(1973) 04 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Sales Tax Reference No. 13 of 1972

M/s. Sikands Ltd. N.I.T. Faridabad — APPELLANT

Vs

The State of Haryana — RESPONDENT

Date of Decision : 16-04-1973

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 10(6)

Citation : (1973) 04 P&H CK 0015

Hon'ble Judges : Hurbans Singh, J;Bal Raj Tuli, J

Bench : Division Bench

Advocate : R.N. Narula, for the Appellant; C.D. Dewan, Additional Advocate General, Punjab, for the Respondent

Judgement

Bal Raj Tuli, J.—The Sales Tax Tribunal, Haryana, has referred the following two questions to this Court for decision :--

1. Whether penalty can be levied under the local Act when it is not leviable under the Central Act ?

2. Whether, on the facts and in the circumstances of the case, it could be a wilful neglect on the part of the company giving rise to the imposition of penalty and whether after accepting the legal-position the learned Sales Tax Tribunal was competent to reduce the penalty Instead of quashing the same ?

2. The facts leading to this reference are that Messrs Sikands Limited, Faridabad (hereinafter called the assessee), is registered as a dealer under the Punjab General Sales Tax Act (hereinafter called the Punjab Act) and the Central Sales Tax Act (hereinafter called the Central Act). For the year 1968-69, the assessee filed monthly returned under the Central Act, particulars of which are given below:--

Period of return

Amount of Tax involved

Date on which return was due

Date on which tax was paid

Amount of penalty imposed.

April, 1968

...

1955.94

30.5-68

5-8-68

700.00

May, 1968

...

2479.92

30-6-68

5-8-68

1600.00

June, 1968

...

251202

30-7 68

3-6-69

2500.00

July, 1968

...

1959.69

30-8-68

3-6-69

1500.00

August, 1968

...

2720.56

30 9-68

3-6-69

2000.00

September, 1968

...

2880.08

30-10-68

2-8-69

1800.00

October, 1968

...

2864.32

30-11-68

2-8-69

1100.00

November, 1968

...

1885.43

30.12-68

22-2 69

200.00

December, 1968

...

966.33

30-1-69

21-5-69

600.00

January, 1969

...

1994.50

3-3-69

21-5 69

800.00

February, 1969

...

1849.46

30-3-69

21-5-69

300.00

March, 1969

...

1187.57

30-4-69

21-5-69

100.00

Total ...

Rs. 13,200.00

3. The Assessing Authority issued a notice to the assessee to show cause why penalty u/s 10(6) of the Punjab Act read with section 9(2) of the Central Act be not imposed for the late filing of the returns and deposit of the tax. After hearing the assessee, a penalty of Rs. 13,200/- was imposed by the Assessing Authority by his order dated September 25, 1969. The Assessee filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Rohtak, which was rejected an March 17, 1970, A further appeal was taken to the Saks Tax Tribunal before whom the learned counsel for the assesses stated that he did not want to urge the legality of the penalty and that he conceded the legal jurisdiction of the Assessing Authority to impose such penalty for the default. He only wanted to argue about the quantum of the penalty on the ground that it was excessive. The Sales Tax Tribunal, fey its order dated August 3, 1970, remanded the case to the Deputy Excise and Taxation Commissioner with a direction to hear the parties and give his decision en the quantum of penalty afresh. The Deputy Excise and Taxation Commissioner (Appeals), Rohtak, heard the case after remand and came to the conclusion that the penalty of Rs. 13,200/- was excessive and reduced it to Rs. 6,400/-. It was noticed by biro that for some defaults, penalty had been imposed at 8 per cent, and for some other defaults at 10 per cent, 74 per cent and 100 per cent. At the uniform rate of 8 per cent, the amount of

penalty worked out to Rs. 6,082/-, but he imposed the penalty of Rs. 6,400/-. This order was passed on August 26, 1970. Against that order, an appeal was taken to the Sales Tax Tribunal who reduced the penalty to Rs. 3,000/- by order dated April 7, 1971. The only point discussed by the learned Salts Tax Tribunal in its order was the quantum of penalty and not its legality. It was urged before the Tribunal that under rule 23 of the Punjab General Sales Tax Rules, 1949, as amended, the period of morally returns was to be reviewed at the end of the year which was, however, not done. The case pleaded by the assessee was that from the date of its registration, the period of returns was fixed as monthly and was never reviewed thereafter. This contention was accepted by the learned Tribunal and was taken into consideration for reducing the quantum of penalty. The second point argued before the Tribunal was that the Company was financially in a bad condition and could not make the payments in time. This plea was also accepted and taken into consideration for reducing the amount of penalty. It was no where pleaded that the penalty could not be imposed u/s 10(6) of the Punjab Act, read with section 9(2) of the Central Act. In fact, the learned counsel for the assessee had conceded before the Sales Tax Tribunal at the earlier stage that he did not want to challenge the legality of the in position. In this view of the matter the first question referred to this Court by the Sales Tax Tribunal does net arise out of its order dated April 7, 1971 and could not be referred u/s 22 of the Punjab Act as applicable to Haryana. Only such questions of law can be referred to this Court as arise out of the order of the Sales Tax Tribunal and no question of law can be referred which does not artists out of that order. Since the legality of the imposition was not challenged before the Sales Tax Tribunal by the assessee, the first question referred to us for decision did not arise out of its order and could not be referred. This question, therefore, does not require any answer by this Court.

4. With regard to question No. 2, the quantum of penalty is in the discretion of the departments authorities and on the facts and circumstances of this case it cannot be said that the imposition of Rs. 300/- as penalty was not justified and the entire penalty should have been quashed. If the period of the returns had not been reviewed by the Assessing Authority after the expiry of one year, rule 20 came into play, according to which the returns had to be filed quarterly and along with the returns, the sales-tax had to be paid. As the table set out above shows, the assessee neither filed the monthly returns nor deposited the sales-tax in time which constituted defaults for which penalty could be imposed. Even if the returns had to be filed quarterly, there was default in the filing of the returns as well as the payment of sales-tax on that basis. The reason given by the assessee was that due to financial stringency, the payments to the labour and the expenditure on the purchase of raw materials, In order to keep the factory running, were given priority. It clearly means that the assessee was quite aware of its liability to pay the sales-tax to the Government which it had collected from the customers but wilfully defaulted in paying it into the Treasury and used that amount for its own business because of its financial difficulties. It cannot be said

that the default in the payment of sales-tax within time was not wilful or was beyond the control of the assessee. The assessee had no right to utilize the tax collected for the Government in its own business and then plead that due to financial stringency, it was not able to pay. The amount of penalty imposed works out only to 4 per cent which is much less than the interest which the assessee would have been required to pay to any financial institution if it had arranged for the credit therefrom, which would have required the furnishing of adequate security as well.

5. As has been said above, the two pleas urged by the assessee before the Sales Tax Tribunal were taken due notice of, with the result that the amount of penalty was substantially reduced. On the facts and in the circumstances of this case, we cannot hold that the Sales Tax Tribunal should have quashed the order of penalty in its entirety instead of reducing its quantum. The answer to question No 2 is, therefore, in the affirmative. In the circumstances of this case, however, we make no order as to costs.