(2009) 03 P&H CK 0261

In the Punjab And Haryana At Chandigarh

N.S. Oswal Yarns APPELLANT

Vs

The State of Punjab RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10(7), 11D, 16, 22(2), 22(3)
Punjab General Sales Tax Rules, 1949 — Rule 12(2)

Citation : (2009) 03 P&H CK 0261

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This order shall dispose of G.S.T.R. Nos. 11 and 12 of 2004 because in both the references common question of law is involved. These references pertain to same dealer-assessee in respect of assessment year 1984-85. However, the facts are referred from G.S.T.R. No. 11 of 2004.

2. The petitioner-dealer filed an application u/s 22(2) of the Punjab General Sales Tax Act, 1948 (for brevity, ''the Act''), before this Court for issuance of a direction to the Sales Tax Tribunal, Punjab, Chandigarh (for brevity, ''the Tribunal'') to draw up a statement of the case and refer the question of law to this Court for adjudication u/s 22(3) of the Act. Accordingly, this Court, vide order dated 24.5.2004, issued direction to the Tribunal to refer the following question of law for determination:

Whether the applicant can be levied the tax and burdened with the penalty etc. for the fault of the department in not issuance of the notifications regarding the cancellation of the registration certificate?

3. Brief facts, as disclosed in the statement of the facts, are that the original assessment in respect of the petitioner-dealer for assessment year 1984-85 was framed by the assessing authority vide order dated 24.2.1993 creating an additional demand of Rs. 1,16,460/-including penalty of Rs. 66,469/- u/s 10(7) and interest of Rs. 49,991/- u/s 11D of the Act. It is apt to mention here that the petitioner-dealer is a registered dealer company under the Act. Aggrieved by an

order of the assessing authority, the petitioner-dealer filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala, who, vide order dated 30.6.1994, dismissed the same. On further appeal to the Tribunal, the Presiding Officer dismissed the appeal vide order dated 26.8.1997, upholding the views taken by the authorities below.

4. The petitioner-dealer, feeling aggrieved, moved an application seeking reference u/s 22(2) of the Act before the Tribunal with a prayer for referring the aforesaid question of law for adjudication to this Court. However, the Tribunal dismissed the application vide its order dated 26.8.1997. Thereafter, the petitioner-dealer approached this Court and this Court accepted the prayer made by the petitioner-dealer and directed the Tribunal to draw up a statement of the case and refer the aforesaid question of law for the opinion of this Court.

5. It has come on record that in the year 1983-84 there were R.D. Sales made by the petitioner-dealer to two registered dealers M/s Anita Knitwears, Hazuri Road, Ludhiana and Arihant Traders, Focal Point, Ludhiana. The registration certificates granted by the Commissioner to these registered dealers were cancelled. In respect of Knitwears, cancellation order was made on 8.12.1983 and in respect of Arihant Packages on 3.1.1984. However, the factum of cancellation was published in the official gazette on 2.3.1984 and 11.5.1984. The sales to these registered dealers were made after passing of cancellation orders but before the publication in official gazette.

6. Mr. J.P. Sharma, learned counsel for the petitioner, has argued that the transactions made by the petitioner-dealer by selling goods to the aforementioned two registered dealers between the date of passing of the order of cancellation and their publication in the official gazette would entitle for benefit u/s 5(2)(a)(iii) of the Act because no knowledge of cancellation of registration certificate could be imputed to the petitioner-dealer that the registration certificate of the purchasing dealer has been cancelled. Such knowledge could be presumed only from the date of publication of the factum of cancellation in the official gazette. In support of his submissions, learned counsel has placed reliance on Rule 12(2) of the Punjab General Sales Tax Rules, 1949 (for brevity, the ''Rule'') and argued that publication in the gazette is mandatory. He has also placed reliance on a judgment of this Court in the case of Arjan Radio House Vs. Assessing Authority (Excise and Taxation Officer) and Another, . In support of his submissions, he has further placed reliance on a Division Bench Judgment of Hon''ble Delhi High Court rendered in the case of Commissioner of Sales Tax. New Delhi v. Hari Ram Oil Company. [1992] 87 STC 493, wherein the judgment of Arjan Radio House case (supra) has been followed. According to the learned counsel, the sales to registered dealers in respect of the period before publication of cancellation in the official gazette should not only qualify for exemption but no penalty could be imposed on that count. Learned Counsel has also placed reliance on another judgment of this Court in the case of Parag Nath Depot v. State of Haryana1982 STI 65 (P& H).

7. Ms. Sudeepti Sharma, learned State counsel has, however, argued that there is no question of giving retrospective effect to the notification issued in the official gazette because once an order has been passed to the knowledge of the purchasing dealer cancelling his certificate, it must be presumed that the selling dealer, like the petitioner, had the knowledge. Learned Counsel has referred to the provisions of Section 16 read with Section 7(4) of the Act dealing with the cancellation of registration of dealers.

8. Having heard learned counsel, we are of the considered view that once knowledge about the cancellation of registration certificate of the purchasing dealer could not be imputed to the petitioner-selling dealer, then the sale made by him to such a dealer would be considered to be bona fide and in the absence of publication of the factum of cancellation in the official gazette, no knowledge could be imputed to him. There is sufficient authority for the aforesaid proposition in the shape of judgment of this Court in Arjan Radio House case (supra), which has been followed by a Division bench of Hon''ble Delhi High Court in the case of Hari Ram Oil Company (supra). Even the judgment of this Court in the case of Parag Nath Depot (supra) supports the aforesaid principle of law. The very basis of imputing knowledge to the party other than those who were issued notice of cancellation could only be gazette notification. In the absence of gazette notification, no knowledge of cancellation could be imputed. The very object of the publication in the official gazette is to impart knowledge to the public at large about the status of a purchasing dealer. There is no other mode of notifying the cancellation to the rest of the world. The status of transaction entered into by such a dealer with purchasing dealer before the date of publication in the official gazette has to be considered as a bona fide and would qualify for exemption as RD sale as has been provided by Section 5(2)(a)(iii) of the Act. Therefore, the question posed has to be answered in favour of the assessee and against the revenue.

9. In view of the above, the question of law is decided against revenue and in favour of the dealer-assessee.

