

(1978) 12 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2487 of 1977

Mangal Chand Phool Chand	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 19-12-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 13, 8, 9
Constitution of India, 1950 — Article 20, 226, 246, 265
Punjab General Sales Tax Act, 1948 — Section 10

Citation : (1980) 45 STC 477

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : R.S. Mittal and N.K. Khosla, for the Appellant; A.S. Nehra, Additional Advocate-General and B.R. Gulati, D.A., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—In this petition under Article 226 of the Constitution of India, the validity of Section 9(2A) of the Central Sales Tax Act, 1956 (hereinafter referred to as the Act), has been challenged on the ground that the Parliament has delegated its essential legislative functions in favour of the State Legislature by providing that the penalty for non-payment of taxes under the Act shall be the same as fixed under the State law as also that the procedure provided for in the State law for the realisation of such penalty could be invoked for taking similar action under the Act.

2. The brief facts of the case are that the petitioner-firm was a registered dealer under the Act. It submitted periodic returns about the transactions of sale and purchase made by it. For the assessment year 1970-71, it showed its gross turnover at Rs. 88,67,705.36, whereas the said turnover assessable according to the books produced and the list of sales worked out came to Rs. 2,06,76,966.19. An argument was raised before the Assessing Authority that the returns had been filed correctly and the gross turnover had been worked out incorrectly

because of an inadvertent mistake in totalling. This argument did not prevail with the Assessing Authority, which held that there was no absence of mens rea and the dealer was liable to pay penalty to the extent of Rs. 2,25,000.00 u/s 9(2) of the Act read with Section 10(7) of the State Act.

3. In support of the argument raised, Mr. R.S. Mittal, the learned counsel for the petitioner-firm, has placed reliance upon a recent decision by their Lordships of the Supreme Court in *Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*, in which it was observed as under:

I also find from the Mysore Act of 1957, that Section 13 of the Act was entirely recast in 1958. It would, I think, be carrying the theory of referential legislation too far to assume that Section 9(2) of the Central Act, 1956, purported to authorise the State Legislatures to impose liabilities in the nature of additional tax or penalties leaving their rates and conditions for their imposition also to be determined by the State Legislatures as and when the State Legislatures decided to impose or amend them. It is evident that these differ from State to State, and, in the same State, at different times. A conferment of such an uncontrolled power upon the State Legislatures could, if it was really intended, be said to travel beyond the province of permissible delegated legislation on the principles laid down long ago by this court in *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, as no guidelines are given in Section 9(2) about the nature, conditions or extent of penalties leviable. If such a power was really conferred would it not amount to an abdication of an essential legislative function with respect to a matter found as item 92A of the Union List I of the Seventh Schedule, so that, according to Article 246(1) of our Constitution, Parliament has exclusive power to legislate on a topic covered by it? As this question was not argued before us I would only say that the correct canon of construction to apply in such a case is that we should so interpret Section 9(2) of the Central Act, if possible, that no part of it may conceivably be invalid for excessive delegation. The well-known maxim applicable in such cases is: *ut res magis valeat quam pereat*.

On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the Law. The machinery or procedure for its realisation comes into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well-settled canon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realisation of tax. It is more than that. Such liabilities must be created by clear, unambiguous

and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good government of laws. It is implied in the constitutional mandate found in Article 265 of our Constitution: "No tax shall be levied or collected except by authority of law."

4. The learned counsel argued that in order to overcome the aforementioned observations, the Parliament enacted Act No. 103 of 1976, by which Sub-section (2A) was added to Section 9 of the original Act, which reads as under:

(2A) All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in Sections 10 and 10A of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.

5. It has been submitted that the penalty has not been quantified by the Parliament and since the same can be varied from time to time by the State Legislature, the Parliament has in substance abdicated its essential legislative functions in favour of the State Legislature.

6. On behalf of the respondents, reliance has been placed on Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, . In that case, the constitutional validity of Section 8(2)(b) of the Act, which allows the adoption of the State rate of tax on intra-State sales if it is higher than ten per cent was held not to amount to abdication of legislative functions or to excessive delegation of such functions.

7. After hearing the learned counsel for the parties, I am of the view that there is no merit in the argument advanced on behalf of the petitioner. In *Khemka and Co. A.I.R. 1975 S.C. 1549*, the opinion expressed was that before a penalty could be created it should be so done by clear, unambiguous and express enactment. In the light of these observations the Parliament intervened and amended Section 9(2) of the Act by adding Sub-clause (2A) to it. That clause when properly read shows that the Parliament after consideration of the matter thought it fit that the quantum of penalties imposed under the Act should coincide with the quantum of penalties imposable under the State laws. I might also add that the tax collected under the Act is essentially meant for augmenting the revenues of the State Government. The delegation of power, if any, has been made to a responsible authority which had fixed the minimum and the maximum limits of the penalty imposable. Section 9(2A) of the Act cannot be said to suffer from the vice either of abdication of essential legislative function by the

Parliament or of excessive delegation of legislative powers.

8. It was then contended by Mr. Mittal, the learned counsel for the petitioner, that the amending Act No. 103 of 1976 was brought on book on 7th September, 1976. Its application to past transactions would follow the constitutional guarantee contained in Article 20 of the Constitution.

9. There is no merit in this submission either, because what Article 20 of the Constitution prohibits is the prosecution and the subsequent conviction of an accused person by what are commonly known as ex post facto laws. An Assessing Authority while imposing a penalty on a defaulting assessee for non-payment of tax can by no stretch of imagination be deemed to be prosecuting such an assessee for the commission of a criminal offence.

10. Last of all, it was argued that the observations made by the Assessing Authority indicate that the assessee did not conceal anything in the quarterly returns filed by it and its only fault is that the figures mentioned in the returns were incorrectly totalled up. It is argued that for such a minor lapse a penalty of Rs. 2,25,000 should not have been imposed on it. The contention raised is not wholly without substance but this is a matter which could more properly have been agitated before the appellate and the revisional authorities especially in view of the amendment of Article 226 of the Constitution of India. The petitioner may, if so advised, avail of the statutory remedies to seek redress of its grievance on this point.

11. For the reasons mentioned above, I find no force in this petition which is hereby dismissed.

12. C.W.P. Nos. 3211 and 3216 of 1977 also stand disposed of by this judgment.