(1959) 01 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1138 of 1957

Rameshwar Dass — APPELLANT

Vs

The Excise and Taxation Commissioner and Others — RESPONDENT

Date of Decision : 23-01-1959

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1959) 10 STC 218

Hon'ble Judges : Gosain, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; Chetan Dass Dewan, Assistant Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Gosain, J.—This is a petition under Article 226 of the Constitution of India seeking to have an appropriate writ issued quashing the orders of the Excise and Taxation Commissioner, Pepsu, Patiala, dated the 1st of August, 1953 (copy Annexure ''H'' to the petition) and that of the Financial Commissioner, Punjab, dated the 19th of July, 1957 (copy Annexure ''I'' to the petition). By means of orders (copies Annexures ''A'' and ''B'' to the petition), both of which are dated the 17th of November, 1952, the Sales Tax Officer, Barnala, assessed Messrs District Refugee Cloth Merchants Syndicate, Barnala District, Dhuri, to sales tax and called upon Shri Jagan Nath, President of the said Syndicate, to pay the sums of Rs. 8,909-8-0 and Rs. 7,013. The first assessment order related to the accounting period 13th April, 1950, to 31st March, 1951, and the second to the accounting period 1st April, 1951, to 31st March, 1952. The department made efforts to recover the amounts from Sri Jagan Nath, President of the Syndicate, but it appears it did not succeed to any appreciable extent. Shri Jagan Nath made an application to the Commissioner, Excise and Taxation, that the other members of the Association be also asked to pay. By means of order dated the 11th of February, 1953, the Commissioner ordered :-

It will be in the fitness of things if the tax is recovered from all the shareholders. Kindly verify the list of shareholders and, if correct, send a copy of it to the Collector directing him to collect arrears from all the shareholders according to their shares.

2. A copy of this order has been placed on the record as Annexure ''C''. Admittedly this order was passed without any notice to the present petitioner or to any other shareholder. The petitioner then moved an application to the Commissioner, Excise and Taxation, that he was not a partner in the Syndicate and no liability for the tax assessed on the Syndicate could be fastened on the petitioner. The petitioner alleges that he was not informed of any orders passed on his petition and on learning from an extraneous source that his petition had been rejected he applied for a certified copy of the order in October, 1953. He then sent reminders on 23rd of October, 1953, and the 16th of November, 1953, but in spite of all this he was not supplied with any copy of the order. In February, 1954, he was asked to pay a sum of Rs. 404-4-0 out of the arrears of Rs. 15,922-14-0 which is presumably the aggregate of the two items of tax levied by assessment orders (Annexures ''A'' and ''B'') referred to above. He paid this amount of Rs. 404-4-0 and a letter was then issued to him by the Excise and Taxation Officer, Barnala, on the 10th of February, 1954, reading as under :--

Reference your application dated 9th February, 1954. An amount of Rs. 404-4-0 out of the arrears of Rs. 15,922-14-0 lying against Messrs District Refugee Cloth Merchants'' Association, Dhuri, has been deposited by you as per notice from Shri Jagan Nath, President of the District Cloth Merchants'' Association, Dhuri, dated 11th December, 1952. In view of this notice and amount of disallowances no other amount is recoverable from you in this respect.

3. A copy of this letter has been placed on the present record as Annexure ''F''. On the 7th of July, 1956, warrant for the petitioner''s arrest was issued and in the same he was called on to pay a sum of Rs. 3,775. On the 13th of August, 1956, the petitioner again applied for a copy of the order passed on his previous petition and having obtained a copy he filed a petition for revision before the Financial Commissioner on the 16th of August, 1956. The said application was dismissed on the 19th of July, 1957. The petitioner has come up to this Court seeking to have the orders of the Commissioner, dated the 1st of August, 1953, and that of the Financial Commissioner, dated the 19th of July, 1957, quashed.

4. The petition is contested by the State who urge that recovery can be made from the present petitioner either because he is a dealer or because he is a partner. Reliance is placed by the State on Rule 39 (1) of the Patiala and East Punjab States Union General Sales Tax Rules, 2006 Bk. This rule reads-

39(1) A dealer and his partner or partners shall be jointly and severally responsible for payment of the tax, penalty or any amount due under the Ordinance or these rules.

5. Mr. D. S. Nehra, learned counsel for the petitioner, urges that the

Commissioner, Excise and Taxation, and the Financial 5. Commissioner have recorded no finding whatever that his client is a partner of the assessee Syndicate. This contention is well-founded. The Commissioner in his order, dated the 1st of August, 1953, observed as under :-

The petitioner''s contention that the members are not the partners of the firm within Rule 39 of the partnership is not very relevant. The explanation attached to Section 2 (d) defining the dealer has clearly said that all co-operative bodies and other associations fall under the category of ''dealer'' for the purposes of this Ordinance and the relevant Rule 39 while saying ''partner'' obviously includes the members of any cooperative body or any other association.

6. From the above observations it is quite clear that the Commissioner did not feel it necessary to record any finding on the point whether the petitioner was a partner in the assessee Syndicate. The Financial Commissioner has not even touched the point. It appears that both these officers have really relied on the definition of "dealer" and have purported to make the petitioner liable to pay the amount in question on the ground that he is a member of the association which is the "dealer" in the present case. Mr. Chetan Das appearing for the State conceded that there was no material on the record to show that the present petitioner was a partner of the assessee Syndicate and that he is liable to pay the tax in question on the ground of his being a partner. Mr. Chetan Das contends that Section 2(d) of the Patiala and East Punjab States Union General Sales Tax Ordinance, 2006 Bk., defines "dealer" as meaning any person engaged in the business of selling or supplying goods. He particularly draws my attention to the Explanation to Sub-section (d) of Section 2 which reads as under :-

Explanation. -- A co-operative society or a club or any association which sells or supplies goods to its members is a dealer within the meaning of this clause.

7. On the basis of the above Explanation it is urged that the assessee Syndicate is certainly an association which sells or supplies goods to its members and is therefore a "dealer" within the meaning of Clause (d) of Section 2 of the Ordinance. The argument is that all the members of the association must be deemed to be the component parts of the association and must therefore be deemed to be "dealers" and as such they should be held liable to pay the tax in question. I regret I am unable to accept this contention. The dealer in this case must be deemed to be the assessee Syndicate and the tax can be recovered from the property of the said Syndicate. If, however, it were found that the petitioner was a partner of the said Syndicate he would be liable to pay the tax under Rule 39 referred to above. It is admitted that the Government used to supply a quota of cloth to the District Refugee Cloth Merchants Syndicate, Barnala District, Dhuri, and that the said Syndicate in turn used to supply cloth to the various other associations who were members of the District Refugee Cloth Merchants Syndicate. It is not denied that the entire profits earned by the District Refugee Cloth Merchants Syndicate on the supplies of the cloth belonged exclusively to that Syndicate and were not shared by the other associations who

in their own turn made profits on the cloth supplied to them. All other associations used to pay commission to the District Cloth Merchants Syndicate on such supplies of cloth as were made to them. The other associations cannot under these cricumstances be deemed to be partners of the District Refugee Cloth Mercants Syndicate and must be held to be distinct entities for all purposes except for only one, namely, that the assessee Syndicate could supply cloth only to those other associations which were its members and not to any one else. Even if it is assumed that all the members of the assessee Syndicate would be liable to pay the sales tax assessed to the Syndicate, the present petirtioner must still be held to be exempt from the said liability on the short ground that the assessment related to the periods from the 13th of April, 1950, to the 31st of March, 1951, and from the 1st of April, 1951, to the 31st of March, 1952, whereas he became President of the Barnala Association for the first time in 1953. The Financial Commissioner has relied upon Form S.T. 1 in support of the fact that the petitioner, who is the President of the Refugee Cloth Merchants Association, Barnala, must be taken to be a member of the assessee Syndicate. In the first instance the said form purports to have been filled in on a date after the period to which the taxes relate. In the second instance the form purports to show that the President, Refugee Cloth Merchants Association, Barnala, was a member of the assessee Syndicate. The present petitioner was not the President of the Barnala Association either during the period to which the taxes relate or on the date when form S.T. 1 was filled in. He has clearly stated in para. 1 of his affidavit that he was President only during the year 1953 A.D. The petitioner being neither a dealer nor a partner cannot be held liable to pay any part of the taxes levied against the Syndicate by means of Annexures ''A'' and ''B''.

8. In the result I accept the petition and order that an appropriate writ be issued quashing the orders of the Excise and Taxation Commissioner, Patiala, and the Financial Commissioner, Punjab, contained in Annexures ''H'' and ''I'' to the petition. In the peculiar circumstances of the case I leave the parties to bear their own costs.