

(1997) 01 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4218 of 1981

Oswal Spinning and Weaving Mills Limited and Another	APPELLANT
Vs	
Excise and Taxation Officer and Another	RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 12(6)

Citation : (1997) 116 PLR 84

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : R.P. Sawhney and Mahavir Ahlawat, for the Appellant; P.P.S. Sahota, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

N.K. Agrawal, J.—This is a petition under Articles 226/227 of the Constitution, seeking a direction to the respondents (Excise and Taxation Officer, Ludhiana and Excise and Taxation Commissioner, Punjab, Patiala), to adjust the refund amount of Rs. 33,558/- due in favour of the petitioner-company for the assessment year 1975-76 for meeting the sales-tax dues of the next year. The petitioner has also sought a direction to the effect that no penalty or interest be levied on account of non-payment of the dues relating to the assessment year 1976-77.

2. The assessee-firm was engaged in the business of manufacture and sale of textile and vanaspati ghee. After assessment for the year 1975-76, an additional salestax liability was created, vide assessment order dated 10.4.1980. In appeal, the tax liability was, however reduced by Rs. 33,558/- by the Deputy Excise and Taxation Commissioner (Appeals), vide order dated 10.11.1980. The petitioner-company filed an application dated 9.2.1981 requesting the Excise and Taxation Officer to give it the refund amount of Rs. 33,558/-. Thereafter, assessment for the next assessment year (1976-77) was made, vide assessment order dated 30.4.1981 and an additional liability of sales tax at Rs. 78,834/- was created. The petitioner then filed another application dated 22.5.1981, seeking

adjustment of the refund amount of Rs. 33,558/- against tax demand relating to the assessment year 1976-77. The petitioner was, however, informed by the Excise and Taxation Officer, vide letter dated 1.6.1981 that no refund was due at this stage.

3. The petitioner, in order to meet the outstanding demand of sales-tax relating to the year 1976-77, made an adjustment of Rs. 4257/- refundable under the computation of tax under the Central Sales Tax Act and deposited the amount of Rs. 41,019 on 28.5.1981. The petitioner informed the Excise and Taxation Officer, vide letter dated 28.5.1981, that, after claiming adjustment for Rs. 33,558/-, the balance amount of tax had been fully deposited and nothing was due and payable for the assessment year 1976-77. The petitioner-company was, however, informed by the Excise and Taxation Officer, vide letter dated 3.8.1981, that the refund amount of Rs. 33,558/- had been withheld u/s 12(6) of the Punjab General Sales Tax, 1948 (for short, the Act), till decision on the suo motu action.

4. The petitioner-company has challenged the order whereby the refund amount has been withheld u/s 12(6) of the Act. It is stated that no notice was issued to the petitioner by the Excise and Taxation Commissioner regarding any suo motu action taken by him for withholding the amount of refund. It is contended that the amount of refund could not be withheld inasmuch as no appeal or revision or any other proceedings was pending against the appellate order passed by the Deputy Commissioner on 10.11.1980. The assessing authority has also not passed any order showing satisfaction that the refund was likely to adversely affect the recovery. The assessing authority has, on the other hand, threatened the petitioner-company with penalty proceedings u/s 11(8) and proceedings to levy interest u/s 11D of the Act.

5. The respondents have, in their joint reply, conceded that an amount of Rs. 33,558/- was withheld u/s 12(6) of the Act till decision on suo motu action by Excise and Taxation Commissioner. It has been admitted that a relief to the tune of Rs. 33,558/- had been granted in appeal by the Deputy Excise and Taxation Commissioner (Appeals).

6. There is no dispute that the amount of Rs. 33,558/- is payable to the petitioner-company by way of refund of tax. The sort question which arises is: whether the amount of refund could be validly withheld by the assessing authority u/s 12(6) of the Act? Sub-section (6) of Section 12 of the Act reads as under:-

"Where an order allowing refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending and the assessing authority is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose orders shall be final."

The assessing authority, while invoking powers, has to form an opinion that the

refund was likely to adversely affect the recovery. It is also to be shown that the refund was the subject-matter of an appeal or further proceedings under the Act. If these two conditions are fulfilled, the assessing authority may withhold the refund and refer the case to the Commissioner whose orders shall be final.

7. The respondents have not denied the petitioners' assertion that no further appeal or revision was pending against the order passed in appeal by the Deputy Excise and Taxation Commissioner (Appeals) on 10.11.1980. The remark, made by the assessing authority that some suo motu action was pending, carries no weight or significance unless it is shown that any such proceeding was pending before any authority under the Act. Nothing has been brought on record to indicate that any proceeding under the suo motu action was pending before the Excise and Taxation Commissioner. u/s 21(1) of the Act, the Commissioner may, of his own motion, call for the record of any proceedings which are pending before any authority or which have been disposed of by any authority subordinate to him, for the purposes of satisfying himself as to the legality or propriety of such proceedings or order made therein. If the Excise and Taxation Commissioner did call for the record under suo motu action, it should have been placed on the record so as to show that the amount of refund could be withheld u/s 12(6) of the Act.

8. The Excise and Taxation Officer had, vide his letter dated 1.6.1981, informed as under:-

"Your application, referred to above, has been considered and it has been decided to adjust the amount of Rs. 4257/- paid in (sic) by you under the Central Sales Tax Act, towards the additional demand of Rs. 73,834/- created during the assessment year 1976-77. Since no refund of Rs. 33,558/- is due at this stage, you are, therefore, directed to deposit the balance of Rs. 74,577/- immediately into the Government Treasury and produce the Treasury receipt."

9. Since the appellate order, giving rise to refund in favour of the petitioner, had been passed on 10.11.1980, there was no justification in the remark made by the Excise and Taxation Officer in his letter dated 1.6.1981 that no refund is due at this stage. There is no mention of any intention on the part of the Excise and Taxation Officer to withhold the amount of refund u/s 12(6) of the Act. When the petitioner persisted, he was informed by the Excise and Taxation Officer, vide letter dated 3.8.1981 that the refund amount has been withheld. The letter conveying the decision to withhold the amount reads as under:-

"Refund of Rs. 33,558/- for the assessment year 1975-76 has been withheld u/s 12(6) of the Punjab General Sales Tax Act, 1948, till the decision of suo motu action in your case by the Excise and Taxation Commissioner, Punjab, Patiala, vide his order dated 9.7.1981.

The said amount already due for the year 1976-77 should, therefore, be deposited immediately to avoid further penal action u/s 11(8) and 11D of the Punjab General Sales Tax Act, 1948."

10. The assessing authority, while withholding the amount of refund, did not record his satisfaction that the refund was likely to adversely affect the recovery. As has already been seen, Sub-section (6) of Section 12 of the Act requires the assessing authority to form an opinion that the refund is likely to affect the recovery. Since it has not been so done, the withholding of the amount of refund is in violation of Sub-section (6). Since there was also no appeal or other proceeding pending in respect of the same subject-matter from which the refund had arisen, there was again no fulfillment of the requirement of Sub-section (6). Thus, both the requirements of Sub-section (6) of Section 12 of the Act had not been fulfilled.

11. In the result, the intimation, withholding the amount of refund of Rs. 33,558/- due in favour of and payable to the petitioner, is held to be illegal and invalid and contrary to the provisions of Section 12(6) of the Act. Since the petitioner wanted adjustment; of the refund amount towards the tax demand relating to the assessment year 1976-77, that shall be allowed. Consequently, no penalty or interest is liable to be levied for non-payment of the balance tax relating to assessment year 1976-77, because the balance tax was paid by adjustment of refund amount of the preceding year. The writ petition stands allowed in the above terms.