
(1973) 02 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 1 of 1972

Parma Nand Joginder Pal

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 14-02-1973

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22, 5

Citation : (1973) 32 STC 533

Hon'ble Judges : Harbans Singh, C.J.; Bal Raj Tuli, J

Bench : Division Bench

Advocate : B. Dass, B.K. Jhingan and S.K. Hiraji, for the Appellant; None, for the Respondent

Judgement

Harbans Singh, C.J.—u/s 22(4) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), the following question of law has been referred to this court for its opinion :

Whether the sales made to the registered dealers could have been disallowed without complying with Rule 26 of the Punjab Sales Tax Rules, 1949?

2. The facts as are necessary for the decision of this reference are that the firm Messrs. Parma Nand Joginder Pal (hereinafter referred to as the assessee) in its return for the assessment year 1965-66 claimed deductions, out of its gross turnover, of the sales made to the registered dealers, amounting to Rs. 3,72,503.07 u/s 5(2)(a)(ii) of the Act. This deduction was disallowed. The main ground on which the deduction was disallowed by the Assessing Authority was that the assessee was not entitled to this exemption without furnishing the S.T. XXII forms. The appeal filed by the assessee was dismissed by the Deputy Excise and Taxation Commissioner and a further appeal was dismissed by the Sales Tax Tribunal. Ultimately, as directed by the High Court vide its order, dated 4th March, 1971, in S.T. Case No. 7 of 1970, the Sales Tax Tribunal has made this reference.

3. Rule 26, as it existed at the relevant time, of the Punjab General Sales Tax Rules, 1949, read as follows:

A dealer, who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act, shall, on demand, produce in respect of such a sale the copy of the relevant cash memo or bill, according as the sale is a cash sale or a sale on credit and a declaration in writing in form S.T. XXII by the purchasing dealer or by his agent, that the goods in question are intended for resale (in the State of Punjab) or such goods are specified in his certificate of registration for use by him in the manufacture (in the State of Punjab) of any goods for sale.

4. This Rule clearly envisaged that copies of the relevant cash memo or bill, etc. and a declaration in writing in form S. T. XXII by the purchasing dealer were required to be produced by the assessee only when demanded by the Assessing Authority. Admittedly, no demand was ever made by the Assessing Authority. The fact that these documents were not to be produced along with the return but only when demanded is made further clear by the fact that Sub-sequently, by Punjab Government Notification No. GSR-237/PA/46/48/S.27/Amd. (5)/66 dated 10th October, 1966, this Rule was amended and the amended Rule provided that such documents were to be furnished "along with his return". The amended Rule 26 is in the following terms:

(1) Any dealer, who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 shall, along with his return in form S.T. VIII in respect of such a sale furnish "C" and "D" parts of declaration in form S.T. XXII duly filled up and signed by purchasing dealer or by his agent.

(2) ...

5. Thus the words "on demand" have been Sub-stituted now by the words "along with his return".

6. In view of the above, it is clear that, at the relevant time, the aforesaid documents were to be produced only when demanded and, in the present case, as no demand was made, the Assessing Authority or the appellate authority were not justified in disallowing the deduction. The question referred is, consequently, answered in the negative.