
(1968) 03 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Sales Tax Reference No. 12 of 1963

Ram Pal Madan Gopal

APPELLANT

Vs

The Punjab State and Another

RESPONDENT

Date of Decision : 21-03-1968

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22

Citation : (1968) 22 STC 79

Hon'ble Judges : Mehar Singh, C.J.; Shamsheer Bahadur, J

Bench : Division Bench

Advocate : C.L. Aggarwal, for the Appellant; R.N. Narula, for the Advocate-General, for the Respondent

Judgement

Inder Dev Dua, J.—Firm Messrs Ram Pal Madan Gopal, Chaura Bazar, Ludhiana, has approached this Court u/s 22(2) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), for a mandamus to the Financial Commissioner to refer to this Court for decision of the question of law, arising out of his order dated 10th January, 1961.

2. The petitioner-firm is a registered dealer within the contemplation of the Act and is alleged to have filed returns for all the four quarters of the assessment year 1954-55 declaring their gross turnover at Rs. 9,12,341-6-6. Out of this turnover they claimed deductions for Rs. 9,03,090-3-0 on account of sales stated to have been made to registered dealers and Rs. 2,207-8-0 on account of exports thus leaving a taxable turnover of Rs. 7,043-11-6 only. In respect of this turnover a sum of Rs. 220-2-6 was deposited as tax u/s 10 of the Act.

3. In response to a notice in Form S.T. XIV the accounts were produced by the petitioner-firm which were examined by the Assessing Authority and by virtue of the order dated 12th March, 1957, the deductions of sale to five registered dealers were disallowed. The order of assessment is annexed with the petition. According to this order, the transactions mentioned above were held not to be genuine because purchases worth lakhs were shown against the purchasers but

no corresponding sales made by them (the purchasers) had been proved and that it was also not possible to contact them at their registered places of business for verifying the purchases and further disposal thereof. The registered certificates obtained by the said purchasers were also, according to the averments in the petition, held by the Assessing Authority to have been fraudulently obtained and steps were being taken for the cancellation of their registered certificates. The petitioner according to the averments in the petition had produced the declaration of the said registered dealers required u/s 5(2)(a) (ii) of the Act read with Rule 26 of the Sales Tax Rules. The only duty cast on the petitioners was to obtain a declaration required u/s 5(2)(a)(ii) and it was the duty of the department to see that the registered dealers were genuine dealers and not bogus ones. If a registered dealer purchases goods from the petitioner-firm and gives the necessary declaration, it is enough and the petitioner-firm need not concern itself with the subsequent dealings on the part of the purchaser. There is no evidence or material on the record to show that any one of the dealers concerned was at the time not a registered dealer or that he made bogus purchases. In the circumstances the disallowance of the deductions claimed on account of the sales to registered dealers by the Assessing Authority had been described in the petition to be wholly illegal and unjustified.

4. The petitioner took an appeal to the Deputy Excise and Taxation Commissioner, Jullundur Division, who rejected the same on 29th April, 1958, holding that the registration certificate of one of the purchaser-dealers appeared from his personal file to have been cancelled on 23rd September, 1955, and another one did not produce his account books for assessment year 1953-54 and a third one did not produce his account books before the Assessing Authority on 17th October, 1957.

5. On revision, the Excise and Taxation Commissioner allowed the revision petition in part and reduced the taxable turnover from Rs. 2,37,398-13-0 to Rs. 1,70,463-0-6. The learned Taxation Commissioner agreed with the petitioner that the furnishing of a declaration by a registered dealer is a prima facie proof that the sale in question was made to him but he endorsed the views of the Assessing Authority in refusing to allow deduction if there was any evidence to suggest that the sales had not in fact been made, as claimed. The sales in favour of the five registered dealers were held to be of suspicious nature because one of them had become insolvent after the assessment year and another had appeared before the Assessing Authority and stated that he had never functioned as a dealer. This material, so proceeds the writ petition, was not disclosed by the Assessing Authority during assessment proceedings against the petitioner nor was the petitioner given any opportunity to rebut any such material. Revision preferred to the Financial Commissioner was also disallowed on 10th January, 1960, on the ground that the Commissioner had given proper reasons for not allowing deductions on account of sales to the two firms Messrs A. K. Jain and Co., and Messrs D.N. Hosiery, Ludhiana.

6. An application made to the Financial Commissioner requiring him to refer the following questions of law u/s 22(1) of the Act was also disallowed in April, 1961 :-

(a) Whether there is any material or evidence on the record to justify the presumption that goods never passed to the registered dealers.

(b) Whether it was not the duty of the Assessing Authority to disclose any material or evidence in his possession leading to a suspicion or inference that the sales were not genuine to the knowledge of the petitioner and whether any such material was brought to the notice of the petitioner and the petitioner given opportunity to rebut the same.

(c) Whether in the face of the facts that the deductions claimed were on account of sales made to registered dealers, the registration certificates of these dealers were in force at the time and had not been cancelled, the dealers were carrying on business in the market, the sales to one of two had been allowed and that the declarations required u/s 5(2)(a)(ii) were duly obtained from the dealers, it was open to the department to go behind the declarations and to hold in the absence of any legal evidence that the sales to the said dealers were bogus and no deductions could be claimed in respect of such sales.

7. Having failed to get the matter referred to this Court the present petition has been filed for a mandamus as already observed.

8. To begin with, it has been urged that the production of the declaration from the purchasers is conclusive proof of the genuine nature of the sales and therefore as a matter of law it was not open to the departmental authorities to go into the question of genuineness of the sales. In support of this proposition no authority has been cited by Shri C. L. Aggarwal. On the other hand, a decision of Mehar Singh, J., dated 24th November, 1958, in Messrs Jhangi Mal Nathu Mal v. Punjab State Civil Writ No. 230 of 1958, which was cited in support of the proposition that the production of the declaration is at least prima facie evidence goes against the petitioner's contention that it constitutes conclusive evidence on the point. A similar contention raised by Shri C. L. Aggarwal in that case was negated as being of no substance. I agree with the view taken in that case with the result that I do not find any good ground for requiring the Financial Commissioner to refer this question of law in the case in hand.

9. Shri Aggarwal then contended that the Deputy Excise and Taxation Commissioner on appeal relied on a statement of one Puran Chand, proprietor of Messrs D. N. Hosiery, made before the Assessing Authority on 17th October, 1957, on his personal file maintained in the District Office of the Sales Tax Department, that he had not maintained account books and indeed had never been in business. According to this statement the registration certificate had been obtained for him by Messrs Prab Dayal Hosiery on the understanding that the latter would pay him a sum of Rs. 3 daily in lieu of his signing certain declarations on the bills whenever required to do so. Regarding Messrs A. K. Jain

& Co., the Deputy Excise and Taxation Commissioner observed that the registration certificate had been granted to this firm on 8th May, 1953, and that it filed the return regularly. It had been assessed to an additional tax of Rs. 2,994-2-0 on account of sales of about one lac of rupees but as the tax could not be recovered the sentence of imprisonment has been imposed upon the proprietor. The file of this firm was stated to be with the Senior Sub-Judge with the result ,that this assertion could be verified. The order of the Assessing Authority was affirmed on the ground that the purchases were either bogus or the goods concerned had been misappropriated or that the real purchasers were some other persons. On revision the Excise and Taxation Commissioner also observed that Messrs A.K. Jain & Co. had been adjudicated insolvent by the Senior Sub-Judge, Ludhiana. Relying on this circumstance as also on the statement of Puran Chand relied upon by the Deputy Excise and Taxation Commissioner, the learned Commissioner upheld the refusal to allow deductions in regard to the purchases said to have been made in favour of Messrs A.K. Jain & Co. and Messrs D.N. Hosiery. In regard to the other dealers the revision was allowed with the result that the taxable turnover was reduced as already mentioned. Shri Aggarwal has laid stress on the point that the fact of Messrs A.K. Jain & Co., having become insolvent as well as the statement of Shri Puran Chand of Messrs D.N. Hosiery were not in existence at the time of assessment and that the insolvency was not found disclosed to the Deputy Excise and Taxation Commissioner with the result that the petitioner has not been given any opportunity of rebutting this material on which alone the finding against his client has been given. This according to the counsel raised an important question of law which should be got referred to this Court for decision.

10. Shri Nehra has, on the other hand, contended that at no stage did the petitioner ever ask for an opportunity of rebutting these two pieces of evidence and that his main case throughout has been based on the conclusive nature of the declaration. According to him, the petitioner is not entitled to a mandamus also because there is no equity in his favour.

11. After considering the contentions of the parties, in my opinion, the order of the Financial Commissioner does give rise to the question of law mentioned in para. 17(a) of the petition. I would, accordingly, direct the learned Financial Commissioner to state and to refer to this Court for decision the question as to whether there is any evidence on the record to justify the presumption that the goods sold never passed to the registered dealers, Messrs A. K. Jain & Co. and Messrs D. N. Hosiery. There will be no order as to costs in these proceedings.

Mehar Singh, J.

12. I agree.

13. In pursuance of the abovesaid order, the Financial Commissioner made an order and the case came on for final hearing before the Division Bench consisting of MEHAR SINGH, C.J., and SHAMSHER BAHADUR, J.

JUDGMENT

Shamsher Bahadur, J.

14. This has to be read in continuation of the judgment of the Bench delivered on 18th of March, 1963, issuing a mandamus to the Financial Commissioner to refer to this Court for decision whether there is any material or evidence on the record to justify the presumption that goods never passed to the registered dealers, M/s. A. K. Jain & Co., and M/s. D. N. Hosiery. The Financial Commissioner in the order passed on 2nd August, 1963, in pursuance of this direction has given answers to which I would shortly advert. The judgment which is now to be given by the Bench will dispose of two matters which have been registered as General Sales Tax References Nos. 12 and 13 of 1963, after the answer of the Financial Commissioner had been received on 2nd of August, 1963, with regard to the question which he was directed to refer for decision to this Court.

15. The facts which are no longer in dispute may be narrated to appreciate the surviving point which calls for decision of this Court. The petitioner-assessee, Messrs Ram Pal Madan Gopal, is a registered dealer and had filed returns for all the four quarters of the assessment years 1954-55 and 1955-56, to which the two references relate. In respect of the assessment year 1954-55, the gross turnover was shown as Rs. 9,12,341-6-6. Out of the deductions, a sum of Rs. 9,03,090-3-0 was claimed in respect of sales stated to have been made to registered dealers. Another sum of Rs. 2,207-8-0 was claimed as deduction on account of exports. The assessee stated that a taxable turnover of Rs. 7,043-11-6 only remained out of the gross sales of Rs. 9,12,341-6-6.

16. The Assessing Authority disallowed the deduction in respect of Rs. 2,30,356-1-6 for the reason that the transactions of sale, to which they related, though made to registered dealers, did not appear to be genuine as the vendees were men of straw. The appeal preferred by the assessee to the Deputy Excise and Taxation Commissioner failed, but in revision the Excise and Taxation Commissioner allowed some further deductions but rejected the sales made in favour of two registered firms, namely A. K. Jain and Company and D. N. Hosiery, Ludhiana. A further petition to the Financial Commissioner also failed.

17. A petition u/s 22(2) of the East Punjab General Sales Tax Act for the issue of a mandamus resulted in success and Dua, J., with whom the learned Chief Justice (then Mehar Singh, J.) agreed, directed the Financial Commissioner to find out if there is "any evidence on the record to justify the presumption that the goods sold never passed to the registered dealers, Messrs A. K. Jain & Co., and Messrs D. N. Hosiery."

18. It is not necessary to give the facts of the other petition as the difference relates only to figures and not to the points in dispute.

19. The learned Financial Commissioner has given three pieces of evidence which he considers to be sufficient to justify the conclusion which had been reached by

the Assessing Authority. The first of these reasons is that the Assessing Authority came to the conclusion that the vendees were incapable of making purchases running into lacs, they being men of straw. The finding admittedly was based on personal knowledge of the Assessing Authority as well as on the reports of the field staff which could not be lightly ignored. This knowledge obviously does not provide any evidence of any probative value and has to be rejected.

20. The second piece of evidence, in the words of the Financial Commissioner is :-

...a statement of Shri Krishan Gopal son of Shri Bhagat Ram partner of Messrs Ram Gopal Madan Gopal that they have maintained no separate khatahs for these dealers. He has further stated that all these alleged transactions (running into lacs) were for cash. This is obviously opposed to normal trade practice where frequent and large transactions between two dealers in the same town are generally made through cheques or hundis. The absence of any reliable record of these transactions casts doubt on their genuineness.

21. It is undoubtedly suspicious that transactions of sale of considerable magnitude should have been made in cash without any recorded entries in any books of account. It may perhaps be true that the payments for such sales are made either through bills of exchange or cheques and all that can be said is that there is no proof of the transactions in respect of which deductions had been claimed. The learned Financial Commissioner has assumed that it was for the assessee to adduce proof about the genuineness of the sales. Mr. C. L. Aggarwal has contended that the sales were made to registered dealers whose certificates of registration having been proved absolved the assessee from any further liability of enquiry regarding the genuineness of the transactions. He has invited our attention to a decision of the West Bengal Board of Revenue in *Srinivas Jiwamam v. State of West Bengal* [1952] 3 S.T.C. 301, in which the petitioners' claim to exemption from sales tax in respect of sales to registered dealers to the tune of Rs. 24,150 was disallowed. The purchasing dealer in that case could not be traced and so the tax on the corresponding sales could not be realised. The declarations that the goods had been purchased by registered dealers could not, therefore, be verified. Considering the disallowance of the claim it was observed by the Member that the department's position embodied "rather a novel proposition of law. The Act only requires that sales should be made to a registered dealer and that the goods must be specified in the purchasing dealer's certificate of registration as being intended for resale by him or for use by him in the manufacture of any goods for sale etc." The seller, in that case, was not held responsible for the movements of a purchaser and if the purchasing dealer could not be traced this circumstance was wholly irrelevant and could not constitute any evidence to conclude that the declarations were not genuine or that they had been manufactured by the petitioners. Another decision, to which our attention has been invited, is of *Narasimham, C.J., and G. K. Misra, J., in Nowranglal Agarwala v. State of Orissa* [1965] 16 S.T.C. 271, where it was held that the law does not cast on the assessee any responsibility to be satisfied about the

correctness of the certificate of registration, because it would prima facie be a strong piece of evidence in his favour. What an assessee stands to lose is his claim for deduction if the department succeeds in showing that the purchasing dealer was not in law a registered dealer. In the instant case it is not the case of the defendant that the persons to whom goods in question had been sold were not registered dealers. There is yet another decision of the Andhra Pradesh Court of Chandra Reddy and Bhimasankaram, JJ., in *Madugula Papayya and Ors. v. Province of Madras* [1956] 7 S.T.C. 180, where it was said that "a mere suspicion that the return is incorrect is not sufficient to enable the assessing authority to proceed under Rule 9. He must have reason to believe that the return is incorrect or incomplete which in its turn should be based upon some material or information and the estimate of the turnover should be based upon the material gathered by him." The Financial Commissioner, under the second head, relies only on the existence of suspicions in the transactions and no evidence can be said to exist that the transactions were really fictitious.

22. There is yet another category of evidence to which the learned Financial Commissioner had adverted in his order of 2nd of August, 1963. He has relied on an unreported decision of this Court in *Messrs Jhangi Mai Nathu Mai v. The Punjab State* Civil Writ No. 230 of 1958, that merely filing of declaration is not conclusive evidence in support of the claim for deduction. This again is not evidence and the matter of production of registration certificates is not discussed at all.

23. On the whole, we are, therefore, inclined to think that no evidence exists to justify the conclusion of the Assessing Authorities and the reference must be answered in favour of the assessee. We would make no order as to costs of this reference.

Mehar Singh, C.J.

24. I agree.