
(1982) 03 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1336 of 1974

Ram Kishan Kapoor and Co.	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 26-03-1982

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10

Citation : (1983) 53 STC 148

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : R.N. Narula, for the Appellant; Nirmal Goel, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—In these two petitions (Nos. 1336 and 1337 of 1974) the two orders of the Assessing Authority imposing a penalty of Rs. 22,500 u/s 10(7) of the Punjab General Sales Tax Act, 1948 (for short, the Act), for filing incorrect returns for the assessment year 1970-71 and Rs. 10,000 for not depositing the tax due respectively are impugned.

2. Undisputably, both these orders emanate from the assessment order dated 28th March, 1972 (annexure P1) (in C. W. P. No. 1336 of 1974), whereby on the basis of consolidated statement of purchases and sales filed in form S.T. VIII-A and form I under the State and Central Sales Tax Acts respectively, the petitioner-firm was assessed to a tax of Rs. 15,000 and a penalty of Rs. 15,000 u/s 10(4) (sic) of the Act. This latter Order (annexure P1) was set aside by the appellate authority, i.e., Deputy Excise and Taxation Commissioner, Rohtak, vide his order dated 5th March, 1973 (annexure P4) (in C.W.P. No. No. 1336 of 1974). The appeals preferred by the petitioner against the orders imposing penalties were dismissed on the ground that the same were barred by limitation. Though the petitioner pleaded for the condonation of the limitation on the ground that Shri Charan Dass, Advocate, to whom the relevant papers had been entrusted by the petitioner for purposes of filing the appeal was suddenly taken ill and remained

confined to bed in P. G. I., Chandigarh, for quite sometime, yet the appellate authority did not accept this plea and thus declined to condone the delay. The petitioner now impugns the orders of the Assessing Authority imposing the penalties as well as of the appellate authority dismissing its appeals.

3. The primary ground of challenge is that since the basic order of assessment (annexure P1 in both the petitions) has been set aside by the appellate authority, the subsequent orders of penalty emanating from the said order must fall and deserve to be set aside. For this proposition, the learned counsel for the petitioner seeks reliance on Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, and L. K. Joshi and Co. v. Sales Tax Commissioner AIR 1971 Orissa 99, where in somewhat similar circumstances it has been observed that when the basic order passed in the assessment proceedings is destroyed or replaced, the resultant orders based on the incorrectness of the information supplied during those proceedings or the non-deposit of tax as a result of those orders, have to fall and deserve to be set aside.

4. The learned counsel for the respondents however seeks to contend that the impugned orders of penalty are wholly independent orders and have nothing to do with the assessment order, annexure P1 in both the petitions. This submission obviously has no legs to stand upon for the reason that it is only during the course of the assessment proceedings that the Assessing Authority has found that either the petitioner had filed incorrect information or statement or the tax so assessed had not been deposited by the petitioner.

5. For the reasons recorded above, these petitions succeed and the impugned orders of penalty are quashed. This, however, does not debar the authorities under the Act to look into the matter afresh in accordance with law and the observations made above. I, however, pass no order as to costs.