
(2003) 07 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No's. 1819 and 1820 of 2003

Ralson Carbon Black Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Punjab General Sales Tax Act, 1948 — Section 10(3), 10(4), 10(5), 10(6), 11D(1)
Punjab General Sales Tax Rules, 1949 — Rule 20

Citation : (2004) 137 STC 527

Hon'ble Judges : K.S. Garewal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; Salil Sagar, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In these petitions, the petitioner has prayed for quashing the orders passed by the Excise and Taxation Officer-cum Assessing Authority, Ward No. 5, Ludhiana (respondent No. 2) u/s 9(2) of the Central Sales Tax Act, 1956 (for short, "the B Central Act") read with sections 10(6) and 11-D of the Punjab General Sales Tax Act, 1948 (for short, "the State Act") and the appellate orders passed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala and Sales Tax Tribunal-II, Punjab (for short, "the Tribunal").

2. The petitioner is a company incorporated and registered under the Companies Act, 1956. It is also registered under the Central Act and the State Act. Due to delayed filing of return and deposit of tax for the quarter ending on June 30, 2000 respondent No. 2 passed order dated November 27, 2000 (annexure P.I in C.W.P. No. 1819 of 2003) and imposed penalty of Rs. 2,25,000 u/s 9(2) of the Central Act read with section 10(6) of the State Act and also levied interest amounting to Rs. 1,41,729 u/s 11-D of the State Act. Appeals filed by the petitioner were dismissed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, and the Tribunal vide their orders dated

November 5, 2001 (annexure P.3) and August 5, 2002 (annexure P.5) respectively. Thereafter, respondent No. 2 issued demand notice, annexure P.6. Similarly, for the quarter ending on September 30, 2000, respondent No. 2 passed order dated November 27, 2000 (annexure P.I in C.W.P. No. 1820 of 2003) and imposed penalty of Rs. 1,43,900 u/s 9(2) of the Central Act read with section 10(6) of the State Act and also levied interest amounting to Rs. 14,390 u/s 11-D of the State Act. Appeals filed against that order were dismissed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, and the Tribunal. Thereafter, respondent No. 2 issued demand notice, annexure P.6.

3. The petitioner has challenged the impugned orders mainly on the ground that respondent No. 2 did not have the jurisdiction to impose penalty u/s 10(6) of the State Act on account of delayed filing of return or levy interest u/s 11-D of the State Act. It has relied on the judgment of this Court in *Oswal Spinning & Weaving Mills Ltd. v. State of Punjab* [1996] 103 STC 491 and averred that the orders passed by respondent No. 2, Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, and the Tribunal ignoring the law laid down by the High Court are liable to be declared illegal and quashed.

4. The stand taken by the respondents is that in terms of section 10(3) read with section 10(4) and 10(6) of the State Act and rule 20 of the Punjab General Sales Tax Rules, 1949 (for short, "the Rules"), the petitioner was required to file return in form ST-VIII on quarterly basis within thirty days from the expiry of each quarter and deposit the amount of tax with the Scheduled Bank which it failed to do and thereby made itself liable for imposition of penalty and levy of interest. According to the respondents, the Assessing Authority is under an obligation to impose penalty for delayed deposit of tax and also charge interest in terms of section 11-D of the State Act. They have tried to distinguish the decision of the division Bench of this Court in the case of *Oswal Spinning & Weaving Mills Ltd. v. State of Punjab* [1996] 103 STC 491 by asserting that the provision contained in rule 20 of the Rules had not been considered in that case. They have also relied on the judgment of the Supreme Court in *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* [1981] 48 STC 466 and averred that a dealer who fails to file return within the stipulated time is liable to pay penalty and interest.

5. We have heard learned counsel for the parties and perused the record. Sections 10(3), (4) and (6) and 11-D of the State Act and extracts of rule 20 of the Rules which have bearing on the decision of these petitions read as under :

"Sections 10(3), (4), (6) and 11-D of the State Act:

10(3). Such dealers as may be required so to do by the Assessing Authority by notice served in the prescribed manner and every registered dealer shall-

(i) furnish such returns by such dates and to such authority as may be prescribed ; and

(ii) file a declaration in respect of the goods which have been purchased from a registered dealer within the State of Punjab in such manner and form and to such authority as may be prescribed.

10(4). Before any registered dealer furnishes the returns required by sub-section (3), he shall in the prescribed manner, pay into Government treasury or the Reserve Bank of India or at the District Excise and Taxation Office, the full amount of tax due from him under the Act according to such returns and shall furnish along with the returns receipt from such treasury, bank, or District Excise and Taxation Office showing the payment of such amount :

Provided that no payment of such amount shall be accepted at the District Excise and Taxation Office made through a bank draft or crossed cheque drawn on a local Scheduled Bank in favour of the Assessing Authority.

10(6). If a dealer fails to pay in the manner laid down in sub- section (4), the amount of tax due from him under the Act in accordance with the returns or revised returns submitted by him under sub-section (4) or sub-section (5), as the case may be, the Commissioner or any other person appointed to assist him under subsection (1) of section 3, may after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, in addition to the amount of tax due from him, a sum not exceeding one and half times but not less than ten per centum of the amount of tax to which he is assessed or is liable to be assessed on the basis of such returns or revised returns excluding such amount of tax, if any, as has already been paid by him under the aforesaid sub-section.

11-D. Payment of interest.-(1) If any dealer fails to pay the amount of tax due from him as required by sub-section (4) of section 10, he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due from him at the rate of one per centum per month from the date immediately following the last date for the submission of the return under sub-section (3) of that E section, for a period of one month and thereafter at the rate of two per centum per month till the default continues."

"Rule 20 of the Rules :

Every registered dealer shall furnish return in form ST-VIII quarterly within a period of thirty days from the expiry of each quarter, if the amount of tax due as per return is deposited in cash into the Government treasury, or, the Reserve Bank of India, and within a period of twenty days from the expiry of each quarter, if the amount of tax due is only paid through crossed cheque or bank draft, as the case may be, drawn on a local Scheduled Bank in favour of Assessing Authority at the District Excise and Taxation Office....."

6. In *Oswal Spinning & Weaving Mills Ltd. v. State of Punjab* [1996] 103 STC 491(P&h), a division Bench of this Court interpreted the provisions reproduced above and held as under :

"A plain reading of sub-section (4) shows that it lays down two requirements to be fulfilled by a dealer. First, every registered dealer while furnishing the return shall pay into the Government treasury the full amount of tax due from him according to the returns. Second, the receipt showing the payment of tax shall be filed along with the return. The assessee's plea was that no tax was paid inasmuch as no return was filed and, therefore, no tax could be said to be due from him under the Act according to the returns. Sub-section (6) of section 10 provides for the imposition of penalty where a dealer failed to pay the amount of tax due from him under the Act in accordance with the return. Sub-section (6) of section 10 of the Act reads as under :

(6) If a dealer fails to pay in the manner laid down in subsection (4), the amount of tax due from him under the Act in accordance with the returns or revised returns submitted by him under sub-section (4) or sub-section (5), as the case may be, the Commissioner or any other person appointed to assist him under subsection (1) of section 3, may after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, in addition to the amount of tax due from him, a sum not exceeding one and half times but not less than ten per centum of the amount of tax to which he is assessed or is liable to be assessed on the basis of such returns or revised returns excluding such amount of tax, if any, as has already been paid by him under the aforesaid sub-section."

It will be thus clear from the requirements laid down in sub-section (6) of section 10 that penalty could be levied where there is failure to pay tax due under the Act in accordance with the return. When no return is filed at all for a period, no tax can be said to be due. The use of the words "amount of tax due from him under the Act, in accordance with the returns or revised returns submitted by him under sub-section (4) or sub-section (5)" is significant and indicates a situation where an amount of tax is found due in accordance with the return.

Interest can be levied under sub-section (1) for non-payment of tax where it is found that a dealer was required to pay tax as laid down in sub-section (4) of section 10. Here, "tax due" is relatable to the amount which arises from the return furnished by the dealer. Reference to sub-section (4) of section 10 in sub-section (1) of section 11-D makes it clear that "tax due" has relevance to the tax ascertained by the dealer on the basis of the return furnished under sub-section (3) of section 10 of the Act."

7. The division Bench then referred to the judgments of the Supreme Court in *State of Rajasthan v. Ghasilal* [1965] 16 STC 318 (RAJ), *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* [1981] 48 STC 466 and *J.K. Synthetics Ltd. v. Commercial Taxes Officer* [1994] 94 STC 422 and held :

"Under the Rajasthan Sales Tax Act, a dealer is required to pay the amount of tax due on the basis of the return and also to file the receipt of money along with

the return. In sub-section (4) of section 10 of the Act, also, a dealer is required to pay full amount of tax due from him under the Act according to the returns furnished by him. Here also, he has to file the receipt along with the return. Since the two provisions, namely, sub-section (2) of section 7 of the Rajasthan Sales Tax Act and sub-section (4) of section 10 of the Act appear to be similar, the judgment of the Supreme Court in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , is squarely applicable to the present case. As has been seen earlier, sub-section (6) of section 10 of the Act empowers the Assessing Officer to impose penalty only where a dealer has failed to pay the amount of tax due from him under the Act in accordance with the returns. Similarly, interest can also be charged under sub-section (1) of section 11-D of the Act where a dealer fails to pay the amount of tax as required by section 10(4) of the Act. Thus, the requirement is similar both in sub-section (6) of section 10 and sub-section (1) of section 11-D. The amount of tax due is relatable to the tax which arises on the basis of the turnover shown in the return furnished by the assessee. In both the provisions, there is a reference to sub-section (4) of section 10. It would, therefore, be not possible to conclude that penalty could be imposed or interest could be levied where neither returns were filed nor the tax was paid on the basis of such returns. However, sub-section (5) of section 11 of the Act provides for an assessment where a dealer did not furnish F return in respect of any period. It empowers the Assessing Authority to proceed within five years after the expiry of the prescribed period after giving the dealer a reasonable opportunity of being heard to assess, to the best of his judgment, the amount of tax, if any, due from the dealer. Sub-section (8) of section 11 provides for the imposition of .-, penalty where the tax assessed is not paid by a dealer within the time specified in the notice of assessment. It would be thus clear that in a situation where a dealer fails to furnish the returns and also fails to pay tax accordingly, action could be taken under sub-section (5) of section 11 by making a best judgment assessment for determining tax payable by the dealer. Penalty could be then imposed if the dealer failed to pay the tax within the specified time.

Sub-section (2) of section 11-D of the Act provides for charging of interest where the amount of tax is not paid by a dealer after assessment. This sub-section, therefore, contains a distinct provision for the levy of interest where tax is not paid after the service of demand notice issued by the Assessing Authority. In this light, subsection (1) of section 11-D assumes significance because, under that sub-section, interest could be charged where tax is not paid as required by sub-section (4) of section 10. Sub-section (1) of section 11-D is attracted only where tax is not paid on or before the date of the furnishing of the return. No tax becomes due under sub-section (4) of section 10 till the return is filed. There is no violation of section 10(4) of the Act unless the return is filed without paying the amount of tax as per the return. Tax is either due when it is ascertained by the assessee in the return filed under sub-section (3) of section 10 or is ascertained by the Assessing Authority u/s 11 of the Act. Thus, an assessee is

obliged to pay tax at two stages, once when the return is filed by him and thereafter when the amount of tax is determined by the Assessing Authority. Payment of voluntary tax is, therefore, dependent on the furnishing of the return and is not independent of it. No time appears to have been prescribed for the payment of voluntary tax except that the tax is to be paid on or before the furnishing of the return. Thus, penalty could be imposed u/s 10(6) or interest could be charged under sub-section (1) of section 11-D of the Act when tax was not paid according to the return filed. Payment of tax is, therefore, linked with the filing of the return. Under the scheme of the Act, tax becomes due only when the return is filed or when the tax is assessed or quantified by the Assessing Authority and demand notice is issued."

8. In *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* [1981] 48 STC 466, a three-Judge Bench of the Supreme Court interpreted the provisions of the Rajasthan Sales Tax Act, 1954, which are in pari materia to sections 10(3), (4), (6) and 11-D of the State Act. By a majority judgment, the Supreme Court held that interest can be levied u/s HB(a) of the Rajasthan Act if the return is not filed within the specified time even though tax may have been paid before filing the return. The relevant extract of the majority judgment is reproduced below :

"We are concerned in this case with the liability of the assessee to pay interest on the amount of tax which had remained unpaid. Tax, interest and penalty are three different concepts. Tax becomes payable by an assessee by virtue of the charging provision in a taxing statute. Penalty ordinarily becomes payable when it is found that an assessee has wilfully violated any of the provisions of the taxing statute. Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal. In order to understand the case of the assessee, we may classify the registered dealers into the following different classes :

- (1) A registered dealer who files his return showing a higher taxable turnover than the actual turnover which is ultimately found to be taxable at the time of regular assessment and who pays tax u/s 7(2) of the Act on the basis of the return.
- (2) A registered dealer who files a true and proper return and pays tax on the basis of such return within the time allowed.
- (3) A registered dealer who does not file any return at all as required by section 7(1) and pays no tax u/s 7(2) of the Act.
- (4) A registered dealer who files a true return but does not pay the full amount of tax as required by section 7(2) and
- (5) A registered dealer who files a return but wrongly claims either the whole or any part of the turnover as not taxable and pays u/s 7(2) of the Act that amount

of tax, which according to him is payable, on the basis of the return.

In the case of a registered dealer falling under class (1) no question of payment of interest would arise as the amount of tax paid by him at the time of filing the return is much more than what is actually due and payable by him under the Act. The extra tax paid by him becomes refundable after the regular assessment is completed in view of section 7(4) of the Act. In the case of a registered dealer falling under class (2) also no question of payment of interest arises as there is no shortfall in payment of the tax.

If the contention of the assessee urged in this case is accepted, no interest becomes payable even by registered dealers falling under classes (3), (4) and (5) because (a) in the case of a registered dealer falling under class (3) who has not filed any return at all, no occasion would arise to claim interest on any tax "due on the basis of return" as there is no return at all, (b) in the case of a registered dealer falling under class (4) who files a true return but does not pay full amount of tax u/s 7(2) the assessing authority is entitled to ignore it under Sub-rule (4) of rule 25 of the Rules and when the return is not taken cognisance of, there will be no return on the basis of which interest can be computed and (c) in the case of a registered dealer coming within the purview of class (5) who has filed a return but has wrongly claimed either the whole or any part of the turnover as not taxable and paid u/s 7(2) of the Act only that amount of tax which according to him is payable as tax, he would have paid whatever is payable on the basis of the return. The resulting position would be that clause (a) of section 11B of the Act which clearly imposes the liability on the assessee who has not paid the tax due by him within the period allowed by law becomes either unworkable or meaningless. A fair reading of section 11B of the Act suggests that the Act expects that all assesseees who are liable to pay sales tax should file a true return within the period prescribed under sub-section (1) of section 7 and should produce a treasury receipt or a receipt of any bank authorised to receive money on behalf of the State Government showing that full amount of tax due from them has been paid.

In the present case if we construe the words "on the basis of return" occurring in sub-section (2) of section 7 of the Act as on the basis of a true and proper return which ought to have been filed under sub-section (1) of section 7, then all the three classes of persons, viz., (i) those who have not filed any return at all and who are later on found to be liable to be assessed, (ii) those who have g filed a true return but have not deposited the full amount of tax which they are liable to pay and (iii) those who have filed a return making a wrong claim that either the whole or any part of the turn- over is not taxable and who are subsequently found to have made a wrong claim, would be placed in the same position and they would all be liable to pay interest on the amount of tax which they are liable to pay but have not paid as required by sub-section (2) of section 7 of the Act. We are of opinion that this view is in conformity with the legislative intention in enacting section 11B of the Act."

9. The majority judgment in the case of Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, was expressly overruled by a Constitution Bench judgment in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another,

10. In Oswal Spinning & Weaving Mills Ltd. v. State of Punjab [1996] 103 STC 491 (P&H) the division Bench applied the ratio of the Constitution Bench judgment in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, and held that no penalty can be imposed and interest levied for delayed filing of return provided that tax due is paid before filing the return. In our opinion, the ratio of that judgment is squarely applicable to the facts of the case in hand.

11. Shri Salil Sagar argued that the judgment of the division A Bench in Oswal Spinning & Weaving Mills Ltd. v. State of Punjab [1996] 103 STC 491 (P&H) cannot be read as laying down a correct law because it did not consider the provision of rule 20 of the Rules which prescribes the time-limit for filing of return and the court may refer the issue to a larger Bench, but having carefully gone through the judgments of the Supreme Court in Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota [1981] 48 STC 466 and J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, we are unable to agree with him. It is true that rule 20 prescribes the time- limit within which the assessee is required to file return and violation thereof can be penalised u/s 23 of the State Act. However, an order of penalty cannot be passed u/s 10(6) and interest cannot be levied on account of delayed filing of return.

12. In the premise aforesaid, we hold that the impugned orders are liable to be quashed. Consequently, the writ petitions are allowed. The impugned orders are quashed and the cases are remanded to the Tribunal for passing fresh orders on the appeals of the petitioner after hearing its representative.

13. We also make it clear that the competent authority may, if so advised, take any legally permissible action against the petitioner for delayed filing of returns.