
(2001) 08 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15949 of 2000

Saurabh Kumar and Bros.	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 22-08-2001

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 14B(7)

Citation : (2002) 127 STC 556

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; M.C. Berry, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner prays for the issue of a writ of mandamus directing the respondents to refund the amount of Rs. 50,000 deposited by it in pursuance to the order dated May 3, 1994 passed u/s 14-3(7) of the Punjab General Sales Tax Act, 1948. It also claims interest.

2. A few facts may be noticed.

On May 3, 1994, the Assessing Authority passed an order u/s 14-B(7) of the Punjab General Sales Tax Act, 1948 by which a penalty of Rs. 50,000 was imposed on the petitioner. This order was challenged. On November 26, 1997, the petitioner's appeal was accepted. On the acceptance of the appeal the amount deposited by the petitioner was not refunded. Consequently, the petitioner submitted a representation dated June 6, 1998 requesting for the refund. Nothing happened. It sent a reminder on November 2, 1998. Still no action was taken. On December 28, 1998 and May 17, 1999 the petitioner requested the Excise and Taxation Commissioner, Punjab, to direct the third respondent to give the refund. Still the respondents did not give the refund. Ultimately, after giving a reminder the petitioner approached this Court through

the present writ petition in November, 2000.

3. In response to the notice of motion written statement has been filed on behalf of the respondents today in court. A copy has been given to the learned counsel for the petitioner. In this written statement, it has been, inter alia, averred that the case had been remanded by the appellate authority vide its order dated November 26, 1997. Thereafter, the matter was considered by the Assessing Officer. It has been decided vide order dated June 25, 2001 by the Assistant Excise and Taxation Commissioner, Sangrur. The penalty of Rs. 50,000 has been confirmed. On this basis the respondents maintain that the petitioner is not entitled to any relief.

4. Learned counsel for the parties have been heard.

5. It is not disputed that the petitioner's appeal against the order of penalty had been accepted by the appellate authority on November 26, 1997. Thus, the petitioner had become entitled to the refund. The respondents did not refund the money despite requests.

6. Mr. Berry states that the receipt of letters alleged to have been submitted by the petitioner has been denied in the, written statement. He refers to the averment in paragraph 5 of the written statement. It reads as under :

"That the contents of para No. 5 of the writ petition are denied for want of knowledge. As no letter dated December 28, 1998 and May 17, 1999 in the matter received in this office (sic),"

7. A perusal of the above shows that the contents of para 5 of the writ petition have been denied "for want of knowledge". The denial is not categorical. Denial for want of knowledge is in fact no denial. Reference in this behalf will be made to the observations of the Lordships of the Supreme Court in *Jahuri Sah and Others Vs. Dwarka Prasad Jhunjhunwala and Others*, .

8. Still further, it is the admitted position that the petitioner's representation of June, 1998 for refund was received in the office of the respondents. Despite that, the refund was not made.

9. We are not very happy with the manner in which the Excise and Taxation Department is treating the assessee. Despite written requests no action is being taken. In the present case, the appellate authority had passed the order on November 26, 1997. The case was remanded to respondent No. 3. For more than 3 1/2 years no order was passed. The petitioner's request for refund of money had fallen on deaf ears. Even the main case was not decided. After the petitioner approached this Court the respondents have passed this order by which penalty has again been imposed. While the petitioner would be entitled to seek its remedy against the order of penalty passed on June 25, 2001 (the learned counsel states that the order had not so far been served on the petitioner), the amount of Rs. 50,000 deposited by the petitioner had remained with the respondents during the period from November 26, 1997 onwards. This had to be

refunded. The respondents having failed to do so, the petitioner is entitled to the payment along with interest as admissible u/s 12 of the Punjab General Sales Tax Act, 1948.

10. Mr. Berry submits that the order of penalty having been confirmed by the authority, the petitioner should not be held entitled to any relief.

11. This contention cannot be accepted. Admittedly, the penalty had been imposed vide order dated May 3, 1994. This order had been set aside by the appellate authority on November 26, 1997. Thus, the order of May 3, 1994 had ceased to exist. Still further, there is no provision in the statute authorising the authority to impose a penalty from a retrospective date. The order becomes effective only after it is passed and issued.

12. No other point has been raised.

13. In view of the above, we allow the writ petition. We direct respondent No, 2 to release the amount of Rs. 50,000 subject to the petitioner's right to opt for adjustment, if any, along with interest as admissible under the law from November 27, 1997 to the date of actual payment. In the circumstances, we make no order as to costs.