(1994) 03 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11110 of 1993

Nippon Benro Ispat Ltd. APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 07-03-1994

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 7(4), 74

Citation : (1994) 107 PLR 11

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : D.S. Brar and S.S. Brar, for the Appellant; H.S. Sidhu, AAG, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—This order will dispose of Civil Writ Petitions 11110 and 11111 of 1993 which have been filed by the same firm. CWP 11110 of 1993 relates to the orders passed under the Punjab General Sales Tax Act, 1948 whereas CWP 11111 of 1993 relates to the orders passed under the Central Sales Tax Act, Otherwise, in all respects the facts giving rise to these petitions are the same. The facts hereinafter noticed have been taken from CWP 11110 of 1993.

2. The petitioner is a public limited company having its registered office in Calcutta and Branch office in Ludhiana. It is a registered dealer both under the Punjab General Sales Tax Act and the Central Sales Tax Act in the State of Punjab. The petitioner made sales to M/s. B.K. Steels and M/s. B.K. Electroplating Works, Ludhiana in the months of March and April, 1992. The firms to which the goods were sold were also registered firms under the Punjab General Sales Tax Act and the Central Sales Tax Act. Declarations in form ST-XXII were issued by the two firms in favour of the petitioner in respect of sales affected by the petitioner-firm in March/April 1992. The premises of the petitioner was raided on December 30, 1992. On January 4, 1993, respondent

No. 3 passed order Annexure P-1 cancelling registration certificate of the petitioner both under the Punjab General Sales Tax Act and the Central Sales Tax Act, with effect from the date of the order. Appeal against the order Annexure P-1 was dismissed by order dated March 30, 1993, Annexure P-3.

3. Before passing order Annexure P-1, the petitioner was asked to explain as to how it had procured ST-XXII forms and shown bogus sales of C.P. Coils to M/s. B.K. Steels and M/s. B.K. Electroplating Works and why its registration certificate be not cancelled for having misused it by showing bogus sales.

4. From the orders Annexures P-1 and P-3, it is clearly discernible that the registration certificate of the petitioner was cancelled on the ground that it made bogus sales to the tune of Rs. 15,91,353/- of C.P. Coils to M/s. B.K. Steels and M/s. B.K. Electroplating Works against ST XXII forms, which forms as per the purchasing firms, had been issued to other firms.

5. The case of the petitioner is that registration certificate could not be cancelled as the alleged fictitious sales have not been proved to be so and even otherwise, it is not a good reason for cancellation of registration certificate and that the mis-user of the registration certificate has not been proved.

6. Relief sought has been opposed by filing written statement.

7. Learned counsel for the petitioner contended that registration certificate of the petitioner-firm could not be cancelled by terming the sales made by it to the registered firms as bogus. According to the learned counsel, the sales were genuine and mis-user of registration certificate has not been proved, and in the absence thereof, registration certificate could not be cancelled. According to the learned counsel, these were not the purchases made by the petitioner on the strength of registration certificate. Learned counsel in support of his contention, placed reliance on Amir Chand Sethi and Sons v. The Assessing Authority Amritsar and Anr. (1973) 31 STC 229 and M.K. Trading Company v. The State of Punjab (1974) 34 STC 237. It was also argued by the learned counsel that the observations made to the effect that "apart from this there may be other heavy sales made to other registered dealers which the department has still to consider" in the order Annexure P-3 were totally uncalled for and are not based on any evidence. In Amir Chand Sethi''s case (supra) the assessee made sales of several lacs of rupees to M/s. S.L. Satish Kumar, a registered dealer. A notice was issued to, the assessee that it made huge sales to other dealers whose registration certificate stood cancelled and that the assessee was mis-using his registration certificate and evading tax. The assessee was called upon to show cause as to why his registration certificate be not cancelled. The defence, inter alia, was that the assessee was having in its possession the declaration forms issued by the other firms. Registration Certificate was cancelled, the reason being that registration certificate of the purchasing dealer had been cancelled and the whereabouts of the firm were not known, and therefore, the sales were fictitious. During the course of judgment, it was observed "One cannot, however,

understand how sales to a person whose registration certificate has been cancelled, but the sales have been wrongly shown as having been made to a registered dealer, would, amount to a "misuse" of the registration certificate by the seller, i.e. the assessee."

8. In the aforesaid situation, the order cancelling registration certificate was set aside.

9. In M.K. Trading Company''s case (supra), one of the grounds for issuing show cause notice for cancelling the registration certificate was that the petitioner had made bogus sales in favour of three bogus dealers. The registration certificate was cancelled. The contention raised was that cancellation of the registration certificate on the ground that sales were made to bogus dealers, was not tenable because the sales were made to registered dealers and whose registration certificates had not been cancelled. Thus, after noticing that the decision in Amir Chand Sethi''s case (supra) does support the contention and that the department did not challenge the same, it was observed, "Of course, if the registration certificate could be cancelled because the sales were made to bogus dealers, the position would have been different. It may have been different if this ground was relevant, but, in view of the decision in M/s. Amir Chand Sethi''s case, this ground is not tenable."

10. The facts of the two reported cases are identical with the facts of the cases in hand. In these cases, it has not been shown that the sales were made to bogus dealers. In fact, the M/s. B.K. Steels and M/s. B.K. Electroplating Works were registered dealers during the period the sales in question were made. It is now shown that the registration certificates were even cancelled thereafter. It is rather the case of the respondent that it is an irrelevant consideration. It is also not shown that the declaration in form ST-XXII have not been signed by an authorised representative of the purchasing firms nor is it the case of the department that the forms evidencing the sales are bogus inasmuch as these were not issued to the purchasing firms. The case of the department is that the purchasing firms while requesting for issuing more declaration forms had indicated that the declaration forms bearing these numbers had been issued to the dealers other than, the petitioner. That may be a wrong information as it was also not shown that in fact the declaration forms, which forms were actually issued by the department had been issued to the firms other than the petitioner and the declaration forms in possession of the petitioner are bogus. The issuance and possession of declaration forms is not in dispute. On the strength of a letter showing the issue of these forms to another firms and missing of relevant entries in the corresponding accounts of the two firms again cannot lead to an irresistible conclusion that the sales made by the petitioner were bogus sales. It may very well be that the purchasing dealers may have got duplicate set of accounts books as the accounts books produced by these firms did not reflect relevant purchases, it can be an act of sheer inadvertence or the like. From the above narration it cannot be concluded that the sales made by the petitioner

were bogus and not genuine. For the acts of negligence of other dealers, the petitioners could not be held liable. Cancellation of registration certificate u/s 74 of the Punjab General Sales Tax Act on a mere allegation, without proof was not justified. The petitioner could be assessed and dealt with according to law if the declaration forms had not been found to be genuine or were proved to be bogus. Similarly, the purchasing firms. could be assessed on that basis. It has not been shown as to how the registration certificate has been misused. The payment for the sales made, was made through banks and the purchasing dealers were assessed to tax on these items after rejecting the accounts books and on the basis of best judgment. Assessment orders of the purchasing firms, Annexures P-4 to P-6 clearly go to show that the sales made by the petitioner to the purchasing firms were accepted and taxed accordingly. It was also found that these firms made heavy purchases but supressed the sales.

11. Learned counsel for the respondents on the above facts was unable to show as to how the petitioner misused the registration certificate. In the absence of any good justification, the department was not right in cancelling the registration certificate only on the ground of "misuser of registration certificate". M.A. Rahman and Ors. v. The State of Andhra Pradesh (1961) 12 STC 392 and Mc. Dowell and Company Limited v. Commercial Tax Officer (1985) 59 STC 277, on which reliance was placed by learned Asstt. Advocate General, Punjab do not render him any assistance. These cases have no relevance to the facts of the instant case.

12. No other point was urged before me.

13. For the reasons given above, these writ petitions succeed and are allowed. Orders Annexures P-1 and P-3 in CWP 11110 of 1993 and order Annexure P- 1 in CWP 11111 of 1993 cancelling registration certificates of the petitioner are hereby quashed. No order as to costs.

