
(1973) 05 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 11 of 1972

Sant Singh Charanjit Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 23-05-1973

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 14

Citation : (1974) 34 STC 34

Hon'ble Judges : Harbans Singh, C.J.; Bal Raj Tuli, J

Bench : Division Bench

Advocate : G.C. Mital, for the Appellant; M.S. Liberhen, for A.G., for the Respondent

Judgement

Harbans Singh, C.J.—This General Sales Tax Reference has arisen in the following circumstances:

Firm Sant Singh Charanjit Singh, hereinafter referred as the assessee, is carrying on a karyana business but did not get itself registered under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). On receipt of information that the turnover of the assessee had exceeded the taxable quantum, the Assessing Authority issued a notice u/s 14 of the Act and, after taking into consideration the purchases made by the assessee and adding profits, came to the conclusion that the assessee became liable to pay tax with effect from 26th January, 1966. For coming to this conclusion the Assessing Authority took Rs. 40,000 as the taxable quantum which the assessee had exceeded during the year 1965-66. At the same time, he actually assessed the turnover for the various years as under:

1965-66	...	Rs. 54,000	1966-67	...	Rs. 67,000	1967-68	...	Rs. 83,000
1968-69	...	Rs. 1,03,500						

and taxed the assessee accordingly.

2. The assessee filed appeals against the actual assessments as well as against

the finding of the Assessing Authority that the assessee became liable, as a dealer under the Act, to pay tax with effect from 26th January, 1966. In the statement of the case it is mentioned that the appeals against the assessments for the years 1965-66, 1966-67, 1967-68 and 1968-69 were accepted and the assessments for all the four years were set aside, vide an order dated 16th March, 1971, which, according to the statement of the case, is annexure D, but actually on the paper-book annexure D is not this order, but only grounds of appeal of the assessee. In order to save time to avoid sending the case back and asking the Tribunal to add the proper annexure, we took a certified copy of that order from the counsel for the assessee. From the copy of the judgment we find that, after discussing the material available from which an inference may be drawn with regard to the turnover of the assessee, the appellate authority, namely, Director of Inspections, Excise and Taxation Department, observed :

In view of the paucity of evidence in the case and the absence of material before me to find out as to how the estimates of turnovers for the years in question have been arrived at, I, on grounds of equity and good conscience, am unable to sustain these estimates. I would like to afford another reasonable opportunity to the appellant and also to the department for bringing forth such further evidence regarding the extent and magnitude of the appellant's business. Whatever estimates are made, these should be related to some evidence which should be brought on record and fully discussed. The estimates should not be blind shot in the dark as appears to be the case in the appeal before me.

3. After discussing a few points that were raised before the Director of Inspections, he concluded as under :

In view of the foregoing discussion I set aside the impugned orders and send back the cases to the Assessing Authority for fresh disposal in the light of observations made above. He should take such further evidence as is furnished by the appellant or by the respondent and draw his conclusions having regard to the evidence.

4. From the above it is quite clear that so far as the assessment, inter alia, of 1965-66, which was made at a figure Rs. 54,000, was concerned, it was set aside by the Director of Inspections. The assessee had also filed an appeal against the fixation of his liability with effect from 26th January, 1966, but strangely enough, while dealing with this appeal, the Director assumed the correctness of the figure of Rs. 54,000 arrived at by the Assessing Authority while making the assessment for the year 1965-66. In paragraph 2 of his judgment, annexure C, he made it clear that the taxable quantum had to be above Rs. 50,000 before the assessee could become liable to pay tax. Thereafter, while dealing with the proper date from which he would become liable to pay tax, the Director of Inspections observed as follows:

...In any case, he (counsel for the assessee) has nothing tangible with him to disprove the estimate of Rs. 50,000 made by the Assessing Authority on account

of sales for the year 1965-66....Taking 300 working days in a year, average daily sales during the year 1965-66 work out to Rs. 180 on the basis of total sales of Rs. 54,000. On this basis, the sales of the appellant would have exceeded the taxable quantum of Rs. 50,000 after 278 working days during the year 1965-66. In other words, his sales during the year 1965-66 exceeded the taxable quantum of Rs. 50,000 on 13th February, 1966, if not earlier. I have taken the date of 13th February, 1966, after making allowance for off days and any other eventualities. The sales having exceeded the taxable quantum of Rs. 50,000 on 13th February, 1966, the appellant had incurred the liability to payment of tax with effect from 15th March, 1966, after the expiry of grace period of 30 days....

Consequently, he fixed the liability to payment of sales tax with effect from 15th March, 1966.

5. The Sales Tax Tribunal, on a further appeal being taken to it, upheld the order of the Director of Inspections. On an application being made by the assessee, the following two questions of law have been referred for decision by this Court:

(a) Whether, on the facts and in the circumstances of the case, liability to pay tax with effect from 15th March, 1966, could be maintained in spite of the fact that the assessment orders were set aside by the appellate authority ?

(b) Whether liability to pay tax fixed with effect from 15th March, 1966, is based on cogent grounds and not on conjectures and surmises ?

6. The appellate authority has fixed the date from which the liability of the assessee to pay sales tax arises by taking the total turnover for the year 1965-66 as Rs. 54,000. The only basis on which he could take this figure of Rs. 54,000 was the assessment made by the Assessing Authority. That assessment, however, he has already set aside and, as noted above, that matter has been remanded to the Assessing Authority with the direction that more material should be collected and that the Assessing Authority should take such evidence as may be produced by the assessee as well as by the department and then arrive at the correct figure. Thus the very foundation for taking the figure at Rs. 54,000 as the turnover for 1965-66 is no longer there. Obviously, the date from which the liability of the assessee would arise for payment of the sales tax under the Act would vary with the variation of the total turnover for the relevant year. Only if the figure of Rs. 54,000 remains intact, will the date, as fixed by the appellate authority, be the correct one. If ultimately this figure is altered to a lower or a higher figure, the date will immediately change. Consequently, on the facts and in the circumstances of this case, the liability to pay sales tax with effect from 15th March, 1966, cannot be maintained, because the assessment order, on the basis of which this date has been determined, stands set aside. Till the assessment order relating to the year 1965-66 has been passed, after compliance with the observations of the appellate authority, there is no material on the basis of which the date with effect from which the liability of the assessee is to arise under the Act, can be determined. It is clear, therefore, that this order

of the appellate authority fixing the liability of the assessee to pay tax with effect from 15th March, 1966, is based on no material whatever. In fact, the finding given in this case, that the liability to pay tax arises with effect from 15th March, 1966, by taking the figure of the turnover for the year 1965-66 as Rs. 54,000, runs counter to the finding of the appellate authority in the other case in which he found that there is paucity of material to find out the turnover for the year 1965-66.

7. For the reasons given above, we answer both the questions referred in the negative. The assessee will have his costs of the proceedings. Counsel's fee Rs. 200.