
(1994) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3464 of 1994

Sachdeva and Sons Rice Mills Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab General Sales Tax Act, 1948 — Section 14B

Citation : (1994) 2 ILR (P&H) 394 : (1994) 108 PLR 88

Hon'ble Judges : R.P. Sethi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : D.S. Brar and S.S. Brar, for the Appellant; G.K. Chatrath, A.G.,
 S.K. Sharma, DAG and Anu Chatrath, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—These three petitions involve adjudication of identical questions of law and even though notices of different dates issued under the Punjab General Sales Tax Act 1948 (for short "the Act") are under challenge, we deem it proper to decide all the petitions by a common order.

2. For the purpose of deciding the questions of law raised in these petitions it is sufficient to make reference to a few facts from Civil Writ Petition No. 3464 of 1994.

3. The petitioner is a dealer registered under the Punjab General Sales Tax, 1948. It is engaged in the business of purchase and sale of rice. On 8th March, 1994 truck No. PB-02-9510 was intercepted by the Excise and Taxation Officer (Enforcement), Kaller Khera. Goods of the petitioner along with the truck and the documents were seized by the Excise and Taxation Officer and the petitioner was served with a notice (Annexure P3), calling upon the petitioner to present itself along with the account books and stock registers. The petitioner is said to have produced the relevant account books and other documents before the Excise and Taxation Officer and prayed for release of the goods, but respondent No. 2 is said

to have refused to release the goods. Petitioner has alleged that actions are being taken against it on account of personal ill-will and prejudice of respondent No. 3 Shri Avtar Singh, Director (Enforcement), Punjab. It has been alleged that respondent No. 3 arranged raid on the business premises of the petitioner. Account books of this petitioner's business were taken away and the same were released only on the basis of the order passed by the Court. On account of the filing of the petition by the petitioner, respondent No. 3 has started a more vindictive attitude. He has instructed various check posts to detain the trucks carrying goods of the petitioner and on the basis of the instructions issued by respondent No. 3, as many as 45 trucks of the petitioner have been detained at various check posts. Further plea of the petitioner is that the truck carrying goods of the petitioner had documents relating to vehicle log books bill of sales or delivery notes containing such particulars as are prescribed in form ST 24. Petitioner's plea is that seizure of the goods is contrary to Section 14B of the 1948 Act and failure of the respondents to release the goods of the petitioner suffers from patent arbitrariness. Further case of the petitioner is that all actions taken by respondents Nos. 2 and 3 suffer from malice in fact as well as malice in law.

4. In reply the respondents have raised preliminary objections to the maintainability of the writ petition on the ground that the petitioner has failed to avail alternative remedies available to it by way of appeal and reference as provided under Sections 20 and 22 of the Act. Another preliminary objection raised by the respondent is that the High Court in exercise of its jurisdiction under Article 226 cannot examine the legality, genuineness etc. of the documents, which are required to be produced when the trucks carrying the goods are checked. On merits it has been stated that the truck in question was loaded with rice. When it was checked at the Sales Tax Check Barrier, Rajpura, District Ferozepur, it was found that the goods were accompanying with fictitious delivery notes and even though the delivery notes contained names of the consignor and consignee, weight, rate and price of the goods, these documents were not genuine. A notice was served on the driver of the truck. It was suspected that the petitioner-firm is not paying purchase tax on paddy out of which rice in question has been produced and that consignment note is being used by evading the tax. On the basis of this suspicion, respondent No. 2 detained the vehicle and the goods and gave a notice to the petitioner. Copy of the notice (Annexure R1) has been placed on record to show that action has been taken by respondent No. 2 in accordance with provisions of Section 14B of the Act.

5. In writ petition No. 3468 of 1994 an additional affidavit of one V.K. Rampal, Chief Accountant of the petitioner-Firm, has been filed. In this affidavit Shri V.K. Rampal has stated that on receipt of information about the detention of goods, accounts books and written explanation were tendered to the Excise and Taxation Officer at the barrier. Thereafter no notice was received. It has also been stated that the petitioner has regularly filed the Sales Tax Returns and has paid tax due

to it. Returns filed by it have not been rejected by the Excise and Taxation Department.

6. Shri D.S. Brar, learned counsel for the petitioner, has argued that the petitioner has fulfilled the statutory requirements enumerated in Section 14B inasmuch as the goods vehicle was having a trip sheet/log book, a delivery note containing particulars prescribed in form St-24 and the same had been produced before the Officer-in-Charge of the check post and, therefore, there was no occasion for respondent No. 2 to have detained or seized the goods u/s 14B(6) of the Act. Shri Brar argued that Officer-in-charge of the check post of the barrier could have taken action only after objective application of mind and only when he suspected that the goods in transport were meant for trade and were not covered by proper and genuine documents, as mentioned in Section 14B(2). By pointing out to the documents available on the record of the writ petition, Shri Brar argued that the entire action taken by respondents Nos. 2 and 3 shows patent malice on their part. He submitted that the delivery note which was being carried by the person incharge of the goods vehicle (truck) was in accordance with form St-24, and, therefore, there was no ground for entertaining any suspicion regarding the genuineness of the said documents. He placed reliance on the decision of the Supreme Court in *Kelvinator of India Ltd. v. The State of Haryana* (1973) 32 S.T.C. 629, *Shaw Scott Distilleries Private Ltd. and Anr. v. Sales Tax Officer, Check Post, Mobile Squad, Mathura, and Ors.* (1983) 54 S.T.C. 344; *Fedders Lloyd Corporation Pvt. Ltd. v. Commissioner, Sales Tax Uttar Pradesh, Lucknow, and Anr.* (1986) 62 S.T.C. 216; as also *Automobile Products of India Limited v. State of Karnataka* (1991) 81 S.T.C. 414. In support of his submission that check post authorities had no right to determine the nature of sale or transaction that the petitioner had entered into with the prospective buyers outside the State of Punjab.

7. Learned Advocate General argued that this Court should not entertain the writ petitions because the petitioner has failed to avail statutory remedies available to him under Sections 20 and 22 of the 1948 Act. Shri Chatrath argued that every original order passed under the Act or the rules made thereunder is appealable and the appellate authorities have been vested with wide powers to set aside, modify, resile or vary the. order passed by a competent authority. He submitted that when an effective alternative remedy is available to the petitioner, there is no justification for this Court to entertain the writ petition filed by a party which has failed to avail such a remedy. He further argued that even after rejection of the appeal, the petitioner could avail remedy before the Sales Tax Tribunal and further remedy by way of reference to the High Court. He placed reliance on the decisions of the Supreme Court in *Titaghur Paper Mills Co. Ltd. and Anr. v. State of Orissa* AIR 1983 S.C. 693, and *Mcdowell and Company Limited v. Commercial Tax Officer* (1985) 59 S.T.C. 277.

8. Power to levy Sales Tax is derived by the authorities of the State under the Act of 1948. This Act is a piece of legislation which falls within the ambit of Entry 54

of List-II of the 7th Schedule of the Constitution of India. Section 14B has been inserted in the Act of 1948 for prevention of evasion of Sales Tax. It empowers the State to establish check post or barrier and inspection of goods of transit. It empowers the competent Officer-in-charge of the Check Post or barrier or any other Officer not below the rank of Excise and Taxation Officer to check the vehicle or vessel at any place. It also empowers such an Officer to detain the goods and the vehicle and submit the case for taking further action, which may ultimately lead to the imposition of penalty under Sub-section (7) of Section 14B. Vires of Section 14B has been upheld by a Full Bench of this Court in *Mool Chand Chuni Lal v. Shri Manmohan Singh*, Assistant Excise and Taxation Officer, Octroi, In-Charge, Shambhu Barrier, District Patiala and Anr. (1977) 79 P.L.R.456 (F.B.). While upholding the vires of Section 14B, a five Judges Bench of this Court observed:

" The prevention of evasion of sales tax is a power incidental or ancillary to the levy of sales tax and falls within entry 54 of List II of the Seventh Schedule to the Constitution. Section 14B(7), which provides for detention of goods and levy of penalty if there has been an attempt to evade the tax due under the Act, cannot, therefore, be said to be without constitutional sanctions.

There is also no repugnancy between the provision for levy of penalty u/s 14B(7) when an attempt to evade the tax is discovered and the general scheme of the Act which provides for the levy of tax at the point of the first sale within the State.

The amended Section 14B(7) for levy of penalty is not based on any assumption that the goods were transported after sale within the State. Its basis is the attempt to evade tax and it prescribes a condition precedent for the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. The goods which are to be detained are also specified in Section 14B(6) as goods meant for trade and not covered by proper and genuine documents.

While Section 14B(8), as it stood originally, provided for the payment of the tax recoverable and a penalty, Section 14B(7) as amended does not provide for recovery of the tax but provides for the imposition of penalty which is calculated not on the basis of the tax payable but on the basis of the value of goods and is clearly outside the rule laid down in *Commissioner of Commercial Taxes and Others Vs. Ramkishan Shrikishan Jhaver and Others*, .

A scheme or device to evade the tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device is set in motion there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability to pay the tax actually arises. If an attempt to evade the tax is discovered earlier, the liability to be subjected to penalty is straightaway attracted."

9. Sub-Sections 14B(2), 14B(6) and 14B(7) are relevant for the purpose of these

cases, and, therefore, quoted below:

14B(2) " The owner or person incharge of a goods vehicle or vessel shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be and a bill of sale or a delivery note containing such particulars as may be prescribed, in respect of such goods meant for the purpose of trade as are being carried in the goods vehicle or vessel, as the case may be and produce the same before an Officer-in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle or vessel at any place."

14B(6) " If the Officer incharge of the check post or barrier or other officer as mentioned in Sub -section (2) has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in Sub -section (2) of Sub -section (4), as the case may be or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing and after hearing the said person, order the unloading and detention of the goods for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or other person incharge of the goods vehicle or vessel on behalf of the owner of the goods, furnishing to his satisfaction a security or (cash security or bank guarantee or crossed-bank draft) for securing the amount of tax in the prescribed form and manner, for an amount not exceeding one thousand rupees or twenty percentum of the value of the goods, whichever is greater.

Provided that where any goods are detained a report shall be made immediately and in any case within twenty four hours of the detention of the goods by the officer detaining the goods of the (Assistant Excise and Taxation Commissioner incharge of the district) seeking the latter's permission for the detention of the goods for a period exceeding twenty-four hours, as and which so required, and if no intimation to the contrary is received from the latter the former may assume that his proposal has been accepted."

14B(7): The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessel and shall require him to produce proper and genuine documents as referred to in Sub -section (2) or Sub -section (4), as the case may be before him in his office or a specified date on which date the officer shall Submit the proceedings along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade, impose on the owner of the goods a penalty not exceeding one thousand rupees or twenty percentum of the value of the goods, whichever is greater, and in case he finds otherwise, he shall order the

release of the goods."

Likewise, Section 20 of the Act, which contains provision for appeal, is also quoted below:

"20. Appeal.-(1) An appeal from every original order passed under this Act or the rules made thereunder shall lie-

(a) if the order is made by an Assessing Authority or by an Officer-in-Charge of the check post or barrier or any other officer not below the rank of Excise and Taxation Officer, to the Deputy Excise and Taxation Commissioner;

(b) if the order is made by the Deputy Excise and Taxation Commissioner, to, the Commissioner;

(c) if the order is made by the Commissioner or any officer exercising the powers of the commissioner; to a Tribunal.

(2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner, are conferred, shall be further appealable to a Tribunal.

(3) Every order of a Tribunal and subject only to such order, the order of the Commissioner or any Officer exercising the powers of the Commissioner or the order of the Deputy Excise and Taxation Commissioner or of the assessing authority, if it was not changed in appeal or revision shall be final.

(4) No appeal shall be entertained unless it is filed within sixty days from the date of Communication of the order appealed against, or such longer period as the appellate authority may allow, for reasons to be recorded in writing.

(5) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the payment of the tax or of the penalty, if any, imposed or of both as the case may be.

Provided that if such authority is satisfied that the dealer is unable to pay the tax assessed or the penalty, if any, imposed or both he may, for reasons to be recorded in writing, entertain an appeal without the tax or penalty or both having been paid or after part payment of such tax or penalty or both.

(6) Subject of such rules of procedure, as may be prescribed, an appellate authority may pass such order on appeal as it deems to be just and proper."

A comprehensive reading of the two provisions shows that power has been conferred on the Officer-in-Charge of the check post or barrier to order unloading and detention of the goods and further empowers him to direct the production of proper and genuine document. It further empowers the competent authority to impose penalty where it is found that there has been an attempt to evade the tax due under the Act. A party aggrieved by an action which may be taken under Sub -sections (6) and (7) of Section 14B of the Act has a right to prefer an appeal to the Deputy Excise and Taxation Commissioner in case the order is

made by an Officer-in-charge of the check post or barrier. Order passed by the Deputy Excise and Taxation Commissioner is appealable before the Commissioner. Order passed in appeal is subject to a further appeal before the Tribunal. It can, thus, be said that against every order passed under the Act or the rules made thereunder, a statutory remedy of appeal is available to an aggrieved party.

10. Further the question is as to whether despite the availability of statutory remedy of appeal, this Court should entertain writ petition under Article 226 of the Constitution of India. There is no doubt that the powers vesting in the High Court under Article 226 are very wide and pervasive and except for the constitutional provisions contained in Articles 223A and 223-B there is no fetter on the powers of the High Court under Article 226. Absence of any restriction on the powers of the High Court under Article 226 of the Constitution of India is, however, not a ground for entertaining each and every petition which a party may file before this Court. During the last more than four decades after the commencement of the Constitution, the Courts have evolved certain self imposed limitations on the exercise of jurisdiction under Article 226. The High Court usually refrains from entertaining a writ petition where a party can avail an effective remedy and get relief. If a party is guilty of delay and laches or its conduct is contumacious, the High Court can decline relief. Even in cases where patent injustice is not done, the jurisdiction of the High Court is not allowed to be used for issue of a writ, order or direction.

11. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (supra) their Lordships of the Supreme Court had considered justification of entertaining writ petition under Article 226 or under Article 32 of the Constitution in a case arising under the Orissa Sales Tax Act, 1947, while upholding the decision of the High Court, which had refused to entertain the writ petition on the ground of availability of alternative remedy under the Act, the Supreme Court observed:

" In the instant case against the order of assessment made by Sales Tax Officer under the Orissa Sales-tax Act the petitioners, assesseees, can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under Sub-section. (1) of S. 23 of the Act. If the Petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section. (3) of S. 23, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S-24. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not be a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

12. In *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , their Lordships once again considered the same

very question and observed:

"Art. 226 is not meant to short-circuit or circumvent statutory procedure. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reasons to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. The Supreme Court can take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice needs to be strongly discouraged."

We are not burdening this order with plethora of cases in which the Supreme Court and this Court have held that when an effective alternative remedy is available under a statute, the High Court must not interfere with the action of the administrative authorities or even quasi-judicial or judicial authorities. This rule will be applicable with greater rigour in the cases involving taxes.

13. In *McDowell and Company Limited v. Commercial Tax Officer* (supra) a five Judges Bench of the Supreme Court examined a fine distinction between tax planning and tax avoidance. Delivering the main judgment, Ranganath Misra, J. observed:

"Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

Chinnappa Reddy, J. in his concurring judgment made detailed observation in this respect with which the majority agreed. Chinnappa Reddy, J. observed:

" The financial needs of the welfare State, if backed by the law have to be respected and met. There is behind taxation laws as much moral sanction as is behind any-other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that it stands on no less a moral plane than honest payment of taxation. The proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions Should be construed literally or liberally nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax and whether the transaction is such that the judicial process may accord its approval to it. It is neither fair nor desirable to expect the Legislature to intervene and take care of every device and scheme to avoid taxation. It is upto the Court to take stock to determine the nature of the new and sophisticated

legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of "emerging" techniques of interpretation to expose the devices for what they really are and to refuse to give judicial benediction,"

We have referred to this decision only with a view to emphasise that when steps are taken by the State authorities for checking the evasion of tax, they should be extremely slow to interfere when aggrieved party can avail alternative remedy provided by the statute.

14. In the case in hand the petitioner has a remedy of appeal u/s 20 of the Act. A further appeal can be preferred to it under the same section, in case it feels aggrieved by the order of the appellate authority. No extra-ordinary circumstances have been brought to our notice warranting departure from the established rule that this Court will not entertain a writ petition under Article 226 where a statutory remedy of appeal is available.

15. The decisions on which Shri Brar has placed reliance do not throw any light on the question of jurisdiction of the High Court to entertain a writ petition under Article 226 in cases where effective alternative remedy is available. All these cases deal with the merits of the action taken by the Officer-in-Charge of the Check Post Barrier and it is open to the petitioner to raise all such points before the appellate authority.

16. For the reasons aforesaid, the writ petitions are dismissed on the ground of availability of alternative remedy of appeal to the petitioner. Opportunity is, however, given to the petitioner to avail remedy of appeal and we hope that if the petitioner files an appeal within two weeks from today, the same will be considered and decided on merits by the Appellate Authority.