
(1964) 07 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No's. 263 to 265 of 1963

National Rayon Corporation Ltd., Bombay

APPELLANT

Vs

The Additional Assistant Excise and Taxation Commissioner,
Punjab

RESPONDENT

Date of Decision : 16-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 21(1)

Citation : AIR 1965 P&H 62 : (1964) 2 ILR (P&H) 869 : (1964) 15 STC 746

Hon'ble Judges : S.S. Dulat, J;P.C. Pandit, J

Bench : Division Bench

Judgement

Dulat, J.

(1) These three appeals under clause 10 of the Letters Patent (Letters Patent Appeals Nos. 263, 264 and 265 of 1963). arise out of a single judgment of Shamsher Bahadur, J., by which he dismissed three writ petitions brought on behalf of the appellant under Art. 226 of the Conditional Assistant Excise and Taxation Commissioner in respect of levy of sales-tax under the central Tax Act, 1956.

(2) The appellant is a company with its registered office in Bombay ant, at the time, it has a branch office at Amritsar which is managed by Kishan Chand and Company. The company is engaged in the manufacture of rayon yarn in its factory at, Bombay and some of it is sent to Amritsar to its Branch office for distribution and sale. The company is a registered dealer both under the East Punjab General Sales Act. 1948, and the Central Sales Tax Act, 1956. In respect of three consecutive years--1957-58, 1958-59 and 1959-60--the company filed its returns and the Assessing Authority made its decision on the 19th February 1959. For the next year, 1958-59, the decision was made on the 14th of July 1959 and for the following year, 1959-60, it was made on the 7th of October 1960. The appellant-company was satisfied with these decisions and as we

understand, no tax under the Central Sales Tax Act was levied.

Later on, this omission was noticed by the Additional Assistant Excise and Taxation Commissioner, Patiala, who, therefore, issued notices in respect of the three years and the notices, which were identical were issued on the 18th August, 1962. The Additional Assistant Excise and Taxation Commissioner said that he had "decide not take us motto action u/s 21(1) of the Punjab General Sales Tax Act. 1948", as he was not satisfied with the legality and propriety of the orders previously made by the Assessing Authority, the intention behind these notices obviously being to reopen the previous decision. The appellant-company objected to that and having found out that tax under a Central Sales Tax Act was proposed to be levied in respect of certain sales in the nature of inter-state trade, the appellant-company put in several objections. Those objections were not considered valid by the Additional Assistant Excise and Taxation Commissioner and that appellant, here-upon, filed three right petition in this court challenging jurisdiction of the Additional Asst. Excise and Taxation Commissioner in respect of the. In substance, the objection to his jurisdiction were two:

(1) that the assessments were being reopened after a long period of time and as far as the first to years 1957-58 and 1958-59 were concerned there were being more than three years after the close of the assessment years and that was not possible in view of S. 11A of the East Punjab General Sales Tax Act, 1948; and

(2) that the goods sold in the course inter-State trade were sent in these cases from Mumbai to Punjab and the tax under Sales Tax Act could levied and collected only in the state of Maharashtra from which the movement of the goods commenced".

In answer to the first objection, it was said on the return filed on behalf of the Excise and Taxation Commissioner, Punjab that the period of time mentioned in section 11A of the East Punjab General Sales Tax Act had no application at all because the Additional Assistant Excise and Taxation commissioner was not an Assessing Authority and was not seeking to act under S. 11A but was merely intending to revise an order previously made by an Assessing Authority and the power of such revision lay with the Additional Assistant Excise and Taxation commissioner by virtue is S. 21 of the East Punjab General Sales Tax Act. Regarding the second objection the return stated that the Supreme Court of India had in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, decided on 29-8-1960 that "when a sale is effected by transfer of documents of tittle to the goods during their movement from one State to another falling under S. 3(b) of the Central Sales Tax Act, 1956 the tax is to be levied by the State in which the sale is effected" and that in the present cases the document of title were transferred at Amritsar while the goods were in movement from Bombay to Punjab and the Punjab State authorities were there fore entitled to levy the tax.

(3) Shamsheer Bahadur, J., did not accept the appellant's submission on the first question and held that the Additional Assistant Excise and Taxation commissioner was competent to revise and was not bound by the period of three years mentioned in S. 11A of the East Punjab General Sales Tax Act and on this view concluded that the power of revision intended to be exercised under S. 21 of that Act could not be questioned. The first ground therefore failed. On the second question the learned Judge felt satisfied that the tax sought to be levied under the Central Sales Tax Act 1956 in connection with inter-State sales could be levied movement of the goods had admittedly started and that it was only into the State of Maharashtra from where the movements of the goods had admittedly started and that it was only the authorities in the State of Maharashtra that were competent to assess collect and enforce the payment of tax on behalf of the government of India. In spite of this conclusion the learned Judge felt that it was unnecessary to issue any writ in the present cases as the Additional Assistant Excise and Taxation Commissioner had merely issued notices to the appellant but had not done any other act which did not properly vest in exercise jurisdiction which did not properly vest in him. The learned Judge, therefore, decided not to make the rule absolute in the expectation, I suppose, that the Additional Assistant Excise and Taxation Commissioner will on considering the matter himself decline to proceed further. The writ petitions were consequently dismissed.

(4) In support of the present appeals Mr. Bhagirath Dass contends that the view of the learned Single Judge about the meaning of S. 21 of the East Punjab General Sales Tax Act is not sound and that, although the power of the Additional Assistant Excise and Taxation Commissioner is not expressly limited to the period of three years mentioned in S. 11-A of that Act, the intention is that it should be governed by the same rule of limitation. Section 11A of that Act, authorises the Assessing Authority to re-assess the sales-tax after an assessment but this power is by the terms of that section to be exercised within three years following the close of the year for which the turnover is proposed to be reopened. Section 21 of the Act authorises the Commissioner and the Additional Assistant Excise and Taxation Commissioner in the present cases had the said power---to call for the record of any proceedings disposed of by an Assessing or appellate authority and after considering the legality or the propriety of the decision made by the Assessing Authority the Commissioner is authorised to make such order in relation to the proceedings as he may think fit.

The argument before us is that this power of the Commissioner mentioned in S. 21 of the Act is really a power to re-open a previous assessment and make a re-assessment and that we must read into it the same limitation as is expressly mentioned in S. 11A of the Act. I am wholly unimpressed by this argument. It is obvious that if the Legislature intended to limit the power of the Commissioner u/s 21 to a period of three years after the close of an assessment year or even after the disposal of the proceedings by an Assessing Authority, it could, and in the circumstances almost certainly would, have said so in S. 21, for the Legislature was aware that a period of limitation had for purposes of re-

assessment by an Assessing Authority been fixed in S. 11A. The conclusion, in my opinion, must be that the Legislature did not intend to fetter power of the Commissioner under S. 21 by nay rile of limitation and therefore left it to the Commissioner"s discretion to exercise his power at any time. Mr. Bhagirath Dass says that it is improbable that such power unlimited anytime could have been entrusted to the Commissioner, but I can find nothing improbable about it and the argument that the Commissioner may decide to reopen a matter stilted twenty or thirty years previously does not lead anywhere. The power of revision mentioned in S. 21 is altogether separate from and unconnected with the power of re-assessment by an Assessing Authority under S. 11A of the East Punjab General Sales Tax Act. In my opinion therefore the learned single Judge was right in holding that the Additional Assistant Excise and Taxation Commissioner had authority to revise the previous orders made by the Assessing Authority in the present cases.

(5) On the second question however, Mr. Bhagirath Dass is on fairly firm ground. The Additional Assistant Excise and Taxation commissioner proposes to levy tax under the Central Sales Tax Act in respect of inter-State sales on the view that the documents of title had been transferred at Amritsar in the State of Punjab while the goods were in movement from Bombay to Punjab. This view has been taken on the authority of the Supreme Court decision in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, .

Mr. Bhagirath Dass points out that that decision of the Supreme Court was concerned with the interpretation of S. 9 of the Central Sales Tax Act as it stood prior to, the 1st October 1958. At that time that is before the 1st October 1958 section 9 authorised the levy and collection of tax in the appropriate State and the expression "appropriate State" was defined in section 2(a) of the Act as the State in which a dealer had his place of business and in relation to a dealer who had more than one place of business the "appropriate" State meant every such State with respect to the place of business within its territory. There was then an Explanation added to section 2(a) which defined the " place of business" as the place of business " meant the place from which the goods were moved. Clause (b) of section 3 the referred to those sales which were effected by transfer of title deeds while the goods were in movement. It was into hat connection that the Supreme court said that when a sale is effected by transfer of document, the sale is effected at the place which the transfer of document takes place and tax under the Central Sales Tax Act could be levied in the State in which such transfer took place. This situation has however changed since the 1st October 1958 and S. 9 of the Central Sales Tax Act now acts now says unambiguously that the tax payable under the Act on a sale effected in the course of inter-State trade or commerce whether such sale falls under clause (a) or clause (b) of section 3, shall be levied and collected by the Government of India "in the State from which the movement of the goods commenced". The question whether the sale in fact takes place in one State or another is no longer of interest for the tax has now to be levied and collected in the Stated from which the movement of

goods started provided of course the tax is on a sale effected in the course on inter-State trade or commerce. In the present cases the sales in question are admittedly sales effected in the course of inter-State sales can be levied and collected only in the State from where the goods begin to be moved, which in the present cases is admitted to be the State of Maharashtra.

(6) Nothing much has been said in opposition to this view on behalf of the respondents and it appears quite clearly that the view. If law in pursuance of which the Additional Assistant Excise and Taxation Commissioner thought that he could deal with the disputed sales is not sound. It is said in this connection that in any case the Additional Assistant Excise and Taxation Commissioner has not really done anything illegal so far and, it is unnecessary to issue any writ. It is however clear that the appellant to appear and submit to the jurisdiction of the Additional Assistant Excise and Taxation Commissioner Punjab. If in fact however the Additional Assistant Excise and Taxation Commissioner Punjab has no jurisdiction to levy and tax sales in question then he can obviously not be notices issued by him for this is a matter of jurisdiction and if it is clear that the officer in question intends to exercise jurisdiction which in law does not vest in him then I think it is only proper that he should be stopped.

(7) The original assessments were made in February 1959 for the year 1957-59 and in October 1960 in respect of year 1959-60. At none of these times that is in February or July 1959 or collect tax under the Central Sales Tax Act in respect of the disputed of the goods had commenced had such power. It is urged on behalf of the respondents that up to the goods had commenced had such power. It is urged on behalf of the respondents that up to the 1st October 1958 the Punjab State authorities could levy and collect tax and therefore in respect of the assessment year 1957-58 was such power with the Punjab Sales Tax authorised by the Additional Assistant Excise and Taxation failed to exercise that power to levy the tax in question at the time. This argument however ignores the fact that the tax in question at the time the Assessing Authority proceeded to consider the matter that is Assistant Excise and Taxation Commissioner can obviously not do anything which the Assessing Authority whose order she seeks to revise could not in law have done. It is true that the liability to pay tax under the Central Sales Tax Act, which may have accrued prior to the 1st October 1958 is not intended to be wiped out by the amendment not claim that it is not liable to pay tax under the years in question and all it claim is that the authorities in the Punjab State have no jurisdiction to make an assessment and levy and collect such tax. This is simply a matter of procedure and it seems to me that as from the 1st October 1958 the Punjab State authorities could not levy or collect the sales effected in the course of inter-State trade the State of Maharashtra. I would therefore hold that in the present cases the Additional Assistant Authority to levy or collect tax under the Central Sales Tax Act.

(8) In the result I would allow these appeals and quash the notices issued by the Additional Assistant Excise and Taxation Commissioner on the 8th August 1962

but considering all the circumstances leave the parties to bear their own costs.

Pandit, J.

(9) I agree.

(10) Appeals allowed.