
(1994) 11 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5380 of 1994

Oswal Woollen Mills

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 20(5)

Citation : (1995) 111 PLR 72

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; A.K. Walia, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Order dated 4.4.1994 (Annexure P-9) passed by the Sales Tax Tribunal, Punjab, has been challenged in this petition filed under Article 226 of the Constitution of India.

2. In order to appreciate the question of law raised in the petition, we deem it appropriate to make a brief reference to the facts of the case. Petitioner is a company registered under the Punjab General Sales Tax Act, 1948 (for short, "the Act")-The petitioner filed its four quarterly returns for the assessment year 1983-84. Revised returns for the first and third quarters were also filed. The Assessing Authority was not satisfied with the returns filed by the Company and, therefore, it issued a notice u/s 11(2) of the Act. After completing the proceedings of assessment, the Assessing Authority passed order (Annexure P-1) dated 22.3.1993 and imposed an additional tax of Rs. 18,28,627.25. It also assessed an amount of Rs. 28,83,666.50 as interest payable by the petitioner u/s 11C(1) of the Act. Against the order of assessment, the petitioner company filed an appeal u/s 20 of the Act before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division. An application u/s 20(5) of the Act was also filed wherein the petitioner stated that it was not in a position to pay Rs.

47,12,294/- because of the fact that capital of the petitioner was lying locked up in the committed business and even the bank over-draft of the Company has been exhausted. The petitioner further pleaded that interest could not be included in the amount payable as a condition to the hearing of appeal. This application was dismissed by the Deputy Excise and Taxation Commissioner (Appeals) vide order dated 26.8.1993 (Annexure P-5) and the petitioner was directed to deposit the full amount of tax together with the interest by 7.10.1993 with a stipulation that in case the petitioner fails to do so, its appeal would be dismissed in limine. The petitioner then filed an appeal u/s 20(2) of the Act before the Sales Tax Tribunal, Punjab, and also filed an application u/s 20(5) of the Act for issue of a direction to the Appellate Authority to hear its appeal without requiring the deposit of tax and interest. By the impugned order dated 4.4.1994 (Annexure P-9) the Sales Tax Tribunal has dismissed the appeal filed by the petitioner with a direction that it should deposit the amount of tax together with interest by 28.4.1994.

3. While the proceedings were pending before the Appellate Authority, respondent No. 2 passed a rectification order u/s 11A(2) of the Act read with Rule 64 of the Punjab General Sales Tax Rules. By this order an additional tax of Rs. 3,98,150/- was imposed on the petitioner. Another rectification order was passed by respondent No. 2 on 1.9.1993 and the amount of total demand was enhanced from Rs. 3,38,150/- to Rs. 4,19,150/-.

4. Petitioner has assailed the order passed by the Sales Tax Tribunal on the ground that element of interest is not required to be deposited as a condition precedent to the hearing of the appeal filed u/s 20 of the Act and, therefore, the insistence of the Appellate Authority and the Sales Tax Tribunal that the petitioner should deposit the amount of tax together with interest is without sanction of any law and they have acted illegally in directing the petitioner to deposit the amount of tax together with interest. Another ground taken by the petitioner is that the Appellate Authority as well as the Tribunal have not considered the financial incapacity of the petitioner to pay tax together with interest and they have arbitrarily insisted on payment of the entire tax and interest. The very levy of interest has also been challenged by the petitioner.

5. In reply, the respondents have pleaded that the petitioner has failed to prove that it was incapable of paying tax and interest and, therefore, the view taken by the Tribunal does not suffer from any legal error. Another plea of the respondents is that the amount of interest is a part of tax and, therefore, direction given by the appellate Authority and the Tribunal for deposit of the amount of tax together with interest does not suffer from any illegality.

6. In its replication, the petitioner has once again reiterated that the amount of tax does not include interest and, therefore, the petitioner cannot be compelled to pay the entire amount of Rs. 47,12,294/-. Further plea of the petitioner is that Section 11D is attracted in a case where the dealer fails to pay the amount of tax due from him as per the requirement of Section 11A and as there is no failure on

the part of the petitioner, the stand taken by the respondents about the petitioner's liability to deposit the amount of interest is untenable.

7. Mr. M.L. Sarin, Senior Advocate, appearing for the petitioner has tried to persuade us to examine the legality of the order Annexure P-1 passed by the Assessing Authority and argued that the very imposition of the tax u/s 11 is without jurisdiction. However, we find little justification for examining the validity of this argument, because this very question is under consideration before the Appellate Authority in the appeal filed by the petitioner against the order of assessment. That appeal has not so far been decided by the competent authority and once the petitioner itself has thought it proper to avail alternative remedy of appeal, there is no scope for this Court to record finding on the question of liability of the petitioner to pay tax and interest.

8. The aforesaid conclusion of ours, however, does not result in dismissal of the writ petition. Another and more important argument of Shri Sarin is that when Section 20(5) of the Act does not make any reference to the requirement of the deposit of interest as a condition precedent for hearing of the appeal, the respondent-appellate authority and the Tribunal are in error in so far as they have compelled the petitioner to deposit the amount of interest apart from the amount of tax assessed vide Annexure P-1. Shri Walia, Assistant Advocate General, argued that in view of the provisions contained in Section 11 read with Section 20 of the Act, an assessee has to deposit the amount of tax together with penalty and interest before an appeal filed by the assessee can be heard on merit by the Appellate Authority. Shri Walia argued that when the amount of interest has been treated as a part of tax for the purpose of recovery proceeding, it must be construed as a part of tax for the purpose of Section 20(5). Before we come to the merit of the rival contentions of the parties, we deem it proper to refer to some of the provisions of the Act, namely," Sections 11B, 11D, 20(2) and 20(5), which are reproduced below: -

"11B. Tax and Penalty recoverable as arrears of land revenue:- The amount of any tax and penalty imposed (or interest payable) under this Act, which remains unpaid after the due date, shall be recoverable as arrears of land revenue.

11D. Payment of interest:- (1) If any dealer fails to pay the amount of tax due from him as required by Sub-section (4) of Section 10, he shall in addition to the amount of tax, be liable to pay simple interest on the amount of tax due from him at the rate of one percentum per month from the date immediately following the last date for the submission of the return under Sub-section (3) of that section, for a period of one month and thereafter at the rate of one and a half percentum per month till the default continues.

(2) If the amount of tax or penalty due from a dealer is not paid by him within the period specified in the notice of demand, or if no period is specified, within thirty days from the service of such notice, the dealer shall in addition to the amount of tax or penalty, be liable to pay interest on such amount at the rate of

one per centum per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues.

Provided that where the recovery of any tax or penalty is stayed by an order of any court, the amount of tax or penalty, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount ultimately found to be due and such interest shall be payable from the date the tax or penalty first became due.

(3) The amount of interest payable under this Section shall-

(i) be calculated by considering part of a month as one month and any amount less than one hundred rupees as one hundred rupees;

(ii) for the purposes of collection and recovery, be deemed to be tax under this Act;

(iii) be in addition to the penalty, if any, imposed under this Act;

Explanation:- If payment of the amount of tax is made by any dealer through cheque and the same is dishonoured by the bank concerned it will amount to failure on the part of the dealer to pay the amount of tax.

20. Appeal :- (2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any Officer on whom the powers of the Commissioner, are conferred, shall be further appealable to a Tribunal.

(5) No appeal shall be entertained by the appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the tax or of the penalty, if any, imposed or of both as the case may be.

Provided that if such authority is satisfied that the dealer is unable to pay the tax assessed or the penalty if any, imposed or both he may, for reasons to be recorded in writing, entertain an appeal without the tax or penalty or both having been paid or after part payment of such tax or penalty or both."

9. The Haryana General Sales Tax Act, 1973, also contains a provision for appeal in Section 39. Sections 39(1) and 39(5) of that Act are also reproduced below for the purpose of ready reference :-

"39. Appeal.- (1) An appeal from every original order, including an order u/s 40, passed under this Act or the rules made thereunder shall lie:-

(a) if the order is made by an assessing authority; officer incharge of a checkpoint or barrier or an officer below the rank of a Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner or such other officer as the State Government may by notification, appoint;

(b) if the order is made by the Deputy Excise and Taxation Commissioner, to the

Commissioner or such other officer as the State Government, may be notification, appoint;

(c) if the order is made by the Commissioner to the Tribunal.

(5) No appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority is satisfied that the amount of tax assessed and the penalty and interest, if any, recoverable from the person has been paid:

Provided that the said authority, if satisfied that the person is unable to pay the whole of the amount of tax assessed, or the penalty imposed, or the interest due, he may, if the amount of tax and interest admitted by the appellant to be due has been paid, for reasons to be recorded in writing, entertain the appeal and may stay the recovery of the balance amount subject to the furnishing of a bank guarantee or adequate security in the prescribed manner to the satisfaction of the appellate authority:

Provided further that in the case of an appeal against any order which has to be communicated by the appropriate authority to the appellant, the period of sixty days shall commence from the date of receipt of the copy of the order . by the appellant and in the case of an appeal against any other order made under this Act, the time spent in obtaining the certified copy of the order shall be excluded in computing the period of sixty days."

10. A combined reading of Sections 11B, 11D and Section 20 of the Act shows that amount of tax and penalty as well as interest payable under the Act can be recovered as arrears of land revenue. The amount of interest is payable by the dealer who fails to pay the amount of tax due from him as required by Section 10(4). Section 11D(2) speaks of the rate of interest for different periods and Section 11D(3) speaks of the mode of calculation of the interest. Sub-Clauses (ii) and (iii) of Section 11D(3) makes it further clear that amount of interest payable u/s 11D shall be in addition to the penalty imposed under the Act and for the purpose of collection and recovery it shall be deemed 10 be tax. Section 20(5) imposes a bar to the entertaining of appeal by the Appellate Authority unless the appeal is accompanied by a satisfactory proof of the payment of tax or penalty, if any imposed. Proviso to this sub-section empowers the competent authority to entertain the appeal without the tax or penalty or both having been paid, in case it is satisfied that the dealer is unable to pay the tax assessed or the penalty imposed. Of course the competent authority is required to record reasons, in writing, for entertaining the appeal without the payment of tax and penalty. To us it is clear that the Legislature has deliberately omitted the word "interest" from Section 20(5) and proviso thereto. For a limited purpose of collection and recovery, the interest has been treated as tax under the Act. The deeming provision contained in this part of the statute has a limited application. Else it was not necessary for the Legislature to have amended Section 11D by the amending Act No. 26 of 1978 to insert the expression "or interest payable" in the

said section. Similarly, if the Legislature intended that the appeal filed u/s 20 can be entertained only on payment of interest apart from the amount of tax and the penalty, nothing prevented it from inserting a similar expression in Section 20(5) and proviso thereto. It is one of the settled principles of law that all the parts of the statute are to be read together in order to gather the Legislative's intendment behind the enactment of a particular law. It is equally well settled that if different parts of the statute contain different words expressions, appropriate meaning should be given to all such words and expressions and what is not provided in a particular part of the statute cannot be read in it by way of implication. Yet another principle of interpretation is that where a stringent provision has been made for entertaining an appeal, the conditions precedent incorporated in such a provision, which are required to be fulfilled in order to effectively avail the remedy of appeal, must be construed strictly. By applying these principles of interpretation of statute, we find that the omission of the expression "or interest payable" from Section 20(5) and proviso thereto is not accidental but is deliberate and the Legislature never intended that the appellant must pay the amount of interest before an appeal filed u/s 20 can be entertained by the Appellate Authority.

11. Though the provisions of the Haryana Act are not contemporaneous with the provisions of the Punjab Act, a look at Section 39(5) and proviso thereto of the Haryana General Sales Tax Act, 1973, is indicative of the fact that the Haryana Legislature intended the payment of interest apart from tax and penalty as a condition precedent for entertaining an appeal under the said Section, Haryana Act is a later statute and it can reasonably be presumed the Haryana Legislature was very much conscious of the provisions contained in the Punjab Act when it enacted the Haryana General Sales Tax Act, 1973. The Legislature of that state has thought it proper to include the requirement of payment of interest as condition precedent for entertaining of an appeal u/s 39. The Legislature of the Punjab State has not thought it proper to bring about an amendment in the Act of 1948 so as to include the requirement of payment of interest as a condition for entertaining of the appeal. In fact, when amendment were made in the Act by Act No. 26 of 1978, the Legislature could have very well incorporated the expression "or interest payable" in Section 20(5) and proviso thereto as was done in Section 11B. This further buttress our conclusion that there is no requirement of payment of interest as a condition precedent for hearing of an appeal filed u/s 20 of the Act.

12. In view of our aforesaid conclusion, we have no hesitation to hold that the Sales Tax Tribunal has committed a serious illegality in requiring the petitioner to pay the amount of interest apart from the amount of tax as a condition precedent for hearing of its appeal by the Appellate Authority.

13. For the reasons mentioned above, the writ petition is allowed. Annexure P-1 is quashed. The petitioner has already deposited the amount of tax except a sum of Rs. 3,000/-. This amount shall be paid by the petitioner within a period of

three weeks from today and on payment of that amount the appeal of the petitioner shall be heard and decided by the Appellate Authority on merits. Costs made easy.