
(1984) 01 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 1 of 1977

Naran Dass Raja Ram and Company

APPELLANT

Vs

The Punjab State

RESPONDENT

Date of Decision : 16-01-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 9

Punjab General Sales Tax Act, 1948 — Section 11, 20, 22

Citation : (1985) 58 STC 313

Hon'ble Judges : Sukhdev Singh Kang, J; M.R. Sharma, J

Bench : Division Bench

Advocate : R.N. Narula, for the Appellant; D.S. Brar, Additional Advocate-General, for the Respondent

Judgement

Sukhdev Singh Rang, J.—This order will dispose of two General Sales Tax References Nos. 1 and 2 of 1977 (both titled as Messrs. Naran Dass Raja Ram and Company v. The State).

2. At the instance of the assessee, the Sales Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") has referred to the High Court the following question of law (which arises in both the references) for opinion u/s 22(1) of the Punjab General Sales Tax Act, 1948 (for short "the Punjab Act") read with Section 9(2) of the Central Sales Tax Act, 1956 (for short "the Central Act"):

Whether on the facts and circumstances of the case there was evidence or material on record for the Tribunal to come to the conclusion that the applicant-dealer failed to prove that he had not collected any tax during the period under dispute within the meaning of Section 10 of the Central Sales Tax (Amendment) Act, 1969 (Act 28 of 1969) ?

3. It will be beneficial to notice the facts of the two references in detail in order to appreciate the legal issues involved-

Messrs. Naran Dass Raja Ram and Company (hereinafter referred to as "the

assessee") is a dealer in cotton and is registered as such under the Central Act and the Punjab Act. During assessment year 1967-68, the assessee filed quarterly returns for the quarters ending December 31, 1967 and March 31, 1968 showing his inter-State sales of cotton at Rs. 18,69,414.45 and Rs. 18,31,985.97s respectively and paid Central sales tax of Rs. 54,984.30 and Rs. 53,598.62 voluntarily. It disclosed inter-State sales of cotton worth Rs. 22,57,412.97 for 1968-69 but did not pay any Central sales tax. The Assessing Authority was not satisfied with the returns and issued notice in form S. T. XIV u/s 9(2) of the Central Act, read with Section 11(2) of the Punjab Act for production of books of account. In response to this notice, the assessee produced books of account. These were examined by the Assessing Authority. The assessee raised an objection that he had not collected Central sales tax on these transactions of sale and in view of the decision of the Supreme Court in State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons, . Therefore he was not liable to pay Central sales tax on the inter-State sales of cotton for 1967-68 and 1968-69. The Assessing Authority did not accept this contention mainly on the ground that the assessee had paid the Central sales tax on its turnover in 1967-68 voluntarily and had paid this tax in the year 1966-67, because it had collected this tax from constituents. The bills issued by the assessee indicated that the sale price was inclusive of the Central sales tax.

4. The assessee filed two separate appeals against these assessment orders before the Deputy Excise and Taxation Commissioner. The assessee claims that it had produced contracts of sale and certificates from the dealers to whom the cotton had been sold certifying that the assessee had not charged any Central sales tax from them. The Deputy Excise and Taxation Commissioner dismissed the appeals.

5. The assessee filed two separate appeals before the Tribunal u/s 20 of the Punjab Act, read with Section 9(2) of the Central Act. It was specifically pleaded that the authorities below committed an error by rejecting the claim of the assessee from exemption without recording findings on the evidence consisting of invoices, account books, certificates of buyers, which showed that no tax under the Central Act had been collected by the assessee. This contention finds mention in the order of the learned Tribunal. However, the Tribunal rejected the appeals, mainly on two grounds :

(i) the assessee had deposited tax for the year 1966-67 after collecting the same from his customers; and

(ii) that he had paid tax for two quarters of 1967-68 voluntarily.

6. The assessee made applications for referring the questions of law arising out of the order of the Tribunal for opinion of this Court. Since the two appeals of the assessee for the years 1967-68 and 1968-69 were disposed of by one order, the learned Tribunal framed a common question in both the cases which has been reproduced above.

7. It has been argued by Shri R. N. Narula, the learned counsel for the assessee, that the returns for the two quarters of 1967-68 were filed and the Central sales tax had been paid under protest. This fact is evident from the covering letter dated April 29, 1968 (a copy of which finds place at pages 55-56 of the paper book). It is clearly mentioned therein that after the decision in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, , the tax was being paid under protest and the same should be refunded. Similarly by letter dated February 12, 1970 (a copy of which finds place at pages 52-54 of the paper book) the position of the petitioner had been made clear to the Assessing Authority that the assessee had not collected any Central sales tax on the inter-State sales of the cotton in 1967-68 and was not liable to pay the same; nonetheless the tax was paid under protest to escape the penal consequences and the same should be refunded. The assessee had produced before the Deputy Excise and Taxation Commissioner the contracts of sale and certificates from the buyers to the effect, that no sales tax had been charged by the assessee. He placed the certificates on the file. A contention had been raised before the Tribunal that there was no evidence on the file to come to the conclusion that the assessee had collected tax on his inter-State sales. Rather, there was conclusive evidence in the form of contracts of sale, certificates of the dealers, the invoices and other documents that no tax had been collected from the dealers. The Tribunal has noted this submission but has not dealt with the same. He has not considered these documents and given his findings thereon. He has not rejected them holding them to be irrelevant, inadmissible or of no value. He simply has not discussed them. These documents were very important for the determination of the real issue. The findings of the Tribunal are vitiated because they are based on no evidence. The conduct of the assessee for the previous year is not relevant and the assessee had filed the return and had deposited the tax for the two quarters of 1967-68 under protest. The Tribunal has either failed to read the covering letter accompanying the return or the objections dated February 12, 1970 filed by the assessee before the Assessing Authority, which clearly indicates that the tax was being paid under protest or he had misread these documents. There is merit in the contentions of Mr. Narula. It is now well-recognised that the findings of a tribunal can be challenged if they are based on no evidence or inadmissible evidence or in disregard of or by ignoring vital and relevant piece of evidence or if the findings are perverse and no prudent man instructed in the relevant law will ever reach that conclusion. In the present case, it is established that the assessee had filed the returns and paid the tax under "protest". This is established from the letter accompanying the returns and the objections dated February 12, 1970 filed before the Assessing Authority. The conduct of the assessee for the previous year cannot be taken into account. If any authority for this proposition is needed, reference may be made to a Division Bench decision of the Andhra Pradesh High Court in *Reddy and Company Vs. The State of Andhra Pradesh*, . The Tribunal has not specified any document on the basis of which he has come to the conclusion that the assessee had collected the tax. He has only referred to the invoices issued by the assessee. In the order itself it is

mentioned that in these invoices it is not mentioned that any sales tax had been charged. So, it is apparent that the Tribunal had no evidence before it to hold that the assessee had collected Central sales tax during the years 1967-68 and 1968-69. The Tribunal has also failed to consider and pronounce upon the relevant and material documentary evidence in the form of contracts for sales certificates issued by the dealers, the covering letter dated April 29, 1968 and the objections dated February 12, 1970. Therefore, these conclusions are vitiated. The Tribunal while deciding the appeals under the State and Central Acts, performs judicial functions. He has to consider every fact for and against the assessee and has to give findings on all the objections raised before him. In this context observations of Bhagwati, J., in *Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras*, are instructive.

8. For the foregoing reasons, we answer the question referred to us for opinion in the negative.