
(1974) 04 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 10 of 1973

M.K. Trading Company

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 09-04-1974

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 22, 7

Citation : (1974) 34 STC 237

Hon'ble Judges : D.K. Mahajan, C.J.; Pritam Singh Pattar, J

Bench : Division Bench

Advocate : Bhagirath Dass and S.K. Hirajee, for the Appellant; D.N. Rampal, Assistant Advocate-General, for the Respondent

Judgement

D.K. Mahajan, C.J.—The Sales Tax Tribunal, Punjab, has referred the following question of law for our opinion u/s 22(1) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act):

Whether, on the facts and circumstances of the case, an order cancelling the registration certificate u/s 7(4) of the Act is sustainable in law?

2. The petitioner was issued a registration certificate on 21st November, 1968. A notice was issued to him on 12th March, 1970, u/s 7(4) of the Act to show cause why the registration certificate should not be cancelled. Two grounds were mentioned in the notice:

(1) that the petitioner was directed by the Assessing Authority to file monthly returns. The return for the month of January, 1970, was to be furnished by 15th February, 1970. The return was, however, not filed by the due date; and

(2) that the petitioner made bogus sales in favour of three bogus dealers.

3. The Assistant Excise and Taxation Officer observed that the dealer was indulging in bogus sales, and that the return had not been filed in time. On these two grounds, the registration certificate was cancelled. An appeal was taken to

the Sales Tax Tribunal, Punjab, and the Tribunal rejected the appeal and found in favour of the department that the grounds on which the Assistant Excise and Taxation Officer had cancelled the registration certificate were established and justified the cancellation of the registration certificate. The petitioner being dissatisfied with the decision of the Tribunal moved an * application u/s 22(1) of the Act, and the Tribunal has referred the question mentioned above for our opinion.

4. Mr. Bhagirath Dass, the learned Counsel for the petitioner, contends that the cancellation of the registration certificate on the ground that the sales were made to bogus dealers is not tenable because the sales were made to registered dealers whose registration certificates had not been cancelled. In support of this contention, he relies on *Amir Chand Sethi and Sons v. Assessing Authority, Amritsar*, and Anr. 1973 RLR 59. This decision does support his contention. The learned Counsel for the department has not challenged this view.

5. Mr. Bhagirath Dass, the learned Counsel for the petitioner, then urged that, in view of the fact that the cancellation of the registration certificate was on the basis of two grounds, one having been held to be untenable, it cannot be said that that ground did not vitally affect the mind of the authority in cancelling the registration certificate and, therefore, the order of cancellation of registration certificate cannot be sustained in law. For this contention, the learned Counsel relies on the decision of the Supreme Court in *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, , wherein it was observed as follows:

It is well-established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding.

6. The learned Counsel for the department, on the other hand, has drawn our attention to another Supreme Court decision in *Union of India v. Sardar Bahadur* 1972 SLR 355, wherein it was observed:

It may be recalled that the punishment of compulsory retirement was imposed upon the respondent on the basis that all the three charges had been proved against him, but now, it is found that only the third charge has been proved. The question then is whether the punishment of compulsory retirement imposed by the President can be sustained even though the first two charges have not been proved.

Now It is settled by the decision of this Court In *Radhakrishnadas Vs. Kaluram*, , that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established.

7. So far as the decision in Sardar Bahadur's case 1972 SLR 355 is concerned, it has no analogy to the case before us. That is a case where punishment could be imposed on the proof of any one of the charges. So far as the present case is concerned, the decision to cancel the registration certificate was taken on two grounds. Of course, if the registration certificate could be cancelled because the sales were made to bogus dealers, the position would have been different. It may have been different if this ground was relevant, but, in view of the decision of this Court in M/s. Amir Chand Sethi's case 1973 RLR 69, this ground is not tenable. In this situation, the only ground available to the department was that the return had not been furnished in time as required by Section 10(3) of the Act and, therefore, a default had been committed within the meaning of Section 7(4) of the Act. This ground itself would have been sufficient provided an alternative punishment was not provided u/s 10(6) of the Act. The punishment provided thereunder is that, in case of delayed submission of returns, penalty to the extent of one and a half times of the amount of sales tax can be levied in addition to the sales tax. The departmental authorities may have chosen to act under this provision and not u/s 7(4)(c) of the Act. In this situation, the contention of the learned Counsel for the petitioner that it cannot be said as to which of the two grounds principally affected the mind of the authority in cancelling the registration certificate assumes importance. It is for this reason that we are constrained to come to the conclusion that, on the facts and in the circumstances of the case, the order of cancellation of the registration certificate u/s 7(4) of the Act is not sustainable in law. The question referred to us is, therefore, answered in the negative, that is, in favour of the petitioner and against the department. There will be no order as to costs.