

(1989) 09 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11797 of 1988

Sant Lal Tek Chand

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 26-09-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Constitution of India, 1950 — Article 14
Haryana General Sales Tax Act, 1973 — Section 30, 31, 39(2), 39(5), 39(6)
Punjab General Sales Tax Act, 1948 — Section 11

Citation : (1990) 97 PLR 426 : (1990) 1 RCR(Rent) 5 : (1990) 76 STC 283

Hon'ble Judges : Sukhdev Singh Kang, J;Jai Singh Sekhon, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; S.K. Sood, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Sukhdev Singh Kang, J.—At issue in these writ petitions (C.W.P. Nos. 11797 and 10955 of 1988) under Articles 226/227 of the Constitution of India is the legality and constitutional validity of Section 59 of the Haryana General Sales Tax Act, 1973. Challenge is also directed against order dated August 19, 1988, of the Excise and Taxation Officer-cum-Assessing Authority, Kaithal (respondent No. 2), levying interest on the amount of tax which had not been paid within the prescribed period and the imposition of penalty of Rs. 15,000 u/s 30 of the Act.

2. First the factual matrix :

Sant Lal Tek Chand, the petitioner in C.W.P. No. 11797 of 1988, is a registered partnership concern engaged in the business of commission agency and also rice shelling at Kaithal. The petitioner-firm is registered both under the Haryana General Sales Tax Act, 1973 ("the Act", for short) and the Central Sales Tax Act, 1956 (hereinafter referred to as the "Central Act").

3. The Excise and Taxation Officer-cum-Assessing Authority, Kaithal, (respondent No. 2) created demand of Rs. 1,31,455 on the petitioner-firm vide order dated May 10, 1980. The petitioner appealed to the Deputy Excise and Taxation Commissioner (Appeals), Ambala. He stayed the recovery of penalty in terms of proviso to Sub-section (5) of Section 39 of the Act. The appeal, was, however, dismissed on March 31, 1983, by the Joint Excise and Taxation Commissioner, Ambala. Aggrieved, the petitioner filed a second appeal before the Sales Tax Tribunal, Haryana, Chandigarh, under Sub-section (2) of Section 39 of the Act. The petitioner filed an application for entertainment of appeal without prior payment of the amount of penalty and also prayed for stay of recovery of the said amount of penalty. The learned Sales Tax Tribunal entertained the appeal and granted stay of the amount of penalty under Sub-sections (5) and (6) of Section 39 of the Act. Ultimately, the second appeal was also dismissed by the Tribunal on May 20, 1987. The interim stay order, thus, stood vacated.

4. The petitioner made an application u/s 42 of the Act to the Sales Tax Tribunal for making a reference of questions of law arising out of the order of the Tribunal dated May 20, 1987. The petitioner filed a review application u/s 41 of the Act before the Tribunal because, in the opinion of the petitioner, many important questions of law raised by the petitioner before the Tribunal during the course of hearing of the second appeal, though noticed, were not decided. Some other equally weighty points, though raised, were not even noticed. The Tribunal, however, dismissed the said review application vide order dated April 21, 1988 and communicated to the petitioner on May 3, 1988. This order was challenged by way of C.W.P. No. 4826 of 1988, which was dismissed in limine on the ground that since an application of the petitioner for reference u/s 42 of the Act was pending before the Sales Tax Tribunal against the appellate order of the Tribunal, recourse to extraordinary remedy of writ petition was not called for. The Tribunal, vide his order dated October 6, 1988, had agreed to refer three questions for the opinion of this Court u/s 42(1) of the Act.

5. The petitioner started making payment of penalty amount of Rs. 1,31,455 from January, 1988, in instalments and had made full payment by July 23, 1988. Thereafter, respondent No. 2 issued a notice in form ST-27 to the petitioner, inter alia, stating that it being a registered dealer had failed to pay taxes due according to the returns and had thereby rendered itself liable to penalty u/s 47 of the Act and to pay interest u/s 59 *ibid*.

6. The petitioner appeared and contested its liability to pay interest and penalty. However, the Excise and Taxation Officer-cum-Assessing Authority had imposed a penalty of Rs. 15,000 u/s 30 of the Act and held the petitioner liable to pay interest to the tune of Rs. 1,86,512.50 for the period June, 1980 to July, 1988, u/s 59 of the Act. Aggrieved, the petitioner has filed the present writ petition.

The facts of C.W.P. No. 10955 of 1988, are also similar to those of C.W.P. No. 11797 of 1988.

7. The respondents have resisted the writ petition and filed written statement through Shri D.P. Verma, Excise and Taxation Officer-cum-Assessing Authority, Kaithal (respondent No. 2).

It has been pleaded, *inter alia*, that the petitioner had filed materially incorrect returns. It did not disclose fully and faithfully the purchases of paddy, thus resulting in less payment of Rs. 65,000 as purchase tax. A penalty of Rs. 1,31,455 was imposed on the petitioner vide order dated May 10, 1980. The factum of filing of the first and second appeals and the review application is admitted. It is averred that even after the rejection of its appeal, the petitioner failed to make payment of Rs. 1,31,455 immediately and had to be reminded to do the same. The petitioner had obtained stay order in respect of the aforesaid amount of penalty and incurred the liability to pay interest as per provisions of Section 59 of the Act. It was averred that since the petitioner had failed to deposit the amount of penalty even after the decision of the Tribunal, it exposed itself to a penalty of a sum not exceeding 25 per cent of the amount due from it. It was explained that detailed particulars of statutory notice in form ST-27 to pay interest u/s 59 of the Act could not be given due to a clerical mistake. However, in response to the notice, the petitioner appeared before the Assessing Authority and was confronted with the facts of the case and also its liability for penalty u/s 30 of the Act for non-payment of additional demand. These facts were recorded on the order sheet of August 19, 1988, and the petitioner was afforded an opportunity to explain its position on August 19, 1988, when the case under Sections 59 and 30 of the Act was decided, creating an additional demand of Rs. 1,86,512.50 u/s 59 and Rs. 15,000 u/s 30 of the Act. It was maintained that the Assessing Authority is not under an obligation to issue a notice to the assessee before levying interest. Support is sought from a decision of the Andhra Pradesh High Court in *Ramu and Co. v. State of A.P.* [1979] 43 STC 510, and the decision of the Supreme Court in *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* [1981] 48 STC 466. It was averred that the liability to pay interest is automatic and arises by operation of law. Since petitioner's representative had been explained all the facts when he appeared in response to the notice, there has been no violation of principles of natural justice even in the matter of imposition of penalty.

8. Shri R.P. Sawhney, Advocate, learned counsel for the petitioner, has argued that Section 59 of the Act which provides for charging of interest from the dealer from the date the tax or penalty first became due is violative of Article 14 of the Constitution of India as it tends to subject the assessee such as the petitioner to hostile discrimination in the matter of charging of interest as against the State, which is the opposite party in the sales tax proceedings, There is no corresponding obligation on the State to pay interest to the assessee on the amounts charged by the State or deposited by the assessee in excess of the tax or penalty legally due from the date when it was originally paid by the assessee. There is no reasonable basis for treating assessee differently in the matter of charge or grant of interest. The State, which is a party similarly situated in the

matter of sales tax proceedings, has been favourably treated by not providing for and laying down a corresponding obligation on the State to pay the interest on the money wrongly or illegally collected from the assesseees in excess of the tax or penalty actually and legally due. It was further submitted by Mr. Sawhney that the provisions contained in the impugned proviso to Sub-section (1) of Section 59 of the Act in so far as it provides for charging of interest right from the date the tax or penalty first became due even in case where the order of stay was granted by the High Court or the Supreme Court and charging of interest even for the period for which the stay order was in operation, is illegal. It was further contended that it tantamounts to putting restrictions on the powers of the High Court or the Supreme Court, to grant relief to the citizens. No restrictions on their powers could be put by the State Legislature, To that extent, Section 59 of the Act is ultra vires the powers of the State Legislature enshrined in entry 54 of List II of the Seventh Schedule to the Constitution, It was urged that the action of respondent No. 2 in charging interest u/s 59 of the Act is without jurisdiction, because interest could be charged only on the amount ultimately found due. The matter is still sub judice inasmuch as the reference u/s 42 against the order of imposition of penalty is still pending and that will only become final on the decision of the said reference by this Court or the Supreme Court. Till then, the amount of penalty cannot be said to have been ultimately found due. The charging of interest on the amount of penalty, which has not been ultimately found due so far or at this stage, is unauthorised and unsustainable in law.

9. We first take up the challenge to the constitutional validity of the proviso to Sub-section (1) of Section 59. Provisions of Section 59 so far as they are relevant for our purpose read as under :

"59. Interest on failure to pay tax or penalty.--(1) If the amount specified in any notice of demand, whether as tax or penalty, is not paid within the period specified in such notice, or in the absence of such specification, within thirty days from the date of service of such notice, the dealer shall be liable to pay simple interest on such amount at one per centum per month from the date commencing after the end of the said period for a period of one month and if the default continues thereafter, at one and a half per centum per month for the whole of the period he continues to make default in the payment or a sum of ten rupees, whichever is greater :

Provided that where the recovery of any tax or penalty is stayed by the appellate authority under Sub-section (6) of Section 39 or by the High Court or the Supreme Court, the amount of such tax or penalty shall be recoverable with interest at the rate mentioned above on the amount ultimately found due ; and such interest shall be payable on such amount from the date of the tax or penalty first became due :

Provided further that where the amount of tax or penalty not paid or paid less, does not exceed five hundred rupees, the interest payable thereon shall not exceed the amount of tax or penalty not so paid or paid less subject to the

minimum of ten rupees :

Provided further that for the purposes of calculation of interest, a period of fifteen days or more shall be deemed to be one month and an amount of fifty rupees or more shall be deemed to be one hundred rupees and a period of less than fifteen days and an amount of less than fifty rupees shall be ignored.

(2) The interest payable under this section shall be deemed to be tax under this Act for the purpose of collection and recovery."

10. When a law is challenged as offending against equal protection of Article 14, the question for determination by the court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of the legislation. Mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of equal protection of laws. To attract the operation of the clause, it is necessary to show that the differentiation is unreasonable or arbitrary or that it does not rest on any rational basis having regard to the object which the legislature has in view. It is well-settled that equal protection provided by Article 14 does not insist that the legislative classification should be scientifically perfect or logically complete. The legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is defined to be clearest. If the law is not discriminatory with its sphere of operation, it does not become invalid because it is not all embracing and that it is limited as to territory, persons or objects to which it is to be applied or the evil to be remedied. The Supreme Court has formulated two tests which must be satisfied in order that the classification made by a legislature may be upheld by the court as reasonable classification coinciding with the guarantee of equal protection in Article 14 :

(i) That the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of this group 5 and

(ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

11. In *Khazan Chand v. State of Jammu and Kashmir* [1984] 56 STC 214 (SC), it was held that the sales tax is the biggest source of revenue for a State and it is for the State to decide how and in what manner it will raise this revenue and to determine which particular transactions of sale or purchase of goods taking place within that State should be taxed and at what rates, and which particular transactions of sale or purchase of goods should be exempted from tax or taxed at a lower rate having regard to the subject-matter of sale, as for instance, where particular goods constitute necessities for the poor classes of people or where the goods in question are of such a nature as are required to be exempted

from tax or taxed at lower rate in order to encourage local industry. It was further held :

"Providing for payment of interest in case of delayed payment of tax is a method usually adopted in fiscal legislation to ensure that the amount of tax which is due is paid by the prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. It is for the State to provide by what means payment of tax is to be enforced and a person who does not pay the amount of tax lawfully and admittedly due by him can hardly complain of the measures adopted by the State to compel him to pay such amount. It neither lies in the defaulter's mouth to protest against the rate of interest charged to him nor is it open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due by him.....Therefore, the graduated rates of interest provided by Section 8(2) of the Jammu and Kashmir General Sales Tax Act, 1962, viz., one per cent per month for the first three months of default, two per cent per month for the second three months of default, and three per cent per month for default in excess of six months, cannot be characterised as arbitrary or unreasonable,....."

12. Recovery provisions of the Act are meant for speedy and prompt collection of revenue. These provisions are not meant for the benefit of defaulting tax-payers and such defaulters cannot claim that the amount of interest payable by them on tax payment should be scaled down as if they were entitled to claim relief under a debt relief law. The impugned provisions have been enacted to ensure that the amount of tax which is due is paid by the prescribed time. However, in the case of tax deposited in excess, these considerations are not present. A tax collected in excess remains with the State ; the money is not utilised by an individual for personal benefit. No provision is necessary for coercing the State to refund the amount of tax collected in excess of what was legally due. Rule 35 provides that on the determination by a competent authority that the tax has been collected in excess, the authorities are ordered to refund the tax. If the same is not done, then interest is payable on the amount remaining due after it has been held to be so. Even otherwise, the State forms a class in itself. It cannot be said that the State when it collects a tax also falls within the category of dealers. The tax is collected in exercise of the sovereign powers of the State. It does not stem from any commercial activity of the State. So, in the matter of exercise of the sovereign powers of the State, the action of the State cannot be judged on the same touchstone as may be applicable in the case of the private citizens. The State can validly frame a law providing that the defaulter-assessees shall be liable to pay interest on the amount of tax which remained due. If such a provision is not made for payment of the excess tax recovered, there is no discrimination. The classification between the State when exercising its sovereign powers, on the one hand, and the private dealers, on the other, is reasonable and based on an intelligible differentia. It has a direct nexus with the object of the Act, i.e., to collect revenue for the State. Thus, we are of the firm view that the provisions of provisos to Sub-section (1) of Section 59 of the Act do not

offend Article 14 of the Constitution.

13. The Supreme Court has upheld the vires of the provisions of Sub-sections (1), (2) and (3) of Section 8 of the Jammu and Kashmir General Sales Tax Act, 1962, which are analogous to the impugned provisions, in Khazan Chand's case [1984] 56 STC 214.

14. Similarly, a Division Bench of the Madras High Court in Sakthi Sugars Ltd. v. Assistant Commissioner of Commercial Taxes, Central Assessment Circle I, Coimbatore [1985] 59 STC 52, had an occasion to adjudicate upon the constitutional validity of Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959. levying interest for default in payment of tax. Therein also, a similar argument as raised in the present case was advanced and it was repelled by their Lordships of the Madras High Court. It was held :

"39.....The argument is that since this amendment [Sub-section (4) of Section 24] came for the first time by Act 22 of 1982 with effect from 1st November, 1982, the State Government was not entitled to ask the defaulting dealers to pay interest. The absence of a provision in the case of Section 24(4) prior to 1st November, 1982, does not create infirmity in the constitutional validity of Section 24(3). It is valid on its own strength and does not depend for its validity on the obligation now cast on the State Government to refund excess recovery with interest."

15. We are in respectful agreement with the above conclusions. This finding is a complete answer to the attack on the impugned provisions on the plea of violation of Article 14.

16. We are not impressed by the second submission of Mr, Sawhney. The interest on the arrears of tax which are not paid by the prescribed time accrues automatically by operation of law. Even if the authorities under the Act, the High Court or the Supreme Court, in proceedings pending before them, stay the recovery of tax, that does not absolve the dealer, in the case of failure of the proceedings, to pay interest on the arrears of tax. This point stands concluded by the decision of the final Court in Haji Lal Mohd. Biri Works v. State of U.P. [1973] 32 STC 496, wherein it was held :

"Argument has also been advanced by Mr. Sen that the interest on arrears of sales tax could not be realised for the period during which the recovery of sales tax was stayed. We find it difficult to accede to this contention because there is nothing in the language of Section 8(1-A) of the Act which prevents the running of interest because of the operation of any stay order. Indeed, the liability to pay interest is created by the statute and the Sales Tax Officer has no discretion to grant any exemption from the payment of interest."

17. The third submission of Mr. Sawhney that the impugned provisions, in any way, fetter the powers of the High Court or the Supreme Court is simply to be stated, to be rejected. By providing that interest shall be payable on the arrears

of tax, the legislature has not, in any way, put any restrictions on the exercise of the judicial powers by the High Court or the Supreme Court.

18. It was then contended by Mr, Sawhney that since a reference u/s 42 of the Act is pending against the orders of the authorities creating additional liability and penalty, the amount has not been ultimately found due, the matter is still sub judice. The interest could be charged only after the matter had been finally decided, on reference, by this Court and the Supreme Court--if the matter was taken there. We regret our inability to accept this contention. The matter has been decided by the Sales Tax Tribunal, the apex authority constituted under the Act, and it can safely be said that the amounts determined have been found due. Proceedings on reference u/s 42 are in the nature of advisory opinion. Their pendency does not indicate that the matter has not been decided by the authorities under the Act. Interest starts running by the operation of law and in this context, the expression "ultimately found due" only indicates the modification or adjustments, if any, made in orders on appeal. It, however, does not mean that a dealer in arrears of tax is not liable to pay interest till the matter is finally disposed of by the final Court.

19. It was faintly contended that no notice was issued before determining the liability of the petitioner to pay interest. This argument is devoid of any merit. It is apparent from para 3 of order dated August 19, 1988 of the Excise and Taxation Officer-cum-Assessing Authority (annexure P-2) that a show cause notice had been issued to the petitioner and the petitioner had put in appearance and had contested the notice. He raised a number of points and those have been dealt with.

20. On the language of the impugned provision, the service of notice is excluded. When the liability to pay interest is automatic and arises out by operation of law, the Assessing Authority is under no obligation to issue a show cause notice before levying interest on the arrears of tax assessed. This is the view taken by a Division Bench of the Andhra Pradesh High Court in *Ramu and Co. v. State of A.P.* [1979] 43 STC 510, wherein it was observed :

"The words "during the year" in Section 15(1) of the Andhra Pradesh General Sales Tax Act, 1957, are not to be understood as "within the year" but refer only to the instalments payable on the basis of the monthly estimated or actual turnover. There is nothing in the language of Section 15, which prohibits the assessing authority from making a provisional assessment on the monthly returns beyond the 31st day of March of the year. The fact that it is open to the assessing authority to make a final assessment on the basis of the returns submitted in form A-2 does not in any way preclude him from making provisional assessment even after the expiry of the 31st day of March. Therefore, no distinction can be drawn between provisional assessments made within the year and provisional assessments made beyond the year for the purpose of collecting interest in accordance with the terms of Section 16(3).

As the liability to pay interest u/s 16(3) is automatic and arises by operation of law the assessing authority is not under an obligation to issue a show cause notice before levying interest on the tax assessed. Similarly, if the recovery of the tax was stayed by virtue of any order passed by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, the dealer would be liable to pay interest at the specified rates on the amount of tax due even for the period when the stay order passed by the High Court was in subsistence.

Payment of interest cannot be equated to or mixed up with levy of penalty."

21. We find no hiatus between the impugned provisions and Subsections (5) and (6) of Section 39 of the Act. The latter provision only provides for stay of recovery of the tax or even interest during the pendency of appeal. It does not in any way provide that even if the appeal is dismissed, no interest shall be charged for the interregnum when the appeal was pending.

22. Lastly, it was contended that no notice was given before imposing the penalty. The petitioner has appended annexure P-1 (at page 21 of the paper book), which is a notice. It is true that Section 47 has been wrongly mentioned in the notice instead of Section 31. But that will make no difference. It is clear from the order, annexure P-2, that the petitioner was fully aware of the case he had to meet and he had put a number of defences. The flaw pointed out by the learned counsel for the petitioner in the notice is not fatal to the penalty proceedings.

23. Civil Writ Petition No. 10955 of 1988 relates to Punjab. The impugned provisions are Section 9(2) of Central Sales Tax Act, 1956 and Section 11(6) of the Punjab General Sales Tax Act, 1948. These provisions are *pari materia* with the impugned provisions of the Act. They are challenged on the same grounds as the provisions of Section 59 of the Act. Our conclusions regarding the provisions of Section 59 equally apply to the provisions of Section 9(2) of the Central Act and Section 11(6) of the Punjab General Sales Tax Act.

24. In the result, we find no merit in these writ petitions and dismiss the same but with no order as to costs.