(1997) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 858 of 1983

Pawan Dal and Ginning Mills — APPELLANT

Vs

The State of Haryana — RESPONDENT

Date of Decision : 14-03-1997

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 19(2)

Citation : (1997) 116 PLR 474

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

Bench : Single Bench

Advocate : M.L. Puri, for the Appellant; Harish Rathee, DAG, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Agrawal, J.—This is a petition under Articles 226 and 227 of the Constitution for quashing the order dated 2.2.1982 passed by the Deputy Excise and Taxation Commissioner and the order dated 8.11.1982 passed by the Sales Tax Tribunal.

2. Petitioner is a partnership firm and it commenced its business in ginning of cotton and manufacturing of Dal on 29.7.1980 at Siwani, District Bhiwani. The petitioner''s firm had purchased gram valued at Rs. 212/- from M/s Radha Krishan Ram Parshad, Siwani, on 4.2.1980. Gram was a schedule commodity under Entry 2B(ix) of Schedule ''D'' appended to the Haryana General Sales Tax Act, 1973 (hereinafter referred to as ''The Act''). Petitioner''s firm was liable to pay sales tax and to obtain registration under the Act. An application for grant of registration was submitted on 4.2.1980 but it was filed by the Assessing Authority, vide order dated 20.2.1980, directing the petitioner to apply for registration after crossing the taxable turnover of Rs. 25,000/-. Petitioner crossed taxable turnover of Rs. 25,000/- on 22.8.1980 and then informed the Assessing Authority about the same. The Assessing Authority thereupon, vide order dated 5.9.1980, granted registration certificate to the petitioner''s firm with validity effective from 4.2.1980.

3. After the registration was granted to the petitioner, the Deputy Excise and Taxation Commissioner in a suo motu action issued on 3.11.1981 a show cause notice to the petitioner u/s 40 of the Act so as to examine the legality and propriety of the orders dated 20.2.1980 and 5.3.1980 passed by the Assessing Authority. The Deputy Excise and Taxation Commissioner, vide order dated 2.2.1982, quashed the order dated 5.9.1980 passed by the Assessing Authority whereby registration was allowed with effect from 4.2.1980. Petitioner went in appeal before the Sales Tax Tribunal but the appeal was rejected, vide order dated 8.11.1982.

4. The petitioner''s grievance arises from the revisional order passed by the Deputy Excise and Taxation Commissioner u/s 40 of the Act. The plea of the petitioner is that the registration had been granted by the Assessing Authority, vide order dated 5.9.1980, on the ground that the petitioner''s application had not been earlier rejected and had only been filed thereby meaning that the application was kept pending. The Revisional Authority, however, did not agree with the petitioner''s plea that the application for registration had not been earlier rejected by the Assessing Authority vide order dated 20.2.1980.

5. A perusal of the order dated 20.2.1980 makes it clear that the petitioner''s application had in fact been rejected giving their detailed facts and reasons. While filing the petitioner''s application for registration on 20.2.1980, the Assessing Authority took into consideration several factors, namely, that there were two partners, both aged about 22 years, in partnership firm and that the second partner, Smt. Sita Devi, was earlier associated with two other partnership firms which stood dissolved after one year only. The discussion of these factors gave rise to a suspicion on the genuineness of the new firm and, therefore, the application was filed. The relevant operative portion of the order dated 20.2.1980 reads as under:-

"In the interest of Revenue, this application is filed and they are directed to apply for registration under the Haryana General Sales Tax Act and C.S.T. Act after crossing the taxable quantum as a manufacturing concern to Rs. 25,000/- if they are sincerely interested to start the manufacturing concern."

6. Shri Harish Rathee, Deputy Advocate General has argued that the Assessing Authority, while dealing with the petitioner''s application for registration on 20.2.1980, declined to grant registration for the reasons specified in the order. Though the Assessing Authority ordered that the application is filed but, in substance, it amounted to refusal of registration. Therefore, the petitioner could very well file an appeal before the Appellate Authority u/s 39 of the Act. The Assessing Authority had given an explicit and clear direction to the petitioner to apply for registration after crossing the taxable quantum of Rs. 25,000/-. It was, therefore, open to the petitioner to file afresh an application as soon as the taxable turnover exceeded Rs. 25,000/- as specified in the order. It is also pointed out by Sh. Rathee that there was no evidence on record to indicate that the petitioner had filed a second application seeking the revival of his earlier

application or praying for review of his earlier order. The order passed by the Assessing Authority on 5.9.1980 does not make any mention of any such application seeking review or reconsideration of the earlier order. Therefore, there was no occasion nor any justification to revive the application, which had earlier been filed, for the purpose of reconsideration. The Assessing Authority had no power of review under the Act. The application seeking registration had earlier been ''filed'' by the then Assessing Authority on merits for specific reasons and it could not be treated to be ''pending''. Sh. Rathee vehemently argued that neither suo motu action was permissible in law nor revival of the application already filed was possible within the scheme of the Act. Since ''filing'' of the application amounted to rejection, there was no justification in reopening the matter regarding registration.

7. Section 19 of the Act provides for the registration of the dealer who is liable to pay tax under the Act. Sub-section (2) thereof reads as under:-

"S.19(1) xxxx

(2) If the prescribed authority is satisfied that the applicant is a bona fide dealer and the application for registration made by him is in order, he shall, subject to the provisions of Section 23 of the this Act, grant him a certificate of registration in the prescribed form. Such certificate of registration shall be valid from such date, as may be prescribed.

(3) X X X X (4) X X X X (5) X X X X (6) X X X X (7) X X X X (8) X X X X

8. It would be thus clear from a perusal of Sub-section (2) that application for registration is to be granted if the prescribed authority was satisfied that the applicant was a bona fide dealer and that the application was in order. As has been observed earlier, the Assessing Authority, while passing the order dated 20.2.1980, made certain observations about the partners of the firm and, thereafter, took the view that the application be filed. Thus, it is apparent that the Assessing Authority had certain doubts on the genuineness of the firm and it was for that reasons that the registration was not granted.

9. Rule 11 of the Haryana General Sales Tax Rules provides for the procedure for registration. Sub rules (4) and (5) of Rule 11 read as under:-

"(4) If the appropriate assessing authority finds that the application is not in order or the particulars contained in the application are not correct and complete or the applicant is not a bone fide dealer or has not complied with any direction given to him by it within the specified time, he may reject the application after giving the dealer an opportunity of being heard.

(5) When the appropriate assessing authority, after making an enquiry that he may think necessary, is satisfied that the applicant is a bonafide dealer and has correctly given the requisite information, that he has deposited the registration fee into the appropriate Government treasury, that he has furnished the security if demanded u/s 23 and that the application is in order, he shall register the

dealer and shall issue a certificate of registration in form ST 3 which shall be valid from the date of receipt of the application for registration by the assessing authority or from the date of commencement of the liability to pay tax whichever is later. In the case of registration u/s 21, the certificate of registration shall be issued in form ST 4 which shall be valid from the date of receipt of the application.

10. Under the aforesaid sub rule also, it is necessary to arrive at the satisfaction that the applicant is a bona fide dealer. If there is a suspicion about the bona fides of the applicant, the appropriate assessing authority may refuse to grant registration.

11. Shri M.L. Puri, learned counsel for the petitioner has argued that the Assessing Authority had never rejected the petitioner''s application by his order dated 22.2.1980 and the words "application is filed" simply indicated that the application was kept "pending". He, therefore, concluded that the grant of registration by subsequent order dated 5.9.1980 was valid and proper and there was no justification to interfere with the said order. It is also pointed out that the Assessing Authority had no power to file the application inasmuch as he could either grant registration or reject the application. It is, therefore, prayed that the petitioner''s application seeking registration under the Act must be allowed.

12. From the facts arising from the rival contentions, it transpires that the petitioner does not appear to have filed a subsequent application seeking revival of his earlier application which had been filed by order dated 20.2.1980. The order dated 5.9.1980, whereby registration was granted, did not make a mention of any application or prayer made by the petitioner before the Assessing Authority seeking reconsideration of his application. It is thus apparent that the Assessing Authority was not justified in reopening the case of registration on the basis of the earlier application which stood filed. In the absence of any further application, there was no occasion to reconsider the matter inasmuch as the Assessing Authority had no power under the Act to reconsider or review the order already passed. There is also force in the respondent''s plea that the petitioner should have filed an Appeal against the order dated 20.2.1980 whereby registration was not granted. After the Sales Tax Tribunal rejected the petitioner''s appeal, there was an alternate remedy also available u/s 42 of the Act but petitioner did not choose to avail of that remedy. It was for the petitioner to seek reference of a question of law arising from the Tribunal''s order before the High Court. In these circumstances, the present petition is found to have no substance and force and is liable to be dismissed. The order dated 20.2.1980 cannot be said to be an interlocutory or interim order. Keeping in view the contents and tenor of the order, it is an order whereby the registration was declined with an advice to file a fresh application as and when petitioner found this taxable turn over to be more than Rs. 25,000/- . In this light suo motu action taken by the Assessing Authority on 5.9.1980 is found to be not permissible in law. The Assessing Authority had no power of review under the Act.

13. In the result, the writ petition has no force and is dismissed. No order as to costs.