(1981) 09 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : G.S.T. Reference No. 11 of 1974

Mathura Dass Kundal Lal — APPELLANT

Vs

The State of Punjab — RESPONDENT

Date of Decision : 24-09-1981

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1982) 1 ILR (P&H) 486 : (1982) 50 STC 103

Hon'ble Judges : S.S. Sandhawalia, C.J;K.S. Tiwana, J;D.S. Tewatia, J

Bench : Full Bench

Advocate : Bhagirath Dass and Ramesh Kumar, for the Appellant; Mohinderjit Singh Sethi, Additional Advocate-General, for the Respondent

Judgement

S.S. Sandhawalia, C.J

1. Whether the certificate envisaged in the proviso to Section 5(1-A) of the Punjab General Sales Tax Act, 1948, may be given by the registered dealer from whom the goods were originally purchased at the first stage is the somewhat intricate question which had necessitated this reference to the Full Bench, I take the view that the controversy is now authoritatively settled by a recent judgment of the final court. It, therefore, suffices to examine the matter with relative brevity.

2. The petitioner assessee, who is a registered dealer, had purchased vegetable ghee to the tune of Rs. 1,85,020.20 from Messrs. Janta Sugar Company, Messrs. Hardit Singh and Messrs. Partap Fair Shop, all of whom were admittedly unregistered dealers. They, in turn, had purchased the vegetable ghee from the manufacturer who was a registered dealer. Sales tax at the first stage of the sale, namely, from the manufacturer to the unregistered dealers had been paid. The unregistered dealers who sold the goods to the assessee issued the certificates in form S. T. XXII-A showing that the sales tax had already been paid at the first stage of the sale. On the basis of these certificates, the assessee claimed exemption from the payment of sales tax on the sale of vegetable ghee

which he had purchased from the unregistered dealers and in respect of which sales tax had already been paid at the initial stage. The authorities constituted under the Punjab General Sales Tax Act consistently disallowed the claim of the petitioner assessee on the ground that he could claim exemption only if he had purchased the goods from a registered dealer and had produced a certificate signed by that registered dealer. According to them, this was the requirement of the law under the proviso to Section 5(1-A) of the Punjab General Sales Tax Act (hereinafter called "the Act"). At the instance of the assessee the Sales Tax Tribunal referred the following question for the decision of the High Court:

Whether, under the facts and circumstances of the case, the Assessing Authority was justified in levying tax u/s 5(1-A) of the Punjab General Sales Tax Act, 1948, on the sale of vegetable ghee to the tune of Rs. 1,85,020.20, when the tax on the same commodity had already been paid by the manufacturers at the time of the first sales?

The matter originally came up before a Division Bench consisting of S. C. Mital and A. S. Bains, JJ. Firm reliance on behalf of the petitioner-assessee was placed on the Division Bench judgment in Mulakh Raj Nand Lal, Bazar Gandawala, Amritsar v. Excise and Taxation Commissioner, Punjab, Patiala which was a case directly on the point and in favour of t[1974] 33 STC 42(PH)he petitioner-assessee. Bains, J., however, took the view that though the decision in Mulakh Raj Nand Lal''s case [1974] 33 STC 42 (PH)was plainly applicable, yet he doubted the correctness of the same and proposed its reconsideration by a larger Bench. S. C. Mital, J., however, unreservedly agreed with the view in Mulakh Raj Nand Lal''s case [1974] 33 STC 42(PH) and, therefore, opined that no reconsideration thereof was necessary. In view of the difference of opinion, the matter was placed before 0. Chinnappa Reddy, J., under Clause 26 of the Letters Patent. In his detailed reference order he concurred with the opinion expressed by Bains, J., and therefore referred the case to the Full Bench to reconsider the ratio in Mulakh Raj Nand Lal''s case [1974] 33 STC 42(SC).

3. When this reference came before us originally on 10th November, 1978, it was brought to our notice that the Division Bench judgment in Mulakh Raj Nand Lal''s case [1974] 33 STC 42(SC) itself was the subject-matter of appeal before their Lordships of the Supreme Court. We accordingly adjourned the case till the decision in the said appeal.

4. It is plain that the issue herein revolves around the language of proviso to Section 5(1-A) of the Act and it is, therefore, apt to read the relevant provision :

The State Government may by notification direct that in respect of such goods other than declared goods and with effect from such date as may be specified in the notification the tax under Sub-section (1) shall be levied at the first stage of sale thereof ; and on the issue of such notification the tax on such goods shall be levied accordingly :

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the Assessing Authority in the prescribed form and manner a certificate duly filled in and signed by the registered dealer from whom the goods were purchased.

Explanation....

As the matter now appears to be concluded by precedent, it is unnecessary to elaborate the matter. It suffices to mention that this very point and the construction of the proviso aforesaid arose directly before the Division Bench in Mulakh Raj .Nand Lal''s case [1974] 33 STC 42(SC), wherein, it was laid down as follows :

For interpreting the proviso, it is necessary to keep in mind the object of insistence on such a certificate. That object obviously is that before a person at the subsequent stage of sale can get exemption from payment of sales tax it must be clear that sales tax had been paid or had been undertaken to be paid by a person making the sale at the first stage and inasmuch as the State authorities have control only over the registered dealers, consequently, the certificate to the effect that somebody has paid or has undertaken to pay the sales tax at the first stage of the sale, must be by a registered dealer. Does the proviso mean that all subsequent hands through which the goods have to pass till they go to the consumers must be registered dealers ? Apparently, there would be no fun in insisting on this for the simple reason that so long as the identity of the goods is there and the payment of the sales tax at the first stage is ensured, the object of the legislation is satisfied. If we hold otherwise, that would run counter to the very object with which Sub-section (1-A) of Section 5 and the notification were issued, namely, that important goods should not be levied sales tax at more than one stage. Taking all these things into consideration, we are of the view that the words ''registered dealer'' when used at the end of the proviso mean a registered dealer ''from whom the goods were (originally) purchased'' or ''from whom the goods were purchased (at the first stage)''. The word ''originally'' or the words ''at the first stage'' can be read into the proviso for clarification of the meaning of the same. It is now well-settled that such words of clarification can be read if they have to be read to bring out the object of the legislation or to prevent the mischief which it was desired to prevent.

Their Lordships of the Supreme Court have now set their seal of approval to the aforesaid enunciation in State of Punjab and Others Vs. Mulakh Raj Nand Lal, , with the following enunciation :

...It is difficult to accept the contention that the phrase ''registered dealer from whom the goods were purchased'' occurring at the end of the proviso should be construed so as to prevent the assessee''s sales being regarded as subsequent sales simply because his purchases were not from immediate registered dealer but were from two unregistered dealers who had purchased from the registered dealer. The words in that phrase are not ''registered dealer from whom he (the dealer effecting the subsequent sales) had purchased the goods''. The words as they are have been rightly construed by the Division Bench of the High Court to mean a registered dealer ''from whom the goods were (originally) purchased'' or ''from whom the goods were purchased (at the first stage)''. Such construction is in consonance with the dominant intention of the legislature to impose a levy on the sale at the first stage.

Faced with the aforesaid authoritative enunciation, Mr. Sethi, the learned Additional Advocate-General, Punjab, fairly conceded that the matter is now concluded in favour of the petitioner-assessee.

5. Accordingly, we render the answer to the question referred by the Tribunal (in paragraph No. 2, above), in the negative, that is, in favour of the petitioner-assessee and against the revenue. In view of the earlier divergent judicial opinion, the parties will bear their own costs.

D.S. Tewatia, J

6. I agree.

K.S. Tiwana, J

7. I agree.