(1968) 03 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 671 of 1966

Messrs Krishan Murari Tarsem Chand and others APPELLANT

Vs

The State of Punjab and another RESPONDENT

Date of Decision : 13-03-1968

Acts Referred:

Citation : (1968) 03 P&H CK 0050

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : S.C. Goyal, for the Appellant; G.R. Majithia, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Shamsher Bahadur, J.—This is a petition of Messrs. Krishan Murari Tarsem Chand and its quondam partners for quashing the assessment order made by the Assessing Authority, Sangrur, on 11th of February. 1966, levying a demand of Rs. 14,817,31 on account of sales-tax. A sum of Rs. 102.55 having been paid, the net demand of Rs. 14,714.76 has been created by the impugned order (Annexure F) of 11th of February, 1966.

2. On behalf of the petitioners it is urged that the firm of Krishan Murari-Tarsem Chand had been dissolved soon after its inception as no profits were forthcoming. It is suggested that the dissolution took place sometime in December, 1962. Intimation of discontinuance of this firm appears to have been sent to the Assessing Authority on 25th of April. 1963. It is contended that a firm which has been dissolved cannot be assessed to sales tax even in respect of the turnover before its dissolution. The decision of the Supreme Court in The State of Punjab v. Jullundur Vegetables Syndicate (1966) 17 S.T.C. 326 = 68 P.L.R. 435, has been relied upon for this submission, It was held by the Supreme Court in that case that: -

there was no provision ''expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution.

3. On behalf of the respondent, it is submitted by the learned Deputy Advocate-General that the petitioners had not made out a case of dissolution. I find it difficult to accede to this submission. The whole tenor of the petition shows that the firm of Krishan Murari Tarsem Chand, which came into existence on 25th of February, 1961, worked only for a few months and had to discontinue its business on account of "slump in the cotton rates" and the consequential effect of losses being incurred by the firm in the year 1961-62. In paragraph 5, it is stated that the partners "decided to dissolve the firm with effect from 15th of December, 1962. A copy of the dissolution deed dated 15th December, 1962, is attached as Annexure B". In reply to this paragraph it is stated in the written statement that : -

The first information about the discontinuance of the business of the firm was received in the office of the Excise and Taxation Officer, Sangrur, on the 25th of April, 1963. No date for its discontinuance has been shown therein.

Again, it is repeated in paragraph 6 of the written statement that the fact of discontinuance of the business was intimated to the Assessing Authority on 25th of April, 1963, and in paragraph 8 it is interesting to observe that the Assessing Authority could not itself get the petitioner-firm served with a notice which purports to have been issued on 5th of April, 1963 "as the firm had discontinued its business and the partners were out of station as per his report dated the 16th April, 1963."

4. It cannot acceptably be urged on these pleadings that the dissolution of the petitioner-firm has not been fully established. Indeed, in a memorandum sent by the Excise and Taxation Officer to the petitioner on 6th of February, 1964 (Annexure E) it was stated in reference to the written arguments which the assessee had submitted that :-

In your case, the assessment proceedings were initiated by issuance of notice in form ST. XIV dated 1st October, 1962, having been served on 3rd October, 1962. No intimation with regard to the discontinuance of business or dissolution of the partnership firm was received by the Department before that or even afterwards.

5. I understand this to mean that the Assessing Authority considered that the notice having been sent with regard to assessment before the intimation of dissolution, the assessment proceedings could continue. This would be in flat violation of the rule laid down in the Supreme Court decision. The date of intimation of discontinuance or dissolution was in April, 1963, and according to the dictum of the Supreme Court decision no assessment can be made an a firm which is dissolved even in respect of the period when the firm was a going concern.

6. In this view of the matter, this petition must succeed and the assessment order be quashed. In the circumstances, there would be no order as to costs of

this petition.

