(1971) 09 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 3 of 1969

Rameshwar Dass Ashok Kumar APPELLANT

Vs

The State of Haryana RESPONDENT

Date of Decision : 21-09-1971

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 15, 21, 22, 4, 5

Citation : (1973) 30 STC 440

Hon'ble Judges : H.R. Sodhi, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : Bhagirath Dass and B.K. Jhingan, for the Appellant; Satya Parkash Jain, for Advocate-General, for the Respondent

Judgement

H.R. Sodhi, J.—This judgment will dispose of two connected General Sales Tax References Nos. 3 and 4 of 1969, made by the Sales Tax Tribunal, Haryana, u/s 22(1) of the Punjab General Sales Tax Act (Punjab Act No. 46 of 1948), as applicable to the State of Haryana, and referred to hereinafter as the Act. The common question of law referred to in both the references is as under :

Whether on the facts arid circumstances of this case, the appellant-firm M/s. Rameshwar Dass Ashok Kumar is entitled to deductions u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948, on account of sales made to M/s. Sardar Singh Kamal Chand of Panipat after the registration certificate of the latter had been cancelled by the competent authority u/s 7(4) of the said Act even when this cancellation was not published in the Official Gazette as required under Sub-rule (3) of Rule 12 of the Punjab General Sales Tax Rules, 1949.

2. The firm, M/s. Rameshwar Dass Ashok Kumar, is a dealer in vegetable ghee registered under the Act. Quarterly returns for the years 1962-63 and 1963-64 were submitted by the assessee to the Assessing Authority, Gurgaon. The assessee claimed deductions u/s 5(2)(a)(ii) for sales to the tune of Rs. 1,71,713.35 to M/s. Sardar Singh Kamal Chand of Panipat, during the year 1962-63, and Rs. 1,11,102.33 to the same firm during the year 1963-64, on the

ground that the latter firm was a registered dealer. It appears that the registration certificate of the purchasing firm had been cancelled by the competent authority u/s 7(4) by an order dated 31st March, 1962, before the sales were effected. The cancellation had, however, not been published in the Official Gazette, as said to be required under Sub-rule (3) of Rule 12 of the East Punjab General Sales Tax Rules, 1949. Rule 12 was amended in the year 1966. The relevant portion of this rule, as it stood before the amendment and during the assessment years in question, reads as under:

12. (1) When the appropriate assessing authority is satisfied that, the gross turnover of any dealer registered u/s 7 has, for three successive years, failed to exceed the taxable quantum or for any other reason the certificate of registration requires cancellation, he shall forward to the Commissioner or such other authority as so authorised, the registration certificate of the dealer and the cancellation shall come into effect from such date as may be specified in the order made under Sub-rule (1) of Rule 13 and the liability of the dealer to pay tax under Sub-section (3) of Section 4 shall cease with effect from the said date.

(2) The appropriate assessing authority shall, by the last day of June and the last day of December in each year, forward to the Commissioner a list of all dealers whose registration is cancelled under Sub-rule (1) and every such list shall contain the names and addresses of such dealers together with the description of the goods covered by their certificates of registration.

(3) The particulars regarding such cancellation shall be published in the Official Gazette thereafter in the following form...

3. The assessing authority created additional demands for the two assessment years in question and appeals by the assessee to the Deputy Excise and Taxation Commissioner met with no success. Two separate revisions were filed before the Excise and Taxation Commissioner but they too failed. The matter was then taken in further appeals to the Sales Tax Tribunal, who also dismissed them. Applications were then made to the Tribunal u/s 22(1) for referring the questions of law stated therein. There were three questions stated in the applications but the Tribunal referred the one stated above.

4. The sole objection of the assessee was that in the absence of publication of the cancellation in the Official Gazette, the same could not be deemed to have been taken effect and the selling dealer could, therefore, have no knowledge about the fact of cancellation of the certificate so as to be deprived of the benefit of deductions otherwise admissible u/s 5(2)(a)(ii). The view taken by the Tribunal was that-

The power to grant registration certificates and to cancel the same u/s 7 are exercisable through delegations at various levels below the Commissioner, For the purposes of Sub-section (4), the authority is exercisable since 1949 by the assessing authority, while powers under Sub-section (6) were delegated to the Deputy Excise and Taxation Commissioner in 1961. The powers of cancellation under other sub-sections of this section have been retained by the Commissioner. Section 9 of the Act was repealed by Punjab Act No. 18 of 1960. Rule 13(2) and Rule 16 of the Punjab Sales Tax Rules were also repealed by Notification No. 5109-E&T-(III)-61/5558, dated the 29th September, 1961. The only rule which still required publication of lists and was not till then eliminated, was Rule 12. This rule quite clearly becomes applicable only where the assessing authorities do not enjoy the powers of the Commissioner u/s 7 of the Act to cancel the registration certificate. In the instant case, the powers exercised were under Sub-section (4) of Section 7 and, therefore, the assessing authority was not under any statutory obligation to follow the procedure prescribed in the said Rule 12.

5. After hearing the learned counsel for the parties, we are in agreement with the view taken by the Tribunal that Rule 12 was applicable only where the assessing authority had not been delegated the power to cancel registration certificate u/s 7(4) of the Act. Section 15 authorises the Commissioner by order in writing to delegate, subject to such restrictions and conditions as may be prescribed any of his powers under the Act except those under Sub-section (1) of Section 21. It is not disputed that powers u/s 7(4) had been delegated to the assessing authorities. A plain reading of Rules 12 and 13 indicates that publication in the Official Gazette is required only in those cases where the Commissioner himself, after the names of the dealers are forwarded to him, has to pass final orders of cancellation. The assessing authority, when it is competent to cancel a registration certificate, is under no obligation to follow the procedure of Rule 12, and publish the names. The reasoning of the Sales Tax Tribunal is unexceptionable and Mr. Bhagirath Dass, the learned counsel for the assessee, has not been able to persuade us to take a different view.

6. In the result, the references are answered in favour of the department and against the assessee. There is, in the circumstances of this case, no order as to costs.