
(1980) 09 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : G.S.T. Reference No. 15 of 1975

Sewa Singh Sadhu Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 09-09-1980

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11

Citation : (1981) 48 STC 117

Hon'ble Judges : M.R. Sharma, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Dass and B.K. Gupta, for the Appellant; Bhoop Singh, Additional Advocate-General, for the Respondent

Judgement

M.R. Sharma, J.—The Sales Tax Tribunal, Haryana (hereinafter referred to as the Tribunal), has referred the following two questions of law to us for our opinion:

(i) Whether, on the facts, an application for registration had to be made for the year 1964-65 when the earlier application for 1963-64 had not been decided ?

(ii) Whether assessment was maintainable u/s 11(6) of the Punjab General Sales Tax Act in view of the pendency of the application ?

2. The Assessing Authority, Gurgaon, vide its order dated 30th June, 1970, assessed the applicant-firm to sales tax amounting to Rs. 2,500 and Rs. 3,225 for the years 1963-64 and 1964-65 respectively, and also imposed a penalty of Rs. 500 in respect of each year u/s 11(6) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). The first appeal filed by the assessee before the Deputy Excise and Taxation Commissioner (Appeals), Rohtak, was partly allowed and penalty of Rs. 500 was waived. The second appeal filed by the assessee was accepted by the Tribunal vide order dated 7th April, 1971. Thereafter, the Excise and Taxation Commissioner applied for review of the order dated 7th April, 1971, re: assessment year 1964-65 of the Tribunal. The Tribunal vide its order dated 12th October, 1973, allowed the review application and set

aside the order of the Tribunal dated 7th April, 1971. On the application filed u/s 42(1) of the Act by the assessee, the Tribunal referred the aforementioned two questions of law to us for our opinion.

3. On behalf of the assessee, it has been argued that the assessee did apply for registration certificate for the assessment year 1963-64 and its application remained pending for this year as well as for the year 1965-66 and that in these circumstances best judgment assessment could not have been framed u/s 11(6) of the Act.

4. It is no doubt true that the application filed by the assessee for the grant of the registration certificate was not decided by the Assessing Authority and as at present advised, we are inclined to agree with the assessee that inaction on the part of the Assessing Authority in deciding this application would confer the status of a registered dealer on the assessee, but that would only mean that the assessee could not be subjected to any penalty for failing to apply for a registration certificate. Its liability in other respects would have to be governed by the charging provisions of the Act.

5. The Assessing Authority called upon the assessee to produce its account books, but it failed to do so on the false pretext that its account books have been taken away by the muneern. Thereafter, the Assessing Authority confronted the assessee with as many as 20 instances of purchase of goods made by it from other dealers. Since the assessee could not offer any explanation against this item of evidence, the Assessing Authority framed best judgment assessment against him for the year 1963-64 at the taxable turnover of Rs. 1,50,000 and Rs. 2 lacs for 1964-65. The first appellate authority also disbelieved the story put forth on behalf of the assessee that its muneem had taken away the account books and the said muneem was not available at the material time.

6. Since the assessee failed to produce account books, it was open to the Assessing Authority to frame a best judgment assessment on the basis of evidence collected by it, which was duly put to the assessee. We are accordingly unable to find any fault with the determined rate of sales tax by the authorities below. The first question is answered in favour of the assessee and against the revenue. The second question is, however, answered against the assessee and in favour of the revenue. No costs.