

(2001) 07 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : S.T.C. No"s. 23, 24 and 25 of 1989

Malik Iron and Steel Rolling Mills

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 25, 42, 42(3)

Citation : (2002) 126 STC 220

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; Palika Monga, AAG, for the Respondent

Judgement

Jawahar Lal Gupta, J.—These three cases relate to three assessment years, viz., 1973-74, 1975-76 and 1976-77. The short issue is-- was the petitioner-assessee liable to pay interest despite its having deposited the tax in accordance with the return ? A few facts may be noticed.

2. The petitioner is engaged in the manufacture of iron and steel rounds. It purchases ingots and billets as the essential inputs. On the end-product, the assessee collected sales tax at 3 per cent from the purchasers. While filing the return, the assessee deducted the amount of sales tax paid on the raw material, viz., the billets and ingots. On the basis of the taxable turnover, the assessee deposited the sales tax. Admittedly, the tax paid on the purchase of raw material had been deducted. Initially, the returns filed by the assessee were accepted. Subsequently, the matter was re-opened on the ground that the assessee could not have deducted the amount of tax paid on the purchase of ingots and billets. Thus, an addition was made to the taxable turnover by invoking the provisions of Section 25(5) of the Haryana General Sales Tax Act, 1973. The assessee was held liable to pay interest on the amount of tax so determined by the competent authority. The order was affirmed by the appellate authority and the Tribunal. Hence, these cases u/s 42(2) of the Act.

3. The solitary contention raised by Mr. Jhingan, learned counsel for the petitioner, in all the three cases is that the Tribunal had primarily relied upon the decision of their Lordships of the Supreme Court in *Associated Cement Co. Ltd. v. Commercial Tax Officer* [1981] 48 STC 466 to sustain the claim of the Revenue for payment of interest. This decision has been considered by the apex Court in *J.K. Synthetics Ltd. v. Commercial Taxes Officer* [1994] 94 STC 422. In view of the latest pronouncement, the view taken by the Tribunal cannot be sustained.

4. This position is not disputed by Ms. Palika Monga, who appears for the Revenue.

5. In *J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another*, it has been held that if the assessee pays tax on the amount shown in the return, the interest is not leviable. The provisions in Section 25 (3) and (5) of the Haryana General Sales Tax Act, 1973 are akin to those which fell for consideration in *J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another*. Resultantly, it is apparent that the Tribunal's view based on the earlier decision in the case of *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*, is no longer tenable. The issue has been settled in favour of the assessee and the position is not disputed by the counsel for the Revenue.

6. Despite the above, it has been pointed out by the counsel for the parties that in view of the provisions of Clause (3) of Section 42, this Court has to direct the Tribunal "to state the case and refer it" for decision.

7. It is undoubtedly correct that if the provision is literally construed, it would be right to require the Tribunal to state the case and then take a decision. This would be the normal course. However, in the present case, there is no dispute on facts. The issue of law has been authoritatively decided by the apex Court. Should this Court still issue a direction to the Tribunal to make a reference to this Court ? Would it serve any purpose? We think not. It would only mean an avoidable loss of time and money. It would not benefit either the assessee or the Revenue. Nor would strict adherence to the letter of law serve any public interest. In view of these facts, it does not appear to be necessary to direct the Tribunal to state the case and make a reference to this Court.

8. It deserves notice that while dealing with the provisions of the Income Tax Act, 1922, their Lordships of the Supreme Court had considered a similar matter in the case of *Commissioner of Income Tax, Punjab Vs. Jai Parkash Om Parkash Company Ltd.*. It was held by their Lordships that while considering an application u/s 66(2) which corresponds to Section 256(2) of the 1961 Act, the High Court could not decide the case and answer the question without calling upon the Tribunal to make a reference. Similar view was also taken by their Lordships of the Supreme Court in the case of *Commissioner of Income Tax, Ernakulam Vs. Managing Trustee, Jalakhabai Trust*. In the light of these

decisions, even the Kerala High Court had interpreted the law in similar terms in the case of COMMISSIONER OF Income Tax Vs. WANDOOOR JUPITER CHITS (P.) LTD. (IN LIQUIDATION)., . In view of these authoritative pronouncements, we would have been normally bound to follow the course as required by the statute. However, we find that in two cases, their Lordships have made a slight departure. Reference in this behalf may be made to the cases of Commissioner of Income Tax, Lucknow Vs. Narang Dairy Products, Lucknow, and Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., . Honourable the Supreme Court had given the decision without directing the High Court to call for the statement of the case.

9. Undoubtedly, their Lordships have much wider powers than this Court. However, it appears that a similar course has also been adopted by the Delhi High Court in the case of COMMISSIONER OF Income Tax Vs. MAHARISHI VED VIGYAN VISHWA VIDYA PEETHAM., . It was held that it was not imperative to follow the "unnecessary and cumbersome part of the procedure" which in the opinion of their Lordships was "directory". Thus, the court had proceeded to "straightaway.....answer the question". Similar view has also been taken by the Orissa High Court in State of Orissa v. Mahabir Prasad Agrawalla [1990] 79 STC 163 and Maharana and Maharana v. State of Orissa [1991] 82 STC 242.

10. We are also of the view that while construing the provisions of a statute, the principle of "updating construction" should be adopted. It means that "a construction that continuously updates" the working of an on-going Act has to be followed. In other words, it means that "in its application on any date, the language of the Act though necessarily embedded in its own time is nevertheless to be construed in accordance with the need to treat it as current law". The principle has been quoted in (1999) 102 Taxman 135, by Mr. Sanjay Bansal as under :

"In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since, the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as "a living Constitution", so an ongoing British Act is regarded as "a living Act". That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording."

11. Respectfully following the later decisions, we find that no useful purpose would be served by calling upon the Tribunal to state the case and make a reference. Thus, to avoid unnecessary wastage of time, we think it appropriate to decide the matter. Since the facts are admitted and the law has been settled by their Lordships of the Supreme Court, we think that the question as raised by the

assessee has to be answered in its favour. Resultantly, we do so. It is held that the Tribunal was not justified in upholding the levy of interest. Resultantly, the assessee shall be entitled to its refund.

12. In view of the above, the question as posed at the outset in all the three cases is answered in favour of the assessee. However, there will be no order as to costs.