(1967) 04 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 613 of 1966

Moti Ram Kishore Chand	APPELLANT
Vs	
District Excise and Taxation Officer (Assessing Authority) and Others	RESPONDENT

Date of Decision : 20-04-1967

Acts Referred:

Citation : (1968) 21 STC 459

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Chand Goyal, for the Appellant; M.R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Shamsher Bahadur, J.—The petitioner-firm of Moti Ram Kishore Chand registered as a dealer under the Punjab General Sales Tax Act used to operate from Bhatinda and its dissolution took place on 25th April, 1962. The petitioner-firm filed a quarterly return only for the first quarter of the assessment year 1961-62 and subsequently no returns were filed. Although an objection was raised on behalf of the petitioner that it was not liable for assessment to sales tax, the third respondent, namely, the Assessing Authority, Central Wing, Patiala, created a liability of Rs. 16,708.15 for the assessment year 1961-62 and in addition imposed a penalty of Rs. 3,500. This order of 30th November, 1965, was in modification of an earlier order of 31st August, 1965, creating a liability of Rs. 22,677.67. Kishore Chand, an ex-partner of the firm, actually paid the amount in respect of which the liability was created.

2. In this petition for issuance of a writ of certiorari it is stressed on behalf of the petitioner that no liability could be created on the petitioner-firm which was dissolved on 25th April, 1962. Mr. Goyal, the learned counsel for the petitioner, has placed reliance on the Supreme Court authority in The State of Punjab v. Jullundur Vegetables Syndicate [1966] 17 S.T.C. 326(P&H) in support of the proposition that no sales tax could be levied on a firm which is no longer in

existence. Their Lordships of the Supreme Court reached the conclusion that "there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution." A dissolved firm, according to the ruling of this decision, cannot be assessed to sales tax even in respect of the turnover before dissolution. It may be that for 1961-62 the petitioner-firm was carrying on business as the dissolution took place on 25th April, 1962, but this would not empower an Assessing Authority to levy sales tax after a firm is dissolved.

3. It has been contended on behalf of the State that this point was never taken up before the Assessing Authority. It may be that the Full Bench decision of this Court, which was affirmed by the Supreme Court in The State of Punjab v. Jullundur Vegetables Syndicate [1966] 17 S.T.C. 326(P&h) led the petitioner to take up the plea which it has in this writ petition. This is, however, no ground to say that the petitioner cannot question the validity of the assessment on the ground that it is not justifiable by the provisions of the Sales Tax Act. It may be observed, however, that the two supplementary documents filed by the petitioner make it clear that the department was aware not only of the dissolution of the petitioner-firm but also that this was taken as a ground for an objection which is now the subject-matter of this writ petition. Annexure 1 is the order of the Deputy Excise and Taxation Commissioner, Patiala Division, of 4th November, 1964, and it is mentioned in paragraph 3 that :-

It is further pointed out that the fact of dissolution of the firm is corroborated from the file which is evident from the impugned order itself.

4. There is an earlier order of the Assessing Authority, Bhatinda, of 2nd December, 1963 (annexure J) wherein it is mentioned that a penalty of Rs. 1,350.66 was levied "taking a lenient view as the firm has since been dissolved". In the face of these admissions, it cannot legitimately be urged on behalf of the State that the plea of dissolution of the firm had been taken for the first time by the petitioner in this Court.

5. In my opinion, this petition must be allowed and the impugned assessment quashed. The petitioner has the right to take advantage of the Supreme Court authority in The State of Punjab v. Jullundur Vegetables Syndicate [1966] 17 S.T.C. 326(P&H), and is entitled to be assessed on the basis of the principle enunciated therein. The petitioner is further entitled to the costs of this petition.

