
(1984) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No's. 7 and 8 of 1977

Mangoo Ram Mohan Lal

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 02-08-1984

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 2, 21

Citation : (1987) 65 STC 45

Hon'ble Judges : Surinder Singh, J; D.S. Tewatia, J

Bench : Division Bench

Advocate : Ajay Mittal, for the Appellant; R.P. Bali, for the Respondent

Judgement

D.S. Tewatia, J.—This judgment would dispose of General Sales Tax References Nos. 7 and 8 of 1977, which involve common question of law and fact that arise for consideration from the order of reference of the Sales Tax Tribunal dated 22nd February, 1977, whereby it referred the following question for the opinion of this Court:

Whether under the facts and circumstances of the present case, the provisions of Haryana General Sales Tax Act, 1973, could be made applicable in view of the fact that the assessment already stood finalised before coming into force of the new Act?

2. For appreciating the import of the question proposed, a few relevant facts deserve noticing at the very outset. The petitioner's assessment for the assessment years 1967-68 and 1968-69 was finalised by the Assessing Authority on 12th April, 1972 and 24th October, 1972, respectively. The Assessing Authority was of the opinion that no tax was leviable on the turnover to the extent of Rs. 46,218.11 and Rs. 61,869.00 for the respective assessment years relating to the sale of sarson sold by the petitioner-firm outside the State of Haryana on consignment basis because of the decision of this Court reported as *Usha Cotton Ginning & Pressing Factory v. State of Punjab* 1970 RLR 273. This

Court rendered that judgment in the light of the definition of the term "dealer" as it existed in Section 2(d) of the Punjab General Sales Tax Act, 1948. Subsequent to the assessment orders, the Haryana Legislature framed its own Act known as the Haryana General Sales Tax Act of 1973 (hereinafter referred to as the Haryana Sales Tax Act), which came into operation with effect from 5th May, 1973. In Haryana Sales Tax Act the definition of "dealer" was materially changed and the legislature expressly made the same operative with retrospective effect from 7th September, 1955.

3. In the wake of the changed definition of the term "dealer" in the Haryana Sales Tax Act, the Deputy Excise and Taxation Commissioner (Appeals), Rohtak, suo motu initiated action u/s 40 of the Haryana Sales Tax Act against the petitioner-firm. He by his order dated 16th July, 1974, directed that the turnover of Rs. 46,218.11 for the year 1967-68 and Rs. 61,869.00 for the year 1968-69 would be treated as part of the taxable turnover and liable to tax. He, therefore, modified the orders of the Assessing Authority. His order was challenged before the Tribunal which sustained the order and dismissed the appeal.

4. Mr. Ajay Mittal, counsel for the petitioner, has canvassed that the case of the petitioner-firm for the assessment years 1967-68 and 1968-69 could not be reopened as the assessment orders had become final before the Haryana Sales Tax Act came to be enacted and in support of his submission placed reliance on State of Punjab and Others Vs. Sukh Deb Sarup Gupta, and Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh, . In our opinion, the ratio of these two decisions is not attracted to the facts of the present case. The above two cases dealt with the situation where amending Acts in question were apparently prospective in nature and the question arose as to whether its relevant provisions could be so interpreted as to effect the final decisions rendered prior to the amendment. Such is not the case here for the legislature in the present case has expressly made the given provision effective from a back date ; that the legislature did it consciously is evident from the fact that different provisions have been given retrospective effect from different dates. That the legislature is competent to enact a legislation with retrospective effect is no longer in doubt as the matter stands settled by their Lordships of the Supreme Court in Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., , wherein it has been expressly held that the legislative power to impose tax also includes within itself the power to tax retrospectively.

5. Mr. Ajay Mittal, Advocate, then urged that since Section 40 of the Haryana Sales Tax Act was given retrospective effect from 1st March, 1968, so while acting under this provision the Deputy Excise and Taxation Commissioner (Appeals) could reopen the Assessing Authority's order pertaining to the year 1968-69 only. In our opinion, there is no merit in this contention. The aspect which is relevant for consideration in this regard is as to whether on the date on which the authority chose to act was it competent to do so. It is not relevant that the order which it was to reopen pertained to an assessment year which

happened to fall in point of time before the date when the revisional power was created. In any case, Section 40 of the Haryana Act merely replaces the existing Section 21 of the Punjab Act. In both the sections the relevant provision authorising the concerned authority to reopen the decided cases suo motu without any limitation in regard to the time are in pari materia.

6. For the reasons aforementioned, the reference is answered in the affirmative, i.e., in favour of the Revenue and against the assessee. No order as to costs.

Surinder Singh, J.

7. I agree.