
(2010) 09 P&H CK 0354
In the Punjab And Haryana At Chandigarh
Case No : G.S.T.R. No. 1 of 2004

Parkash Industries Limited

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 10, 27(1), 31, 40, 42
Haryana General Sales Tax Rules, 1975 — Rule 12A, 21, 21(13), 21(15)

Citation : (2011) 38 VST 201

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—At the instance of the assessee, following questions of law have been referred for the opinion of this court u/s 42 of the Haryana General Sales Tax Act, 1973 (in short, "the 1973 Act") :

(1) Whether, in the facts and circumstances of the case, the declaration in form ST 15 produced by the applicant at the time of original assessment can be disallowed by the revisional authority on the ground that the same had been stolen from the store of DETC, Faridabad (East), notwithstanding that no notification in the official gazette had been issued declaring the said declaration forms to be obsolete and invalid as required by sub-rules (13) and (15) of rule 21 of the Haryana General Sales Tax Rules, 1975 and further notwithstanding the circular issued by the Excise and Taxation Commissioner, Haryana, Chandigarh bearing No. 3227/ST-V dated December 4, 1993 clarifying that although the practice so far has been that lost or obsolete ST 15 forms are circulated by the concerned Assessing Authority through DETC to all other DETCs, but as per rules, those lost or obsolete ST 15 forms have also to be got notified in the official gazette by the Government and directing the concerned DETCs to send such cases to the office of Excise and Taxation Commissioner for publication in the official gazette besides circulation to all DETCs at their own level ?

(2) Whether, in the facts and circumstances of the case, the declaration forms in

question were not liable to be accepted by the revisional authority in view of the Department's instructions issued by circular No. 3623/ST dated July 28, 1976 inasmuch as the name and address of the dealer to whom the said forms were issued along with their RC No. and the official seal of the Department had been affixed thereon, which particulars were required to be filled up by the

Assessing Authority issuing the said forms and on the basis of which the petitioner was entitled to presume that the said declaration forms must have been issued by the concerned Assessing Authority to the dealers who had furnished the same to the petitioner ?

(3) Whether in view of the law laid down by the honourable Supreme Court in the case of Chunni Lal Parshadi Lal Vs. Commissioner of Sales Tax, U.P., Lucknow, , the applicant had discharged its onus by producing the declaration forms in question and the revisional authority therefore could not reject or disallow the same ?

(4) Whether the revisional authority had exceeded his powers of suo motu revision u/s 40 of the HGST Act by making independent enquiries in the matter and taking into consideration material which was not before the assessing authority at the time of framing the original assessment order ?

(5) Whether the revisional authority could exercise powers of suo motu revision in a case where reassessment u/s 31 of the Act had become time-barred by making independent investigation and taking into consideration material which was not before the assessing authority, thus indirectly passing an order of the reassessment which it could not have done directly ?

(6) Whether, in the facts and circumstances of the case, suo motu revision u/s 40 of the HGST Act has become time-barred ?

(7) Whether the revisional authority could validly exercise powers of suo motu revision u/s 40 of the Act on a reference made by the successor-assessing authority ?

2. The assessee/dealer is engaged in manufacture of PVC pipes at Hissar. During the assessment year 1988-89, claims of the assessee with regard to turnover sale to registered dealers worth about Rs. 7 crores were allowed on production of ST 15 forms. However, the revisional authority exercised suo motu power u/s 40 of the Act and held that RD sales to the extent of about Rs. 3.37 crores were wrongly allowed against stolen ST forms and the goods appeared to have been disposed of otherwise than by way of sale to registered dealers in the course of inter-State trade or commerce. This finding was affirmed on appeal by the Tribunal.

3. The findings recorded by the revisional authority are as under :

In the present case, the declaration forms are not genuinely obtained. The assessee-company also failed to satisfy themselves that the purchasers were

registered dealers as some of the so-called purchasers had been found to be non-existent or unregistered. The company procured the declaration forms in a clandestine manner and hence there could not arise any question of collusion between the selling and purchasing dealers as the so-called purchasers never came into the picture. The goods covered by the declaration forms were, in fact disposed of by the assessee-company otherwise than shown in the declaration forms in question. The assessee-company was directed to prove the movement of goods from Hissar to Faridabad and also to produce the proof/mode of payment on October 6, 1997, but, the assessee-company did not avail of this opportunity to substantiate the genuineness of their claim by producing the documents confirming the movement of goods from Hissar to Faridabad, or showing the evidence of receiving the payment from the so-called purchasers of Faridabad. Thus, it is established beyond doubt that the company had disposed of goods in some other manner and showed the sales to the dealers who either did not exist or never purchased any goods from the assessee-company.

4. The findings recorded by the Tribunal are as under :

It is not disputed that the forms against which claim was sought was stolen properly. Information to this effect was also conveyed to all the Deputy Excise and Taxation Commissioners within the State of Haryana, through the circular dated January 28, 1991. Since in the present case declaration forms were not genuine the revisional authority was fully justified to disallow the claim of sales being ingenuine. The appellant-company procured such declaration forms in clandestine manner to evade tax.

5. We have heard learned counsel for the parties and perused the record.

6. The learned counsel for the dealer submitted that deduction for sale to registered dealers on the basis of ST 15 forms was wrongly disallowed on the ground that the forms had been stolen from the store of DETC when no notification in the Official Gazette had been issued as per rule 21 of the Haryana General Sales Tax Rules, 1975 nor loss of forms was circulated by the assessing authority as required under circular dated July 28, 1976. The dealer had discharged the onus by producing the requisite forms.

7. We are unable to accept these submissions made on behalf of the dealer.

8. u/s 6 of the Act, sale or purchase of goods is liable to be taxed after deduction of turnover to the extent specified therein including sales to registered dealers as provided u/s 27(1)(a)(ii). Under second proviso to section 27(1)(a)(ii) of the Act, selling dealer is required to furnish declaration signed by the purchasing dealer containing particulars of sales.

It is undoubtedly true that requirement of furnishing declaration is to facilitate determining genuineness or otherwise of the sales made to registered dealers and mere fact that such declaration is furnished is not conclusive of sales actually made to dealers nor absence of such form is conclusive of sale not having been

made. Furnishing of such a form may be, prima facie, evidence of sales having been genuinely made and absence thereof may be, prima facie, evidence of sales not having been so made. The assessing authority is entitled to determine the question on the basis of entire material available on record. This position of law has been discussed, inter alia, in judgment of the honourable Supreme Court in *Chunni Lal Parshadi Lal Vs. Commissioner of Sales Tax, U.P., Lucknow*, in the following manner (page 120 in 62 STC) :

As we read the rule, the furnishing of the certificate in the manner indicated raises a presumption, but as indicated before that was not the only method, a registered dealer might prove otherwise also. As noted, rule 12A first states that a sale of any goods specified in sub-section (1) shall be deemed to be a sale to the consumer. But this presumption will not be there if the dealer furnishes a certificate in form IIIA as indicated therein. But the question with which we are concerned in this case did not arise in the form in either of the two cases. It is not the question whether it raises a presumption or not. But the question is whether it raises an irrebuttable presumption, i.e., a presumption which cannot be rebutted by the relevant assessing authority. In other words, even if the assessee had furnished a certificate in form IIIA, and the details as stipulated in form IV, can the selling dealer be called upon to prove further how the purchasing dealer has dealt with the goods after purchasing the goods ?

9. Reference was made to earlier judgment in *The State of Madras Vs. Radio and Electricals Ltd. etc.*, . It was observed (page 120 in 62 STC) :

There, Shah, J., speaking for the court, observed at page 207 of the report that the Act sought to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce; and explaining similar provisions in the Central Act, this court observed that though the tax under the Act was levied primarily from the seller, the burden was ultimately passed on to the consumers of goods because it entered into the price paid by them. Parliament, with a view to reduce the burden on the consumer arising out of multiple taxation, prescribed low rates of taxation, when transactions took place in the course of inter-State trade or commerce. This court observed that indisputably the seller could have in these transactions no control over the purchaser. He had to rely upon the representation made to him. He must satisfy himself that the purchaser was a registered dealer, and the goods purchased were specified in his certificates but his duty extended no further. If he was satisfied on these two matters on a representation made to him in the manner prescribed by the rules and the representation was recorded in the certificate in form C, the selling dealer was under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplied the goods he incurred a penalty u/s 10 of that Act. That penalty was incurred by the purchasing dealer and could not be visited upon the selling dealer. The selling dealer was under the Act authorized to collect from the purchasing dealer the amount payable by him as tax on the

transaction, and he could collect that amount only in the light of the declaration mentioned in the certificate in form C. He could not hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertained whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in form C. There was nothing in the Act and the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty might be visited upon the selling dealer.

This court further observed that if the purchasing dealer held a valid certificate specifying the goods which were to be purchased and furnished the required declaration to the selling dealer, the selling dealer became, on production of the certificate, entitled to the benefit of section 8(1) of that Act. It was of course open to the sales tax authorities to satisfy themselves that the goods which were purchased by the purchasing dealer under certificate in form C were specified in the purchasing dealer's certificate in form C. These observations as has been noted before were made in the context of the Rules and the provisions of the Central Act, which were on similar lines, though their provisions were not in *pari materia*.

10. Applying the above observations to the present case, the finding recorded by the revisional authority clearly is that the declaration forms were not genuinely obtained. The dealer had failed to satisfy itself that the purchasers were registered dealers. The dealer was also failed to prove movement of goods from the place of origin to the place of destination and to produce the proof/mode of payment. The dealer was given opportunity but failed to substantiate the genuineness of its claim by producing documents showing movement of goods or showing the receipt of payment from the purchasers. In such circumstances, inference could be drawn that goods were transferred in some other manner and shown as sale to registered dealers. The findings concurrently recorded by the revisional authority and the Tribunal having not been shown to be perverse, the question that the decision arrived at is legal, cannot be held to be untenable. As regards non-compliance of rule 21 with regard to circulating the loss of forms, even if this information was not circulated, it cannot be held that the dealer's claim for deduction from the taxable turnover on the ground of sale being to registered dealer was established. Effect of compliance with the rules has to be seen in overall fact-situation. The dealer inspite of opportunity failed to give evidence of movement of goods and receipt of sale consideration. For this failure on the part of the dealer, adverse inference could have been drawn and mere non-compliance with the rules could not, in the circumstances, be conclusive for upholding the claim. Questions 1 to 3 have thus to be decided against the dealer. As a consequence thereof, question 4 has also to be held against the dealer. As regards question 5, the revisional order being permissible u/s 40, mere fact that the reassessment was not permissible, did not affect the jurisdiction of the revisional authority. Question 6 has not been pressed by learned counsel for the

petitioner. As regards question 7, the revisional authority had suo motu power. Merely because reference was made by the assessing authority did not take away the jurisdiction to exercise suo motu jurisdiction. The said question is answered against the dealer.

11. The reference is disposed of accordingly.