
(1982) 01 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 17 of 1976

Punjab State Electricity Board

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 25-01-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A
Punjab General Sales Tax Act, 1948 — Section 21, 22

Citation : (1982) 51 STC 274

Hon'ble Judges : S.P. Goyal, J; Prem Chand Jain, J

Bench : Division Bench

Advocate : Kuldip Singh and I.D. Vij, for the Appellant; A.S. Sandhu, Additional Advocate-General, for the Respondent

Judgement

Prem Chand Jain, J.—The Punjab State Electricity Board, Patiala (hereinafter referred to as the petitioner), is a registered dealer in the State of Punjab both under the State and the Central Sales Tax Acts.

2. The petitioner carries on the business of generation and distribution of electricity and for that matter installs electric towers, poles, etc. and constructs power houses and allied buildings.

3. The petitioner purchased cement worth Rs. 6,03,559.21 and other materials worth Rs. 66,569 for use in generation and distribution of electric energy against C forms in the course of inter-State trade and paid 2 per cent sales tax thereon during the year 1964-65.

4. During the assessment, the Assessing Authority vide its order dated 28th November, 1969, found that the goods purchased for the purpose of use in generation and distribution of electric energy were not actually used for the said purpose and as such an offence u/s 10(d) of the Central Sales Tax Act was committed. It was further found that the cement was used for the construction of officers' bungalows, rest-house buildings and was also used in the construction of

foundation and plinths of power houses and towers. So the Assessing Authority arrived at a conclusion that the cement was used in one form or the other for construction of buildings not directly connected with the generation and distribution of electric energy and accordingly it imposed a penalty of Rs. 74,000 u/s 10A of the Act.

5. Feeling aggrieved from the order of the Assessing Authority, the assessee went up in appeal which was heard by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala. On consideration of the entire matter, the appellate authority confirmed the imposition of penalty, but reduced the same to Rs. 20,103.36 by calculating the same at one-and-a-half times of the rate of tax applicable to the purchase of goods had there not been misuse of C forms.

6. It transpires that after the decision of the Deputy Excise and Taxation Commissioner, the Joint Excise and Taxation Commissioner, Punjab, Patiala, vide its order dated 12th December, 1972, in suo motu proceedings again restored the penalty of Rs. 74,000 imposed by the Assessing Authority.

7. Feeling aggrieved from the order of the Joint Excise and Taxation Commissioner, the petitioner went up in appeal before the Sales Tax Tribunal, who vide its order dated 15th May, 1975, confirmed the order passed by the Joint Excise and Taxation Commissioner and also affirmed his action in precluding the petitioner from attempting to raise the points decided against him (petitioner) by the Deputy Excise and Taxation Commissioner on the ground that in suo motu proceedings the matter was not reopened by the department on any point other than whether the penalty should have been one-and-a-half times of the concessional rate or the full rate of tax. It was also held that starting of proceedings u/s 21(1) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the State Act), in view of the judgment of the Jammu and Kashmir High Court in Assessing Authority v. Jammu Metal Rolling Mills 1971 Tax LR 1861 (FB) and the order of the learned Joint Excise and Taxation Commissioner do not become illegal or improper in any way.

8. Still dissatisfied, an application was presented by the petitioner u/s 22(1) of the State Act, requiring the Tribunal to refer certain questions of law, which arose out of the order of the Tribunal. On consideration of the matter, the Tribunal has referred the following questions of law for our decision :

(i) Whether, on the facts of the case, the Honourable Tribunal was justified in upholding the decision of the Joint Excise and Taxation Commissioner in suo motu proceedings in precluding the petitioner from raising the points which were decided against the petitioner by the learned Deputy Excise and Taxation Commissioner (Appeals), Patiala ?

(ii) Whether, on the facts of the case, the Honourable Tribunal was justified in upholding the right of the Joint Excise and Taxation Commissioner to take into consideration the judgment of the Jammu and Kashmir High Court which neither

existed at the time of assessment nor at the time of appeal ?

(iii) Whether, on the facts of the case, the Honourable Tribunal was justified in upholding the levy of penalty u/s 10A of the Central Sales Tax Act at one-and-a-half times of the normal rate instead of the concessional rate in view of the cardinal principle of law that any provision in a taxing statute capable of two interpretations, interpretation favourable to the assessee is to be followed ?

9. On question No. (i), it is vehemently contended by Mr. Kuldip Singh, the learned counsel for the petitioner, that even where proceedings are initiated on its own motion only with regard to a particular question, the appropriate authority has wide power and is not precluded to deal with other questions that may be raised by the assessee in order to show that in some other respects also, the order of the subordinate authority suffers from illegality or impropriety.

10. After giving our thoughtful consideration to the entire matter, we find considerable force in the contention of the learned counsel. Section 21(1) of the State Act, under which the proceedings were initiated suo motu, reads as under:

21. (1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

11. A bare perusal of the aforesaid section clearly goes to show that the Commissioner while exercising suo motu powers, after calling for the record, can satisfy himself as to the legality or propriety of such proceedings or orders passed by any authority subordinate to him. When such a wide power is envisaged under the statute, then merely this fact that the proceedings were initiated suo motu only with regard to the question of penalty, would not debar the Commissioner to deal with other questions on which the assessee or the revenue may to the satisfaction of the Commissioner be able to show that the view taken by the subordinate authority is either illegal or improper. As earlier analysed, the section is absolutely clear and given wide powers to the authority to go into the question of illegality and impropriety of any proceedings taken or order passed by any authority, subordinate to him and thereafter pass such order in relation thereto as it thinks fit. Though we would have further elucidated the matter, but it would be wasteful to do so in view of the judgment of the Supreme Court in THVL. Bombay Ammonia Pvt. Ltd. Vs. The State of Tamil Nadu, which lends full support to our view. In that case, a similar point under the Madras General Sales Tax Act, 1959, had arisen with regard to the power of the Deputy Commissioner u/s 32 of that Act. The relevant observation reads as under :

In view of the above, we are of the opinion that the suo motu power of revision of the Deputy Commissioner is of wide amplitude and can be exercised in favour of the revenue as well as the taxpayer in order to correct any error or illegality committed by the assessing authority in his order of assessment.

12. Consequently, in view of the aforesaid discussion, we hold that the Joint Excise and Taxation Commissioner has wide powers u/s 21(1) of the State Act, that even if proceedings are initiated suo motu in respect of a particular matter only, then also the other questions touching the legality and propriety of the order or the proceedings of the subordinate authority, can be gone into and that the Tribunal was not justified in upholding the decision of the Joint Excise and Taxation Commissioner in precluding the petitioner from raising the points which were decided against him (petitioner) by the Deputy Excise and Taxation Commissioner (Appeals), Patiala, in the proceedings initiated by him u/s 21(1) of the Act. Hence, question No. (i) is answered in the negative, i.e., in favour of the assessee and against the revenue.

13. In the view we have taken on question No. (i), the learned counsel for the parties state at the Bar that the other two questions need not be answered as the matter has to be decided afresh by the Joint Commissioner. Consequently, we return these two questions unanswered.

14. In the circumstances of the case, we make no order as to costs.