penalty even if the same is, in view of the previous record of the petitioner, considered to be rather excessive. The writ petition consequently stands dismissed but the parties are left to bear their own costs.