
(1970) 10 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Case No. 8 of 1966

National Motors

APPELLANT

Vs

The Punjab State

RESPONDENT

Date of Decision : 28-10-1970

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 21, 22

Citation : (1971) 28 STC 442

Hon'ble Judges : D.K. Mahajan, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : Bhagirath Dass, B.K. Jhingan and S.K. Hirajee, for the Appellant;
H.L. Sibal, General and M.R. Sharma, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

1. This order will dispose of General Sales Tax Cases Nos. 8 and 12 of 1966, which are by the same assessee; only they relate to different years. General Sales Tax Case No. 8 of 1966 relates to 1961-62 while General Sales Tax Case No. 12 of 1966 relates to 1960-61.

2. For the year 1960-61, the petitioner-firm had not filed the quarterly returns of its turnover as required u/s 10 of the Punjab General Sales Tax Act (hereinafter called the Act) and the Rules framed thereunder, with the result that the firm also did not pay the sales tax due on the basis of those returns. A notice was issued to the petitioner-firm by the Assessing Authority which was received by it on 27th September, 1961, requiring the petitioner-firm to show cause why the return had not been filed. In reply to that notice, the petitioner-firm did not file the four quarterly returns for 1960-61 till 7th October, 1963, that is, more than two years from the receipt of notice and more than two and a half years after the close of the year. These quarterly returns were to be filed on or before 31st July, 1960, 31st October, 1960, 31st January, 1961, and 30th April, 1961. After the filing of the returns, the Assessing Authority passed an order of assessment on 25th October, 1963, creating tax liability of Rs. 1,32,340.06 on account of sales

tax and imposing a penalty of Rs. 10,000 u/s 10(6) of the Act for the non-filing of the returns and for non-payment of the tax at the proper time. Against that order, the petitioner-firm filed a revision application before the Excise and Taxation Commissioner u/s 21 of the Act on 12th December, 1963, and before its decision, the District Excise and Taxation Officer, Amritsar, moved the Excise and Taxation Commissioner, by letter dated 6th July, 1964, for the enhancement of the penalty. The Excise and Taxation Commissioner then issued a notice to the petitioner-firm on 19th August, 1964, informing it that he had decided to satisfy himself as to the legality and propriety of the proceedings for the year 1960-61 and the order of the Assessing Authority dated 25th October, 1963, in respect thereof and calling upon the petitioner-firm to show cause against such a course. In reply to that notice, the petitioner-firm submitted a reply on 29th September, 1964, saying that the notice issued by the Excise and Taxation Commissioner was as a result of the findings of the Das Commission Report and by way of political vendetta against the petitioner-firm which was owned by Shri Surinder Singh Kairon, son of Shri Partap Singh Kairon. The learned Commissioner, after hearing the parties, passed an order on 2nd October, 1964, enhancing the penalty from Rs. 10,000 to Rs. 1,32,340.06, that is equal to 100 per cent. of the sales tax levied., The petitioner-firm then filed a revision petition before the Financial Commissioner which was dismissed on 17th June, 1965. An application u/s 22(1) of the Act for making a reference to this Court on certain questions of law stated in the application was also dismissed by the learned Financial Commissioner on 16th March, 1966, holding that no question of law arose out of his order which required reference to this Court. The petitioner-firm then filed the present application in this Court.

3. For the year 1961-62, the petitioner-firm did not file any quarterly return and a notice was issued by the Assessing Authority which was received by the petitioner-firm on 3rd September, 1961, to show cause why the returns had not been filed. On receipt of this notice, the petitioner-firm filed the four quarterly returns for the year 1961-62 on 25th October, 1963. The returns were required to be filed within one month of the expiry of each quarter, that is for the year 1961-62, the quarterly returns had to be filed on or before 31st July, 1961, 31st October, 1961, 31st January, 1962, and 30th April, 1962. After the filing of the returns, the Assessing Authority passed an order of assessment on 11th November, 1963, creating tax liability of Rs. 1,14,055.40 and imposing a penalty of Rs. 5,000 u/s 10(6) of the Act for the non-filing of the return and for non-payment of the tax at the proper time. Against the order of assessment, the petitioner-firm filed a revision before the Excise and Taxation Commissioner u/s 21 of the Act on 28th December, 1963, and before its decision, the District Excise and Taxation Officer, Amritsar, moved the Excise and Taxation Commissioner, by letter dated 6th July, 1964, for the enhancement of the penalty. The Excise and Taxation Commissioner then issued a notice to the petitioner-firm on 19th August, 1964, informing it that he had decided to satisfy himself as to the legality and propriety of the proceedings for the year 1961-62 and the order of

the Assessing Authority dated 11th November, 1963, in respect thereof and calling upon the petitioner-firm to show cause against such a course. In reply to that notice, the petitioner-firm submitted a reply on 29th September, 1964, saying that the notice issued by the Excise and Taxation Commissioner was as a result of the findings of the Das Commission Report and by way of political vendetta against the petitioner-firm which was owned by Shri Surinder Singh Kairon, son of Shri Partap Singh Kairon. The learned Commissioner, after hearing the parties, passed an order on 2nd October, 1964, enhancing the penalty from Rs. 5,000 to Rs. 1,14,055.40, that is equal to 100 per cent. of the sales tax levied. The petitioner-firm then filed a revision petition before the Financial Commissioner which was dismissed on 17th June, 1965. An application u/s 22(1) of the Act for making a reference to this Court on certain questions of law stated in the application was also dismissed by the learned Financial Commissioner on 16th March, 1966, holding that no question of law arose out of his order which required reference to this Court. The petitioner-firm then filed the present application in this Court.

4. It is not disputed that the petitioner-firm had not filed the returns in time and that a default had been committed in filing the returns and paying the sales tax due in accordance with the statutory provisions. What the learned Counsel for the petitioner submits is that the proceedings for enhancing the penalty were taken on extraneous considerations, that is, the report of the Das Commission, which had been appointed to enquire into various allegations made against the late Shri Pratap Singh Kairon and his sons, who owned the petitioner-firm. It was stated in the Das Commission Report (page 93) as under :

That S. Surinder Singh Kairon has taken the fullest advantage of his position as the son of the Chief Minister and has freely exploited the influence and power of his father in securing the agency of the Premier Automobiles Ltd. for National Motors and in developing its business and increasing its sales in diverse ways and in delaying the filing of the sales tax return or making of the voluntary deposits without any effective step being taken against him and in getting away with a paltry penalty wholly inadequate to his lapses.

5. But for this report, the learned Counsel submits, no enhancement of penalty would have taken place. His second ground of attack is that while imposing penalty for the years in question the similar defaults committed by the petitioner-firm in the earlier years and subsequent years could not be taken into consideration which has admittedly been done by the Excise and Taxation Commissioner while enhancing the penalty. He has relied on a judgment of the Bombay High Court in *Kishinchand Chellaram and Others Vs. Commissioner of Income Tax, Central, Bombay*, in which it was held that "an assessee cannot rely on a subsequent event in order to escape taxation which he is properly liable to pay as far as the assessment year itself is concerned." Evidently, this case has no relevancy to the facts of the present case. He has then pressed into service a judgment of their Lordships of the Supreme Court in *Dwarkadas Kesardeo*

Morarka Vs. Commissioner of Income Tax, Central Bombay, wherein it was held that--

in the matter of assessment of Income Tax each year's assessment is complete, and the decision arrived at in a previous year on the material then before the taxing officer cannot be regarded as binding in the assessment for subsequent years.

6. There is no quarrel with this proposition but it has no application in the case of imposition of penalty, as I will explain later. The last judgment relied upon by the learned Counsel is by their Lordships of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, wherein it was held that--

the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

7. These observations, in my opinion, go against the petitioner-firm. Neither a copy of the order of the Assessing Authority nor a copy of the order of the Excise and Taxation Commissioner has been filed with the petition. The learned Financial Commissioner has, however quoted extensively from the order of the Excise and Taxation Commissioner to bring out the reasons which impelled the learned Commissioner to enhance the amount of penalty. These observations are as under:

The petitioner has not shown any legal defects in the said action of the Assessing Authority beyond making a simple mention both in the revision petition as also in the written arguments filed before this Court that the orders of the Assessing Authority were illegal. It had been mentioned before me by the petitioner that the orders were illegal because no opportunity was granted to him by the Assessing Authority before the said imposition of penalty. The Taxation Inspector had pointed out that this plea is not available to the petitioner because he was duly represented before the Assessing Authority at the time when the impugned

orders were passed, as is clear from the order-sheet as also the impugned order itself. Besides Shri Surinder Singh, Manager, the petitioner was represented by Shri S. K. Bansal, Advocate, on the said date before the Assessing Authority. The Taxation Inspector had further pointed out that a notice in form ST-XIV, dated the 3rd September, 1963, had duly been issued to the petitioner by the Assessing Authority, as is clear from the file, in which he had been asked to explain the reasons of his having not filed the quarterly returns for the year 1961-62. It was argued by him that in the face of these facts it did not lie with the petitioner to contend now that he had not been given a reasonable opportunity of being heard as envisaged under the provisions of Section 10(6). I find that the arguments put forth by the Taxation Inspector are both factually correct and technically sound. I have carefully considered the arguments advanced by the petitioner as well as the representative of the department with reference to the circumstances and facts of this case as revealed from the record. The petitioner had nothing to say against the factual correctness of the arguments of the Taxation Inspector mentioned before. In fact, the assessment file of the petitioner fully bears out the correctness of all these facts. The quarterly returns along with the quarterly deposits of tax should have been made by the petitioner. These were not filed nor were the deposits of tax due made by these prescribed dates. The law, as has already been discussed in the foregoing paragraph, had imposed an obligation on the petitioner to file the quarterly returns by the prescribed dates after making the deposits of tax due. Any plea of ignorance of the provisions of law is never acceptable.

In this case, even this plea was not available to the petitioner because he had himself filed quarterly returns for the two quarters of the preceding year 1959-60 and as such was fully in the know of the requirement of law. The returns were actually filed before the Assessing Authority only on 25th October, 1963, i.e. after one year and six months after the expiry of the due dates in April, 1962. Even then only the returns were filed without the tax due having been deposited. This, obviously amounts to a wilful and deliberate flouting of the provisions of law and a wilful disregard of the specific notice given by the Assessing Authority. When this conduct of the petitioner is viewed in the context of the arguments advanced by the Taxation Inspector, it appears that the petitioner had been deliberately and systematically flouting the requirements of law and keeping back Government money in huge amounts over long periods without any obvious intention of ever making the payment on his own. These defaults had started right from the last quarter of the year 1959-60 during which the firm was established and these continued not only up to the year under revision but also for the subsequent years, viz., 1962-63 and 1963-64. From the circumstances of this case as mentioned before, it is clear that this is a case of the extreme type in which the imposition of even the maximum amount of penalty provided for by law could be justified. It is a case where the dealer was influential, his business was flourishing with turnovers running into lakhs of rupees, provisions of law had been not complied with deliberately and even wilfully flouted in spite of the

specific directions of the Assessing Authority, and tax money running into lakhs had been kept back from Government treasury over a number of years without any intention of depositing it ever voluntarily.

8. From these observations, it is quite clear that the Excise and Taxation Commissioner applied his judicial mind to the facts of the case and held that the default in filing the returns and paying the sales tax on the due dates was deliberate and showed scant regard to the statutory provisions on the part of the petitioner-firm. It is not that the petitioner-firm did not know that returns had to be filed every quarter because quarterly returns for two quarters of the year 1959-60 were filed by the petitioner-firm. The quantum of penalty to be imposed is within the discretion of the appropriate authority and no reference can be called by this Court in order to determine whether the amount of penalty imposed is excessive or not. The Legislature permitted the imposition of a penalty up to a maximum of one and a half times the sales tax due and in these cases the Excise and Taxation Commissioner imposed the penalty equal to the sales tax which was less than the maximum provided by the statute.

9. I am further of the opinion that the conduct of the petitioner-firm for the previous and subsequent years could be taken into account by the Excise and Taxation Commissioner in order to determine whether the default on the part of the petitioner-firm was deliberate and contumacious showing complete disregard of the statutory obligations in order to determine the quantum of penalty to be imposed. If the appropriate authority has to confine itself to the assessment of a particular year only, then there was no point in leaving it to the said authority for the quantum of penalty to be imposed in the circumstances of each case. The fact that the penalty imposed can vary from zero per cent. to one hundred and fifty per cent. shows that something more than mere default in carrying out statutory obligation has to be taken into consideration and it is, therefore, legitimate to take into consideration the previous and the subsequent conduct of the assessee in determining the quantum of penalty to be imposed.

10. There is no merit in the submission of the learned Counsel that any extraneous considerations prevailed with the Excise and Taxation Commissioner and the Financial Commissioner in imposing and upholding the penalty. The order of the Excise and Taxation Commissioner shows that he objectively considered the facts of each case and was not influenced by the observations in the Das Commission Report set out above. The observations of their Lordships of the Supreme Court in *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, , to the effect--

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. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises

do not apply to the facts of this case. Those observations are meant for cases

where the matter has to be decided on subjective satisfaction of the authority and not on the material placed before it considered objectively. Their Lordships have explained in *Zora Singh*, , that--

the principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior court would not interfere if the finding can be sustained on the rest of the evidence.

11. In the light of these observations, it is evident that there was enough material on the record before the Excise and Taxation Commissioner to come to the conclusion that the omission to file the returns within time and to pay the sales tax in accordance therewith was deliberate and showed utter disregard of statutory obligations and on that finding it was open to the Excise and Taxation Commissioner to impose such penalty as he considered fit. The petitioner-firm availed of the further remedy of revision to the Financial Commissioner who also considered the penalty imposed by the Excise and Taxation Commissioner not to be excessive. That is a question of fact and, therefore, no question of law can be said to arise out of the orders of the Financial Commissioner dismissing the revision petitions. We are, accordingly, of the opinion that there is no merit in these petitions which are dismissed but without any order as to costs.