
(2006) 07 P&H CK 0184
In the Punjab And Haryana At Chandigarh

Setia Paper Mills Limited

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21(1), 22(2)

Citation : (2007) 8 VST 17

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. This is a petition u/s 22(2) of the Punjab General Sales Tax Act, 1948 (for short, "the Act") seeking a direction to the Sales Tax Tribunal, Punjab for referring the following questions of law to this court for opinion for the assessment year 1981-82:

(i) Whether, in the facts and circumstances of the case, the provisions of Section 4B can be attracted and the additional demand created by AETC and affirmed by the Tribunal is sustainable in law ?

(ii) Whether the ratio of law in Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, and J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, has rightly been invoked and the purchaser, namely, the petitioner-dealer can be subjected to pay the additional demand of tax ?

(iii) Whether, in the facts and circumstances of the case, the additional demand of Rs. 9,003 is legal and sustainable in law ?

(iv) And lastly, whether the provisions of Section 11D could be attracted in the facts and circumstances of the case and can it be said that in such a contingency the levy of interest is automatic and consequential ?

2. The question before the authority was whether goods purchased on the strength of registration certificate/ST-22 forms, but used in construction of

building could be treated as machinery. Though at the time of assessment, the claim was allowed by the assessing authority, however, later the case was taken up by the revisional authority for suo motu action u/s 21(1) of the Punjab General Sales Tax Act, 1948 (for short, "the Act"). The revisional authority while assessing the tax also levied interest on the assessee. The assessee failed in his appeal before the Tribunal. Even though question on merit with regard to levy of the tax has been raised in the petition, the counsel did not press the same keeping in view the small amount of the tax. However, he submitted that levy of interest on the assessee is totally contrary to settled position of law to the effect that no interest can be levied for the period before the demand is raised as tax due according to returns was paid and the claim made in the returns was also accepted by the assessing authority.

3. For the purpose, the counsel for the assessee relied upon judgments of the honourable Supreme Court in the cases of J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422 Frick India Limited v. State of Haryana [1994] 95 STC 188 and Maruti Wire Industries Pvt. Ltd. v. Sales Tax Officer [2001] 122 STC 410 and a Full Bench of this court in United Riceland Limited v. State of Haryana [1997] 104 STC 362. In United Rice-land Limited case [1997] 104 STC 362 (P&H) it was held as under:

As noted in the earlier part of the judgment, the liability of the petitioners to pay the purchase tax was apparently in dispute and not clear even to the respondent-authorities. The issuance of notice u/s 40 of the Act proposing to take suo motu action with respect to the assessment years much prior to the date of issuance of the aforesaid notice is indicative, suggestive of the fact and strengthens the case of the petitioners so far as the demand of interest is concerned. Resort to the provisions of Section 40 of the Act unambiguously demonstrates that the petitioner had not earlier been held responsible for their tax liability and the revisional authority on its own decided to call for the records of the case supposedly disposed of by the assessing authority for the purposes of satisfying himself as to the legality or propriety of the proceedings or of the orders made therein before passing the order determining the liability of the petitioners to pay the tax....

Keeping in view the legal position and the admitted facts of the case, it cannot be said that the petitioner-assessee had mala fide or intentionally evaded to pay the tax thus incurring the liability to pay the interest within the meaning of Sub-section (5) of Section 25 of the Act. The demand regarding payment of interest is also vague, ambiguous and without the authority of law. The petitioners cannot be directed to make the payment of interest for any period prior to the actual demand made for the payment of purchase tax under the provisions of the Act. The impugned order in so far as it directs the payment of interest is liable to be quashed....

4. In the present case, the revisional authority raised the demand of interest for the period prior to the date of order and raising of demand.

5. In this situation when the issue raised by the assessee is squarely covered by various judgments, whether this court should still give a direction to the Tribunal to make a reference or decide the issue at this stage itself, is settled by this court in S.T.C. No. 19 of 1992, titled Chaudhary Tractor Co., Tohana v. State of Haryana decided on May 29, 2006 Reported at [2007] 8 VST 10.

6. Accordingly, following the judgment in Chaudhary Tractor's case, S.T.C. No. 19 of 1992 decided on May 29, 2006 Reported at [2007] 8 VST 10 we deem it appropriate to answer the question straightway by converting the case into a reference.

7. In view of the above discussions, it is held that the assessee shall not be liable to pay interest for the period before the demand was raised against the assessee in the revisional proceedings.

8. Ordered accordingly.