(1982) 03 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2600 of 1973

Krishna Dal Mills — APPELLANT

Vs

The State of Haryana and Others — RESPONDENT

Date of Decision : 05-03-1982

Acts Referred:
Constitution of India, 1950 — Article 286
Punjab General Sales Tax Act, 1948 — Section 10, 29

Citation : (1983) 52 STC 248

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Advocate : G.C. Garg and Hemant Kumar, for the Appellant; V.K. Vashisht, for A.G., for the Respondent

Judgement

A.S. Bains, J.—The petitioner is a partnership firm known as M/s. Krishna Dal Mills, Loharu. It is registered at Hissar. It deals in the sale and purchase of dais. In the course of its business it sold the commodity on consignment basis outside the State of Haryana to the tune of Rs. 1,60,580.65. The Assessing Authority, i. e., respondent No. 3, while framing assessment for the assessment year 1969-70 treated these sales as taxable, in spite of the explanation given by the petitioner that such sales could not be assessed to tax in view of the provisions of Section 29 of the Punjab General Sales Tax Act, 1948 (hereinafter called as the Act). The Assessing Authority also imposed a penalty of Rs. 3,500 under Sub-section (7) of Section 10 of the Act. Copy of the assessment order is attached with the petition as annexure B.

2. The petitioner-firm filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Rohtak, who vide his order dated 23rd June, 1972 (copy annexure C with this petition), upheld the tax of Rs. 4,504.86 on the sales outside the State of Haryana, but reduced the amount of penalty from Rs. 3,500 to Rs. 2,500.

3. The petitioner-firm preferred second appeal before the Sales Tax Tribunal,

Haryana, Chandigarh, which was also dismissed and the order passed by the first appellate court was upheld-copy of the Tribunal''s order is attached with this petition as annexure D. It is against the aforesaid orders that the present petition has been filed.

4. Mr. Garg, the learned counsel for the petitioner-firm, canvassed that in view of Section 29 of the Act, sales conducted outside the State of Haryana on consignment basis could not be taxed. Section 29(1)(a) is in the following terms :

29. Provision in case of inter-State trade, etc.--(1) Notwithstanding anything contained in this Act,--

(a) a tax on the sale or purchase of goods shall not be imposed under this Act,--

(i) where such sale or purchase takes place outside the State of Punjab; or

(ii) . . .

From the reading of this provision it is plain that the sales of goods conducted outside the State are not taxable and could not be assessed to tax. Reference in this connection may also be made to a.Full Bench decision of the Allahabad High Court reported as Commissioner, Sales Tax, U. P. v. Allied Chemicals, Kanpur [1969] 23 STC 165 (FB), wherein their Lordships of the Full Bench observed as follows :

Sales made outside Uttar Pradesh and exempted under the provisions of Article 286 of the Constitution of India could not be included in the turnover of a dealer in the assessment year 1956-57 for the purpose of the first provision to Section 3(1) of the U. P. Sales Tax Act, 1948. Section 27 overrides all other provisions of the Act including Section 3, which is the charging section. Therefore neither the first proviso to Section 3 nor the definition of ''sale'' in Section 2(h) nor of ''turnover'' in Section 2(i) can be applied to include sales made outside Uttar Pradesh.

In the Allahabad case, Section 27 of the U. P. Sales Tax Act, 1948 (which is in pari materia the same as Section 29 of the Punjab General Sales Tax Act) was interpreted and it was observed that Section 27 overrides all the provisions of the Act including Section 3, which is a charging section. The definitions of "sale", "turnover" and the charging provision of the Act are substantially the same as in the U. P. Sales Tax Act.

5. In this view of the matter, this petition is partly allowed and the impugned orders are quashed to the extent that the sales made outside the State could not be assessed to tax. No costs.

