(1966) 04 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2705 of 1964

Madan Mohan and Another — APPELLANT

Vs

The District Excise and Taxation Officer and Assessing Authority and Another — RESPONDENT

Date of Decision : 29-04-1966

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 16, 18, 23

Citation : (1966) 18 STC 364

Hon'ble Judges : D.K. Mahajan, J;A.N. Grover, J

Bench : Division Bench

Advocate : G.C. Mittal, for the Appellant; A.M. Suri, for A.G., for the Respondent

Final Decision : Allowed

Judgement

A.N. Grover, J.—This petition under Article 226 of the Constitution of India was referred by me to a Division Bench as a question of retrospective operation of the amending provisions introduced by the Punjab General Sales Tax (Amendment) Act, 1963, in Section 18 of the East Punjab General Sales Tax Act, 1948 (hereinafter called the Act) was involved. The facts lie within a narrow compass. It was alleged in the petition that the firm Messrs Mangat Rai Madan Mohan was a partnership concern consisting of two partners Mangat Rai and Madan Mohan. This firm was dissolved by a deed of dissolution dated 31st May, 1962 (annexure "A"). An intimation of dissolution was sent to the Assessing Authority on 2nd June, 1962, together with a request for cancellation of the registration certificate (armexure "B"). A notice in Form S.T. XIV dated 30th November, 1963, was received in the name of the dissolved firm for the year 1961-62 under the Act as well as the Central Sales Tax Act. Petitioner No. 1 brought it to the notice of the Assessing Authority on 6th October, 1964, during the course of the assessment proceedings that the firm stood dissolved with effect from 31st May, 1962, and that no assessment could be made on the firm which had been dissolved. This objection was pressed time and again but the Assessing Authority proceeded to finalise the assessment and passed assessment orders (annexures "C" and "D") creating a demand of Rs. 9,680.97 under the Central Sales Tax Act and Rs. 1,706.92 under the Act on best judgment basis.

2. In the return filed on behalf of the respondents the facts with regard to the dissolution of the firm were not specifically denied but it was stated that the petitioners might be put to strict proof of the same. As regards the information regarding the dissolution of the firm as also the request for cancellation of the registration certificate, it was admitted that an application dated 2nd June, 1962, was received from the petitioners for cancellation of the registration certificate. It was further stated that another application regarding the dissolution of the firm was given on 3rd August, 1962, when the case for reassessment for the year 1960-61 was still pending.

3. A Full Bench of this Court in Jullundur Vegetable Syndicate v. The Punjab State [1962] 13 S.T.C. 251(P&H) held that a partnership, which was a registered dealer under the provisions of the Act and which was in existence throughout the period for which assessment of sales tax had to be made, was not liable to the said assessment if it had been dissolved before the proceedings for assessment were initiated. It was further held that the information which was to be furnished u/s 16 of the Act regarding the discontinuance of the business of the firm was only for administrative purposes such as cancellation or amendment of the certificate of registration, and the default in giving such information made the person responsible for default liable to penalty under Clause (h) of Section 23(1). It had no connection with the liability to assessment. On 10th January, 1963, the Punjab General Sales Tax (Amendment) Ordinance, 1963, was promulgated which was followed by the Punjab General Sales Tax (Amendment) Act, 1963. By Section 6 of this Act Section 18 was inserted in the Act, which reads as follows :-

18. (1) Where a dealer is an undivided Hindu family, firm, or other association of persons, and such family, firm or association is partitioned, dissolved or disrupted, as the case may be,-

(a) the tax payable under this Act by such family, firm, or association of persons for the period up to the date of such partition, dissolution or disruption may be assessed as if no such partition, dissolution or disruption had taken place and all the provisions of this Act shall apply accordingly ; and

(b) every person who was at the time of such partition, dissolution or disruption a member or partner of an undivided Hindu family, firm or association of persons shall, notwithstanding such partition, dissolution or disruption, be liable severally and jointly for the payment of the tax including interest and penalty, if any, payable under this Act by such family, firm or association of persons, whether assessment is made prior to or after such partition, dissolution or disruption....

4. An appeal was taken to the Supreme Court against the judgment of the Full Bench mentioned above and the decision of their Lordships is reported in The State of Punjab v. Jullundur Vegetables Syndicate 1966] 17 S.T.C. 326 (p&h)

Apart from upholding the judgment of this Court and overruling a Bench decision in Khushi Ram Behari Lal and Co. Vs. The Assessing Authority and Another, it was observed at page 332 :

There, is, therefore, a lacuna in the Act, which was filled up later on by an amending Act; but the said amending Act, it is conceded, is not retrospective in operation.

5. This concession, which appears to have been accepted as correct by their Lordships, has been relied upon by Mr. Gokal Chand Mittal, learned counsel for the petitioners, who submits that it has set at rest any doubts which might have been entertained with regard, to the amending Act being retroactive. There can be no manner of doubt that the concession was made in unequivocal terms and it is difficult to accept the suggestion of Mr. Anand Mohan Suri, learned counsel for the respondents, that the amending Act can still be held to be retrospective in operation. The latest decisions of this Court are also in favour of the view that the amending Act cannot be given retrospective operation. R.S. Narula, J., in Harjas Mai Dila Ram v. The Excise and. Taxation Officer 1966 All Tax Reportes 1 had to deal with a. case where the petitioner-firm was dissolved on 10th April, 1962, of which intimation was sent to the Registrar of Firms as well as the Assessing Authority. The notices in Form S.T. XIV were sent to the petitioner for the turnover for the period from 1st April, 1960, to 31st March, 1961, on 17th April, 1964, and 19th May, 1964, and the assessment order was passed on 25th September, 1964, under the Act and the Central Sales Tax Act. It was held that the petitioner-firm was not liable to assessment in respect of any period prior to its dissolution on 10th April, 1962, in respect of which no subsisting assessment order had been made before the date of dissolution. The learned Judge followed the decision of P.D. Sharma, J., in Bishan Dial Hans Raj v. The State of Punjab Civil Writ No. 483 of 1963 decided on 20th April, 1965 and of the Supreme Court already referred to before.

6. Apart from the matter being concluded by the decision of their Lordships, the language of Section 18 as introduced by the amending Act is in such terms that it is not possible to read any retrospectivity in it. The use of the present tense in the opening part of Sub-section (1) shows that the intention was to enact the provision prospectively and not retrospectively.

7. Mr. Anand Mohan Suri has sought to argue that the liability of a dealer under the Act arises the moment he files a return and that the return was filed in the present case before the firm was dissolved. That, however, will not make any difference in view of the clear pronouncement of their Lordships in the matter.

8. In the result, this petition is allowed and the order of the Assessing Authority in the matter of assessment of the dissolved firm for the period in question is hereby quashed. In the circumstances there will be no order as to costs.

D.K. Mahajan, J.

9. I agree.

