(1970) 12 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2655 of 1970

M/S Chandra Industries Refrigeration Engineers and Manufacturers, Jullundur — APPELLANT

Vs

The Punjab State — RESPONDENT

Date of Decision : 16-12-1970

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 5(2)(a)(ii)

Citation : (1970) 12 P&H CK 0006

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : D.N. Awasthy, for the Appellant; S.S. Kang, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Sodhi, J.—The sole question that arises for determination in this writ petition is whether a dealer registered under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act), is, in the matter of his liability to pay tax entitled u/s 5 (2) (a) (ii) to deduct from his gross turnover sales of goods made to a dealer during the period when the application of the latter for getting himself registered as a dealer under the Act remained pending with the department. There are in force the Punjab General Sales Tax Rules, 1949 (hereinafter referred to as the Rules), framed in exercise of the rule making power conterred by Section 27 in order to carry out the purposes of the Act.

2. Facts as are necessary for the disposal of the writ petition are not in controversy and can be stated in a narrow compass. The petitioner is a partnership firm registered as such and earning on the business of manufacture of refrigeration and air-conditioning machinery. It is also registered as a dealer under the Act and holds a certificate to that effect in the prescribed form S.T. III. The mode of payment of tax as provided therein is quarterly. The petitioner firm accordingly submitted four returns during the year l966-67 to the appropriate assessing authority and they are as under:

1st Quarter covering the period 1st April, 1966 to 30th June, 1966

Rs. 2,45,456.96

2nd Quarter covering the period 1st July 1966 to 30th September, 1966.

Rs. 3,37,578.62

3rd Quarter covering the period 1st October, 1966 to 31st December, 1966.

Rs. 1,12,291.93

4th Quarter covering the period 1st January, 1967 to 31st March, 1967.

Rs. 2,54,560.00

Total Gross turnover

Rs. 9,49,885.51

It also deposited tax due on each taxable turnover for the quarter concerned as required under the Rules. Against the gross turnover for the first quarter, deductions to the tune of Rs. 1,64,522,31 were claimed for the alleged sales to registered dealers. The assessing authority did not, however make any assessment soon after the receipt of the quarterly returns and allowed all of them to be collected till it ultimately on 15th April, 1968. passed one, consolidated order for all the tour quarters. The book version of the petitioner firm was completely accepted in every respect except that the claim of sales to registered dealers for an amount of Rs. 1,53,475.32 was disallowed on the ground that tie purchaser M/s Refrigeration Products did not hold dealers'' registeration certificate on 31st May, 1966, when sales were made to them, though they were registered subsequently on 3rd June, 1966, on an application u/s 7 which had been made as early as March, 1966, and was pending at the time of sales in question.

An appeal filed by the petitioner against the order of the assessing authority disallowing exemptions u/s 5(2) (a) (ii) met with no success and it was dismissed on 30th June, 1969. Further appeal to the Sales-Tax Tribunal also failed on 5th August, 1970, and this Court was then moved by the present writ petition under Article 226 of the Constitution of India. Recourse could be had to a reference being made to this Court by the Tribunal u/s 22 of the Act but the petitioner firm. did not pursue this alternative remedy on the ground that the recovery proceedings had started (treating the alleged amount as arrears of land revenue) and that moving the Tribunal for a reference to this Court would have rendered such a remedy wholly ineffective.

3. Mr. D.N. Awasthy, learned counsel for the petitioner, has addressed elaborate arguments and taken me through the relevant provisions of law as contained in the Act and the Rules made thereunder in support of his contenion that where the registgation certificate is ultimately issued, it would be effective from the date of application and that the sales made during the per dency of the

application for the said certificate must be exempted u/s 5 (2) (a) (ii) of the Act as sales to a registered dealer. My attention has, in this connection, been drawn by him to the amended Rule 5 wherein it is provided that the certificate of registration shall be valid from the date of receipt of application for registration by the assessing authority or from the date of commencement of the liability to pay tax, whichever is later. The earlier Rule 5 before its amendment by the Punjab Government notification No. G.S.R.-237/PA/46/48/S.27/Amd.(5)/66, dated the 10th October, 1966, did not make such a certificate operative and effective from the date of application, but the contention of the Learned Counsel is that this was the intention of law even before the amendment which had been introduced only to remove any doubts if they ever existed with regard to such intention. It is not disputed that the case in hand relates to the period when the unamended rule applied.

4. I have given my careful thought to the matter and am not able to persuade myself to accept this contention of the learned counsel which, to my mind, is without substance. In order to appreciate the correct legal position as it stood before Rule 5 was amended in the year 1966, it is necessary to refer to certain provisions of the Act and the rules relating to the processing of an application for registration as a dealer and the subsequent decision thereon. Every dealer is liable to be levied tax under the Act on his taxable turnover. "Taxable turnover" as defined in Section 5 (2) means that part of a dealer''s gross turnover during any period which remains after making certain permissible deductions therefrom. What deductions can be allowed to be made are stated in the said section. Relevant part of this section as was invoked in order to claim a deduct ion reads as under:

5 (2) In this Act the expression "taxable turnover" means that part of a dealer''s ''gross turnover during any period which remains alter deducting therefrom-

(a) his turnover during that period on -

(i)

(ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under Sub-section declared by him in a prescribed form as being intended for resale in the State of Punjab or sale in the Course of inter State trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods, other than goods declared tax-free u/s 6 for sale in Punjab and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods:

Provided further that when such goods are used by the dealer to whom these are sold for purposes other than those for which these were sold to him, he shall be liable to pay tax on the purchase thereof at such rate, not exceeding the rate of tax leviable on the tale of such goods as the State Government may by notification direct in respect of a class of dealers specified in such notification, notwithstanding that such purchase is not covered by Clause (ff) of Section 2.

5. A plain reading of this provision of law leaves no manner of doubt that it is only sales of goods made to a dealer who is actually registered on the date of the sales that are exempted from the levy of tax and not that it would include a dealer who though not registered had only applied for registration. It is an elementary rule of interpretation that the words should be given their plain and ordinary meaning unless there are clear indications to the contrary in the con- j text in which those words are used. The expression "registered dealer" cannot by any stretch of imagination be equated with "dealer to be registered ''. No doubt interpretation of a fiscal enactment charging a citizen with liabilities must be construed strictly and to his benefit in a matter admitting of doubt but not that Courts should on equitable considerations read in the unambiguous and clear terms of a statute or a statutory rule, an implied intention which does not appear to exist from a plain reading thereof. Sub-section (1) of section prohibits a dealer from carrying on any business as such "unless he has been registered and possesses a registration certificate." A dealer, in order to be registered, has to make an application in this behalf in the prescribed manner to the prescribed authority. The application must be in form S.T. 1 or S.T. 2 and in either case information is required to be given by the dealer in regard to various particulars like, the nature of his business, gross turnover, etc., and the requisite certificate could issue only if the appropriate authority is satisfied, after making an inquiry, if necessary, that the applicant is a bona fide dealer and has given correct information. It has also to be found whether he has deposited the registration fee and the application is in order in every respect. The registration of an applicant as a dealer does not, therefore, follow as a matter of course but depends on the correctness of certain information supplied by him and compliance with conditions precedent to the issue of a certificate. It is on registration only that the applicant is issued a certificate. It is inconceivable how, in such circumstances when the application is still pending, the applicant can be called a registered dealer. The Legislature or an authority exercising delegated functions like rule making, may declare certain consequence to ensue or a decision to take effect retrospectively but there is no warrant for reading such an intention in a provision of law unless it is manifestly so clear from the context. The State Government did amend Rule 5 in the year 1966 to make the registration certificate effective from the date of application but no such intention could possibly be read in Section 5(2) (a) (ii) or in the unamended Rule 5. It is pertinent to refer to old Rule 26 as well which reads as under:

26. A registered dealer who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deductions

under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act, shall, on demand produce in respect of such sale the copy of the relevant cash memo, or bill, according as the sale is a cash sale or a sale on credit, and a declaration in writing in form S.T. XXII by the purchasing dealer or by his agent, that the goods in question are intented for resale or such goods are specified in his certificate of registration for use by him in the manufacture of any goods for sale or in the execution of any contract or for both." This rule required a declaration to be made in writing in form S.T. XXII by the purchasing dealer or his agent that the goods in question were intended for resale or such goods were specified in his certificate of registration. The number of the registration certificate too is to be stated and such a form could not obviously be properly filled in if the purchaser had not been registered as a dealer and necessary certificate issued to him. The expression "that the goods in question are intended for resale or such goods are specified in his certificate of registration" is not without any meaning and the compliance with these rules is not reasonably possible unless the purchaser is factually registered as a dealer and holds his certificate of registration.

6. The argument on behalf of the petitioner is that Rule 26 does not require declaration by the purchaser or his agent in form S.T. XXII to be made simlutaneously with the purchase, and all that is needed is that the selling dealer, if he wishes to deduct from his gross turnover the amount of any sales on the ground that they were made to a registered dealer, has only to furnish such a certificate to the assessing authority along with the return. In other words, the contention is that declaration in form S.T. XXII can be obtained at any subsequent time. I am afraid this argument cannot help the Learned Counsel. It may be true that such a declaration can be supplied by the purchaser afterwards and is not necessary to be obtained from him at the time of the sale At the same time the assessing authority if it decides to make an assessment order soon after the receipt of the quarterly return can call upon the dealer to produce the declaration and the purchaser will not be in a position to furnish the same it his application for registration as a dealer is still pending at that time. There could indeed be no certainty that the necessary certificate would at all issue. The Act and the rules have to be interpreted in a fair and workable manner and the matter of assessment and permissible deductions could not have been intended to be left to depend on uncertain contingencies.

7. Mr. Awasthy relies on three case reported as Ramdhari Ram Chander (1955) 6 S.T.C. 430, decided by the Financial Commissioner (Taxation), Pepsu; Orient Paper Mills Ltd. v. Commissioner of Sales Tax, Madhya Pradesh, Indore, and another, (1969) 23 S.T.C. 3(sic)8 decided by a Division Bench of the High Court of Madhya Pradesh, and another Divison Bench case of Orissa High Court in Subhash Chandra Ghosh v. State of Orissa (1970) 36 S.T.C. 211. In Ramdhari Ram Chander''s case, the Financial Commissioner who was dealing with a similar situation was led by what he thought to be the interests of justice in that case and held that in older to claim deducations with regard to sales alleged to have

been made to a registered dealer, it was the date of application for a registration certificate that should be taken into account and not the date of issue of the registration certificate. The main thing that weighed with the Financial Commissioner was that responsibility for delay in disposing of the purchaser''s application for registration lay on the shoulders of the sales tax authorities for which the dealers should not have been made to suffer. Section 5 (2) (a) (ii) of the Pepsu General Sales Tax Ordinance, 2006, and Rule 25 of the Pepsu General Sales Tax Rules, 2006, were almost in similar terras and a strict interpretation of the rule would have led to the same conclusion at which I have arrived. The Financial Commissioner has not given any reason except that he was moved by compassionate grounds. The assessment under consideration was for the first year after the commencement of the Ordinance and the Financial Commissioner thought it desirable to show some accommodation to the Assessee. Howsoever just may be the view taken by the learned Financial Commissioner, the fact remains that it was not based on correct interpretation of the relevant provisions in the Ordinance or the Rules. There may be hard cases and whatever be the extent of fault of office in causing delay in processing an application for registration, all these considerations are wholly irrelevant for interpreting statute or any statutory rules.

8. Facts in Orient Paper Mills Ltd.''s case are distinguishable and the ratio therein gives no guidance in the present case. A purchasing dealer had applied for amendment of his registration certificate and a Division Bench of the Madhya Pradesh High Court took the view that in the absence of any provision in the Central Sales Tax Act, 1966, or the Central Sales Tax (Registeration and Turnover) Rules, 1967, as regards the date of effectiveness of an amendment in the resistration certificate, it would be more equitable and reasonable that the amendment should take effect from the date of application made by the purchaser to that effect. The certificate of registration as issued specified certain goods and some more goods were sought to be added by an amendment in the said certificate. The application for amendment of the certificate was made on 10th September, 1965, but was not disposed of till 30th March, 1966, by the Sales Tax Officer and ultimately by the Commissioner till 18th May, 1967. Keeping in view the interval of about 20 months between the making of an application for amendment and the passing of the final order by the Commissioner allowing the amendment, the equitable considerations prevailed.

9. The decision in Subhash Chandra Ghosh''s case is equally not of much help since the same considerations seem to have weighed with the learned Judges. An application for registration was filed by the dealer on 20th February, 1959, and not decided by the competent authority till December, 1962, when the registration certificate was granted. Again, we find no reasons in support of the judgment of the learned Judges except that it Is stated that once the registration certificate was granted it must be operative from the date of the application and that the Assessee could not be treated as an unregistered dealer during the pendency of the application. With utmost respect to the learned Judges, I find it

difficult to take the view that because of the delay, apathy or default on the part of the office, the law should be interpreted differently.

10. In the result, I must hold that the Sales Tax Tribunal was. justified in disallowing deductions as claimed by the petitioner because'' the purchaser from the latter was not a registered dealer at the time the sales were made to him, no matter that his application for registration was pending at that time.

11. The last contention of Mr. Awasthy is that the assessing authority was not competent to pass one consolidated order levying assessment for all the four quarters and that such authority was duty bound to have made assessment in regard to each quarter alter the return therefor bad been submitted to it. He in this connection relies on a Single Bench judgment of the Calcutta High Court reported as B.C. Nawan & Bros. Pvt. Ltd. v. Certificate Officer. 24'' Parganas, and Ors. (1969) 24 S.T.C. 25. The contention of the learned counsel must be repelled on the. short ground that no such objection was taken by the petitioner before the assessing or the appellate authority and that such a ground cannot be entertained for the first time by this Court in its writ jurisdiction. The petitioner deposited in the Government treasury tax due from him under each return in accordance with the rules and it is a common ground that the amount of tax has not been enhanced except that the deductions claimed by the petitioner were not allowed in one case. Mr. Awasthy could not point out any injustice much less manifest injustice caused to the petitioner by the failure of the Assessing Authority to pass assessment ciders at the close of each quarter instead of a consolidated one for the full year. There is no inherent want of jurisdiction in the assessing authority in making a consolidated assessment order at the close of the financial year though the return period is only a quarter. What Section 10 enjoins is only this much that the tax under the Act shall be paid at such intervals as may be prescribed be the rules. Dealers must also furnish return by such date and to such authority as is prescribed. Rules 17 to 25 deal with the fixation of return periods and their variations, submission of returns and other matters connected therewith. There is, however, no indication from the Act or any of the Rules that the assessing authority must make a separate assessment order with respect to every retain in a particular year soon after the same has been filed and that it cannot assess for different periods at the same time on the close of the year. The jurisdiction of the assessing authority to make an assessment is no doubt separate as regards a unit of the return period but one consolidated order on regard to the several returns duly filed is not barred. The Assessee 1 as to pay tax under each return while filing the same and the petitioner had done so in the instant case. The position may be different when no return has been filed at all and the assessing authority instead of having issued a separate notice for each period consolidates the demand for several quarters in one assessment proceedings as was the position in B.C. Nawan & Bros. Pvt. Ltd.''s case. The return period of a dealer registered under the Bengal Finance (Sales Tax) Act, 1941, (6 of 1941) had b?en fixed by the assessing authority as quarterly but B.C. Nawan & Bros Pvt. Ltd. did not furnish return for lull one year

1951-52. The Assessing authority then issued a single notice of demand in respect of all the four quarters and in pursuance of the said notice, the company filed a consolidated return for the four quarters. The assessing authority made a consolidated assessment order amounting to over Rs. nine lakhs. This sum was demanded from the company by a single notice of demand and it was such a demand which was held to be ultra vires of the Act and the rules and, therefore, a nullity.

12. For the foregoing reasons, the writ petition is without any merit and must be dismissed. The parties are left to bear their own costs.

