
(1982) 11 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3056 of 1975

Marwah and Co.

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 08-11-1982

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 46

Citation : (1983) 53 STC 286

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : R.N. Narula, for the Appellant; B.S. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—The petitioner has impugned the order of the Assessing Authority, annexure P-I dated 10th March, 1975, in this writ petition.

2. Since the counsel for the petitioner has not pressed his attack against the impugned order on merits, it is not necessary to notice the facts in any great detail. Suffice it to say that for the assessment year 1972-73 and for the accounting period starting from 7th June, 1973, to 31st March, 1974, three quarterly returns were required to be filed, first return on 30th October, 1973, for the period from 7th June, 1973, to 30th September, 1973, second return on 31st January, 1974, for the period from 1st October, 1973 to 31st December, 1973, and the third and the last one on 30th April, 1974, for the period from 1st January, 1974, to 31st March, 1974. The petitioner, however, filed all the three returns together on 30th December, 1974. He had also not deposited the sales tax for the given period. The Assessing Authority acting u/s 46 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Act), imposed penalty at the rate of Rs. 8 per day and the final amount that became payable along with the interest and penalty of Rs. 250 u/s 47 came to Rs. 9,567.

3. Mr. Narula confined himself to the challenging of the vires of Section 46 of the

Act where the Assessing Authority had imposed penalty of a given sum upon the petitioner for not filing the returns in time and also for not depositing the tax along with the returns. Mr. Narula has canvassed that Section 46 suffers from the vice of excessive delegation of the legislative power and from the vice of vesting in the authority mentioned in Section 46 uncontrolled and unguided power in the matter of imposition of penalty.

4. The aforesaid contention stands settled against the petitioner in this jurisdiction by a Division Bench judgment of this Court reported in *Surja Ram Cotton Ginning and Pressing Factory v. State of Haryana* [1979] 44 STC 21 and the following observations of Sandhawalia, C. J., may be noticed with advantage :

4. A combined reading of the provisions of Sections 25 and 46 of the Haryana General Sales Tax Act would broadly indicate the scheme laid out in the statute with regard to the submission of sales tax returns and the payment of tax thereunder. The manner and the period of time at which it is to be done is to be prescribed by the Rules made under the Act by virtue of Section 2(i). It is not in dispute that the Haryana General Sales Tax Rules, 1975, have been duly framed under the Act. The registered dealers are then enjoined by Sub-section (3) of Section 25 to deposit the tax due in the prescribed manner in the Government treasury or the Reserve Bank of India or the State Bank of India and obtain a receipt therefore from such treasury or bank. A reference to Section 25(2) would then show that every registered dealer is bound to furnish the sales tax returns by such dates and to such authority as may be prescribed and along therewith he must attach the receipt for the amount of tax deposited. No detailed reference is necessary to Sub-section (4) of Section 25, which pertains to the filing of the revised returns which may become necessary on the discovery of any omission or error in an earlier return. The material provision herein then is Sub-section (5), which penalises the failure to pay the tax as required by the further condition that such default would involve the payment of simple interest therefore at the rates specified. As is plain, Section 46 then separately provides the penalties for a failure to furnish the prescribed tax returns. 5. In the context of the aforesaid scheme of the submission of returns and the payment of tax, the core of the argument of Mr. Dogra, whilst challenging the constitutionality of Section 46, is that the legislature has vested an unguided discretion in the Commissioner or his delegate to impose any penalty ranging from Rs. 5 to Rs. 10 for every day during which the default or failure to file returns continues. With some vehemence it was contended that no guidelines have been prescribed by the legislature itself and it has been left to what the counsel called as the whim of the Commissioner or his delegate to either impose the minimum penalty of Rs. 5 or the maximum penalty of Rs. 10 per day.

6. To my mind, it seems plain that the argument aforesaid is rather misconceived. What is manifest herein is the fact that the legislature has itself prescribed the minimum and the maximum amounts of Rs. 5 and Rs. 10 respectively. This cannot be said to be a yawning gap and indeed is a narrow

enough limit in itself. This apart, I am unable to see how a provision regarding the imposition of penalty can be so cut and dried as to rule out all discretion in the authority vested with the power to do so for meeting a wide variety of situations which must inevitably arise. These may range from a wilful and designed default to file the returns with the express purpose of evading or concealing the tax due on the one hand, to an inadvertent, honest or an unavoidable omission to do so on the other. Amongst the wide gamut of penal provisions, I am unable to recall any which does not leave a reasonable discretion to the authority concerned for its imposition. In terms, the argument on behalf of the petitioner appears to be that no discretion at all should be granted to the Commissioner with regard to the quantum of the penalty and the same should either be laid down expressly by the legislature itself or be governed by a mathematically precise formula. This is neither possible nor desirable. The learned counsel for the respondent-State on an analogy of the criminal law rightly pointed out to the widest discretion vested by the Penal Code to impose punishments ranging from an infinitesimal and unspecified fine to the heaviest terms of imprisonment or of both.

7. It has then to be recalled that Section 46 in itself prescribes a variety of safeguards. Expressly it lays down that penalty is to be imposed only if the default has been made without sufficient cause. Further, it conforms with the requirements of natural justice by providing that the delinquent dealer must be given reasonable opportunity of being heard and it is thereafter only that the penalty within the narrow range prescribed by the legislature has been left to the discretion of the Commissioner or his delegate.

5. Mr. Narula, counsel for the petitioner, also half-heartedly urged that a composite order imposing penalty for the entire period of delay could not have been passed. According to him, the Assessing Authority has to pass a separate order for each day's delay after affording due opportunity for each day's default.

6. This matter is not *res Integra*. In a Division Bench judgment of the Gujarat High Court reported as *Motilal Joitaram Patel v. Sales Tax Officer* 1975 Tax LR 1589, Mehta, J., speaking for the Division Bench, has clearly ruled in the following words :

If once a penal liability is imposed after a proper opportunity to show cause against its quantification is given, and if it is found that the nature of that penal liability was a continuing one, then for such a continuing liability periodical notices are not required to be given. In case of continuing liabilities, it is for the defaulting dealer to make a proper move for stopping the same by approaching the concerned authorities and by showing reasons why the liability should stop running.

7. I entirely concur in the above enunciation of law on the point.

8. What is more, in this case, the petitioner appeared thrice before the Assessing Authority and took adjournments after noting down dates but on the final date of

hearing neither filed any explanation showing any reasonable cause nor appeared either personally or through his duly authorised representative and so it is not open to him to take the plea of the above kind.

9. For the reasons aforementioned, I dismiss this petition.

10. Since the petitioner has utilised for his own use a sum of Rs. 9,567 payable by him to the Government, in pursuance of the impugned order for all those seven years as a result of stay order obtained from this Court and thus deprived the State Government from realising the said amount, it would be in the fitness of things that the petitioner should part with the part of the gains that he received as a result of utilisation of the said amount for his own purpose. I therefore impose costs of Rs. 2,000 which the State Government would be entitled to realise along with the amount in question under the Act itself.