(1971) 10 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Ref. No. 3 of 1965

Santokh Singh Karam Singh of Malout — APPELLANT

Vs

The Punjab State and Another — RESPONDENT

Date of Decision : 21-10-1971

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 17, 22

Citation : (1973) 31 STC 77

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

Bench : Division Bench

Advocate : P.N. Aggarwal, for the Appellant; M.R. Sharma, Senior Deputy Advocate-General, for the Respondent

Judgement

D.K. Mahajan, J.—u/s 22(3) of the Punjab General Sales Tax Act, 1948, this court required the Sales Tax Tribunal, Punjab, to state the case and refer the following question of law for its opinion :

Whether on the facts and in the circumstances of the case it could be held that there was a transfer of the entire business or a succession of the business ?

2. The relevant year is the assessment year 1954-55. Messrs. Santokh Singh Karam Singh prior to 22nd July, 1954, were selling cloth as hawkers. On the 22nd July, 1954, they purchased the entire cloth of the shop of Messrs. Sunam Rai Deviditta Mal. Each piece of cloth was valued and the total price of cloth in the shop was calculated which came to Rs. 1,982-5-9. On this purchase, a sales tax of Rs. 61-15-3 was paid. The total amount thus paid came to Rs. 2,044-5-0. The premises in dispute in which Messrs. Sunam Ral Deviditta Mal were carrying on their cloth shop belonged to the municipal committee. The tenants of these premises, Messrs. Sunam Ral Deviditta Mal also parted with the tenancy rights in favour of Messrs. Santokh Singh Karam Singh, the assessee. Later on, the tenancy rights were acquired by the assessee-firm from the municipal committee. Upto 22nd July, 1954, the rent of the premises was paid by the transferor-firm.

3. The Assessing Authority took the view that the transfer of cloth and the premises by Messrs. Sunam Ral Deviditta Mal to Messrs. Santokh Singh Karam Singh was transfer of business within the meaning of Section 17 of the Act and all purchases made on the registration certificate of the transferor-firm were treated as the gross turnover of the transferee-firm with the result that a tax liability of Rs. 908-13-0 was created. The plea of the assessee-firm (Messrs. Santokh Singh Karam Singh) that there was no transfer of business by Messrs. Sunam Ral Deviditta Mal within the meaning of Section 17 was negatived. On appeal to the Deputy Excise and Taxation Commissioner, the decision of the Assessing Authority was affirmed on the question in dispute, though certain other reliefs were granted to the assessee-firm. The assessee then preferred a revision petition to the Excise and Taxation Commissioner, Punjab, but without success. A further revision petition to the Financial Commissioner, Punjab, also failed. The assessee then made an application u/s 22(1) of the Act requesting the Financial Commissioner to refer as many as eight questions of law for the opinion of this court. This application was also declined. The assessee then moved an application u/s 22(2) of the Act and this court passed an order u/s 22(3) requiring the Tribunal to refer the question of law already set out.

4. It is significant that only two factors are proved, namely, that the entire stock of cloth was sold by Messrs. Sunam Ral Deviditta Mal to Messrs. Santokh Singh Karam Singh and this sale was subjected to sales tax and that the premises in which the cloth business was being carried on by the transferor did not belong to the transferor but the tenancy rights therein were transferred by the transferor to the transferee and later on the transferee was recognised as tenant by the owner. Beyond this, no further fact is proved from which it can be spelt out that there was transfer of business as such. There is no evidence that the goodwill, furniture or the benefits of a running concern, including its assets and liabilities or account books, were transferred to the assessee-firm. There is also no evidence that any of the employees of the transferor-firm became an employee of the assessee-firm.

5. In our opinion, from the two solitary facts proved on record, it cannot be spelt out that there was a transfer of business as such. The view we have taken of the matter finds support from the plain language of Section 17, which is in the following terms :

Where the ownership of the business of a registered dealer is entirely transferred and the transferee carries on such business either in its old name or in some other name, the transferee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the certificate of registration of such dealer had initially been granted to the transferee ; and the transferee shall on application to the prescribed authority be entitled to have the registration certificate amended accordingly,

6. as well as from the following decisions: Bajranglal Bajaj Vs. The State of

Madhya Pradesh and Others, , Industrial Development and Investments Co. Ltd. Vs. Commissioner of Excess Profits Tax, Bombay, and MOTICHAND AND DEVIDAS IN RE., .

7. We are, therefore, clearly of the view that the sales tax authorities, including the Tribunal, were in error in coming to the conclusion that there was a transfer of business as such and not a sale of the stock of the business.

8. For the reasons recorded above, we-answer the question referred to us in the negative, i.e., in favour of the assessee and against the department. The assessee will get its costs which are assessed at Rs. 100.