
(1982) 06 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 16 of 1976

Prag Vanaspati Depot

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 02-06-1982

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21, 22, 5

Citation : (1982) 51 STC 378

Hon'ble Judges : Surinder Singh, J;Rajendra Nath Mittal, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; Prem Singh Kadian, for Advocate-General, for the Respondent

Judgement

Surinder Singh, J.—This is a reference initiated by the applicant, Messrs. Prag Vanaspati Depot, Gurgaon, which firm filed an application u/s 22 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), praying to the Sales Tax Tribunal to refer the following question of law for the opinion of this Court :

On the facts and circumstances of this case, what would be the effect on the applicant of stay order granted by the High Court on 25th January, 1966, to the Laxmi Trading Company, Amritsar, during the relevant period and was the Tribunal Justified in maintaining the disallowance of claims of Rs. 5, 21,075.50 made by the applicant out of turnover determined under the Central Sales Tax Act, 1956, in respect of sales made to Laxmi Trading Company, Amritsar, against forms E (application dated 24th April, 1971, filed by the applicant is at annexure GG)?

2. The facts giving rise to the reference may be briefly noticed. The applicant is a registered dealer under the Punjab General Sales Tax Act, 1948 and the Central Sales Tax Act, 1956. The firm is carrying on the business of vanaspati ghee manufactured by it at Aligarh (U.P.). The present reference relates to the assessment year 1966-67. While the assessment case of the applicant was under

consideration, the firm, claimed deductions with regard to sales made to two firms, namely, Messrs. Sohan Lal Raghunandan Lal of Ludhiana and Messrs. Laxmi Trading Company, Amritsar. Both these firms were also registered dealers. In so far as the Ludhiana firm is concerned, the applicant has already got relief in appeal, but the dispute subsists with respect to the sales made to the Amritsar company which are to the tune of Rs. 5,21,075.50, for which deduction was claimed u/s 5(2)(a)(ii) of the Act. The Assessing Authority vide order dated 25th March, 1968, allowed the aforesaid deduction. Subsequently, however, the Deputy Excise and Taxation Commissioner, exercising the powers of the Commissioner u/s 21 of the Act, issued notice to the applicant with a view to reopen the assessment on the basis of a report of the audit that the firms at Ludhiana and Amritsar were not genuine dealers and their registration certificates had been cancelled by the competent authority. The case of the applicant was that though the registration certificate of the Amritsar firm had been cancelled on 8th November, 1965, the said firm had obtained a stay order from this Court and had been working under their registration certificate by virtue of this stay order. There is no dispute that the stay order referred to above, was granted by this Court on 25th January, 1966, vide annexure E. Apart from the above contention, the applicant claimed the deduction on two other grounds, namely, that the cancellation of the registration certificate had at no time been notified in the official Gazette, as required under Rule 12(2) of the Punjab General Sales Tax Rules, 1949, nor had the Amritsar firm surrendered the registration certificate to the Assessing Authority, as required under Rule 14 of the said Rules. The Deputy Excise and Taxation Commissioner, however, repelled the above objections and declined to allow the deduction primarily on the ground that the writ petition in which the Amritsar firm had obtained the stay order was ultimately dismissed. A review application before the Deputy Excise and Taxation Commissioner, however, succeeded only in regard to the sales made to the Ludhiana firm and not to the Amritsar firm. The applicant's appeal before the Sales Tax Tribunal also failed. The present reference has, thus, been initiated for the consideration of the question reproduced above.

3. We have Heard Mr. R.P. Sawhney, the learned counsel for the petitioner and Mr. P.S. Kadian for the Advocate-General, Haryana, at considerable length. In so far as the question referred to this Court is concerned, it can be split up in two parts. The first part relates to the claim for deduction on the basis of the stay order granted by this Court in favour of the Amritsar firm. The learned counsel for the parties have not been able to cite any authority on the subject and the matter has, therefore, to be considered on first principle. There is no gainsaying that the very notion of issuing a stay order is to place the parties in the same position as they were prior to the passing of the impugned order. This being so, there is no manner of doubt that during the period when the stay order is effective, the registration certificate in favour of the Amritsar firm which obtained the stay order, must be deemed to be valid. It was on the basis of this registration certificate that the applicant-firm supplied the goods to the Amritsar

firm and did not charge sales tax as permissible under the law. It cannot be expected that a selling firm would continue to charge sales tax from the purchasing firm for an indefinite period, even though the validity of the registration certificate of the latter firm was intact in view of the stay order. The mere fact that the writ petition of the Amritsar firm was ultimately dismissed, would not incur liability upon the petitioner for recovery of sales tax on sales made to the Amritsar firm during the pendency of the stay order. It is not a case where the dispute is only between the Amritsar firm and the sales tax authorities, but the interest of a third party, namely, the petitioner-firm has also come into being. We have, thus, no hesitation in holding that on account of the issuance of the stay order by this Court in favour of the Amritsar firm, the sales made by the petitioner-firm to the Amritsar-firm on the basis of the registration certificate of the latter, are not chargeable to sales tax. This part of the question is, therefore, answered in favour of the petitioner-firm and against the respondent.

4. The answer to the second part of the question referred to this Court will also have to be in the negative. In para 4 of the statement of the case, it is mentioned and the same is factually undisputed at the bar that the cancellation of the registration certificate of the Amritsar firm was never notified in the Gazette, as required under Rule 12(2) of the Punjab General Sales Tax Rules, 1949. It is also not disputed that the registration certificate which is said to have been cancelled, was never surrendered by the Amritsar firm to the Assessing Authority. This being so, no knowledge in regard to the cancellation of the registration certificate can be imputed to the petitioner.

Arjan Radio House v. Assessing Authority (Excise and Taxation Officer) Gurdaspur [1973] 31 STC 49 is an authority regarding the non-publication of the cancellation of the registration certificate in the official Gazette. In such a situation, if the petitioner-firm continues to transact with the Amritsar firm, the sales made by it to the said firm, would not be chargeable to sales tax, the second part of the referred question is, therefore, answered in the negative, i.e., in favour of the petitioner and against the department. By way of clarification it is held that the Tribunal was not justified in maintaining the disallowance of the claim of Rs. 5,21,075.50 as deduction made by the applicant out of its turnover for the assessment year under consideration. This deduction ought to have been allowed. In the circumstances of the case, the parties are left to bear their own costs of this reference.

Rajendra Nath Mittal, J.

5. I agree.