
(2005) 12 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Sales Tax Case No. 9 of 1991

Mansa Co-operative Spinning Mills Ltd.	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10(6), 22(2)

Citation : (2006) 148 STC 443

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : K.L. Goel and Vivek Goel, for the Appellant;

Judgement

1. By this petition filed u/s 22(2) of the Punjab General Sales Tax Act, 1948 (for short, "the Act"), the petitioner seeks a direction to the Sales Tax Tribunal (for short, "the Tribunal") to state the case and refer the following questions of law for the opinion of this Court:

1. Whether, on the facts and circumstances of the case, the honourable Tribunal is justified to hold that penalty u/s 10(6) is leviable in this case, when tax has been paid in full according to return filed by the assessee ?

2. Whether the honourable Tribunal is justified to hold that penalty u/s 10(6) is leviable in the case, when the assessee was under bona fide belief that tax has been paid according to law ?

2. We have heard learned Counsel for the parties.

3. Since, in our opinion, the main issue raised in the aforementioned question No. 1, namely, whether the assessee could be visited with penalty u/s 10(6) of the Act when it has paid full tax on the basis of the return furnished, is purely legal and is no more res integra as it stands concluded by the decision of the Supreme Court, with the consent of the parties, we dispense with the calling of the statement of the case from the Tribunal, and proceed to dispose of the

present petition finally by converting it into a regular sales tax reference.

4. An almost identical issue came up for consideration of the apex court in J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422. In that case, the question for consideration was whether interest u/s 11B of the Rajasthan Sales Tax Act, before its substitution by Act No. 4 of 1979 with effect from April 7, 1979, could be levied on the additional sales tax, determined at the time of final assessment when full amount of "tax due on the basis of the return furnished by an assessee, had been paid". Their Lordships of the Supreme Court came to the conclusion that u/s 7(2) of the said Act, a dealer is required to file with its return, a receipt showing deposit of the full amount of tax "due on the basis of the return". In other words, a dealer is required to pay the full amount of tax that becomes due, on the basis of the particulars in regard to the turnover and taxable turnover, disclosed in the return. If full amount of tax due on the basis of the return, had been paid by the dealer, interest u/s 11B of the said Act cannot be, levied. In our opinion, the ratio of the said decision is fully applicable to the facts of the present case.

5. In the instant case, it is not in dispute that the amount of tax due from the petitioner under the Act, had been paid in accordance with the return filed. In fact, the plea of the assessee before the Deputy Excise and Taxation Commissioner (A), Ferozepur to the effect that tax due as per the return had been paid, has not been controverted by the Revenue.

6. In the light of the aforementioned authoritative pronouncement of the Constitution Bench of the Supreme Court, we are of the opinion that the amount of "tax due on the basis of the return", filed by the petitioner, having been paid in the prescribed manner, penalty u/s 10(6) of the Act, could not be levied. Accordingly, question No. 1 is answered in favour of the dealer and against the Revenue.

7. In view of our answer to the first question, second question is rendered academic and, therefore, need not be answered. Ordered accordingly.

8. The reference stands disposed of accordingly.