(1973) 02 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : General Sale Tax Reference No. 8 of 1971

Sharma Sales Centre APPELLANT

Vs

The State of Haryana RESPONDENT

Date of Decision : 13-02-1973

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 11(6), 2(1), 20(1), 22(2), 4(3)
Punjab General Sales Tax Rules, 1949 — Rule 29

Citation : (1975) 2 ILR (P&H) 93

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

Bench : Division Bench

Advocate : G.C. Mital and Parkash Chand, for the Appellant; S.P. Jain, for A.G. and S.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—The Petitioner firm (hereinafter called the dealer), was carrying on the business of selling radios, transistors, sofa sets, electric ceiling fans etc., since June 1, 1965, and was found importing goods from other States since April 26, 1967, by the Sales Tax Department. The dealer failed to apply for registration and his date of liability was fixed with effect from April 26. 1967. The dealer produced his account books for the year 1967-68 and an assessment was made by the Assessing Authority, Gurgaon, by order dated November 12, 1968, whereunder the total sales, tax assessed was Rs. 1,429.39. A penalty of Rs. 200.00 u/s 11(6) of the Punjab General Sales Tax Act (hereinafter called the Act), was also levied and a demand notice for Rs. 1,629.39 was issued to the dealer. The dealer filed an appeal u/s 20(1) of the Act which was dismissed by the Deputy Excise and Taxation Commissioner (Appeals), Rohtak, by order dated January 6, 1969. Further appeal before the Sales Tax Tribunal, Haryana, succeeded only to the extent that the amount of penalty was reduced to Rs. 100.00 by order dated April 14, 1969, and the assessment to sales tax was upheld. Against that order, the dealer filed an application u/s 2(1) of the Act for reference of the following questions of law to this Court for opinion:

(i) That no liability for tax could be fixed on the Petitioner.

(ii) Whether liability could be fixed on the Petitioner-firm when the gross turn-over was much below the quantum merely on the ground of import?

(iii) That the Petitioner-firm had placed orders for supply of goods before the re-organisation which took place on 1st of November, 1966, and the goods were actually supplied after the re-organisation. Thereafter no new goods were booked. Under these circumstances, can it be said in law that the Petitioner has become an importer of goods from Punjab.

(iv) Whether a couple of casual receipt of goods booked before re-organisation, can amount to import in law and liability can be fixed.

The learned Tribunal rejected the application by order dated November 21, 1969, observing that none of the questions could be said to arise out of its order. The dealer then moved this Court u/s 22(2)(b) of the Act praying that the Sales Tax Tribunal be directed to refer the above questions of law to this Court for opinion. A Division Bench of this Court, by order dated December 18, 1971, directed the Tribunal to refer the following question of law to this Court for opinion along with the statement of the case:

Whether it is open to the Assessee, who has failed to apply for registration and had paid sales tax on the goods purchased by him as an unregistered dealer, to urge that he is not liable to pay further tax on the same u/s 11(6) of the Punjab General Sales Tax Act?

This is how this reference has come up for hearing before us.

2. The learned Counsel for the dealer has relied on the following observations of the Sales Tax Tribunal, Haryana, in its decision in Shri Krishan Lal v. State S.T.A. No. 200 of 1968-69 decided by Sales Tax Tribunal Haryana on 26th February, 1970:

---in the case before me, it is contended that the Assessee had already paid sales tax as an unregistered dealer but nevertheless he is being required to pay it a second time as a registered dealer. This is manifestly unfair and improper. Regardless of any omission in the Act, it is opposed to natural justice that a person should be required to pay his taxes twice over. I have, therefore, no hesitation in accepting the contention of the Assessee that the tax should be recovered from him only once. Accordingly, I return the case to the Assessing Authority with the direction that he may verify the assertion of the Assessee that he has paid the tax as an unregistered dealer. If that is so, then the assessment framed against him should be deemed to have been modified to permit of the tax already paid by him on his purchases being adjusted against his total liability to sales tax.

The said Tribunal refused to refer the following question of law to this Court for opinion on the application of the Stale (S.T.M. No. 2 of 1970-71, decided on

October 21, 1970):

Whether, on the facts and in the circumstances of the case, the Respondent is entitled to refund/adjustment of tax paid by him as an unregistered dealer on his purchases against his liability to pay tax on his sales after adjudication of his liability to pay tax u/s 4(3) read with Section 7 of the Punjab General Sales Tax Act?

The State then field a petition u/s 22(2)(b) of the Act in this Court for a direction to the Tribunal to refer the above quoted question of, law to this Court for opinion which was dismissed in limine by D.K. Mahajan and Gopal Singh, JJ. on January 28, 1971. It is pleaded on behalf of the dealer that a Division Bench of this Court upheld the view taken by the Sales Tax Tribunal, Haryana and therefore, it should be held in the instant case that the dealer was not liable to pay further tax on the goods on which he paid tax when he purchased them as unregistered dealer. We, however, do not find any substance in this submission. The dismissal in limine of the petition u/s 22(2)(b) of the Act by a Division Bench of this Court only meant that that Bench did not find that any point of law arose out of the order of the Sales Tax Tribunal. That dismissal does not mean that the reasoning or the decision of the Tribunal was approved.

3. The learned Counsel for the dealer has not been able to bring to our notice any provision of the Act under which the deduct on claimed by him could be allowed. It is admitted that under the Act every registered dealer is liable to pay sales tax on his assessable turnover as determined under the Act. Deductions allowable are provided for in Section 5(2) of the Act and Rule 29 of the Rules framed thereunder. Admittedly, these two provisions do not provide for any deduction which was claimed by the dealer in the instant case. There is no question of double taxation either. On the first transaction o? purchase, the tax was payable by the registered dealer who sold the goods to the Petitioner and the Petitioner was not the Assessee in respect of that transaction. In respect of his own sales, the Petitioner is liable to pay sales tax and is an Assessee. In the first transaction, the sales tax was paid by the Petitioner while in the second transaction of sale by him, the sales tax was payable by the customer who purchased the goods from him. There is, therefore, no question of double taxation on the dealer. Moreover, there is no principle of natural justice that a transaction cannot be taxed twice. In our opinion, the learned Tribunal completely went wrong in deciding that case on his own whims and views without reference to any provision of the Act or the rules framed thereunder. When an Assessee is taxable under the taxing statute, the burden to prove that he is entitled to any deduction or exemption is on hint and only such deductions and exemptions are allowed Which are provided for in the Act or the rules framed thereunder. No deduction or exemption can be allowed merely because the Assessing Authority or any higher officer thinks that in equity or justice the Assessee should be allowed that deduction or exemption. Equity and justice have no place in the administration of taxing statutes which have to be administered

and enforced according to their provisions as enacted by the Legislature and not on the notions of the persons administering the Acts. We have found no provision in the Act under which the dealer was entitled to claim the deduction and no deduction could be allowed to him. The decision of the Assessing Authority, which has been upheld by the higher authorities, was, therefore, correctly made.

4. The learned Counsel for the Respondent has brought to our notice a judgment of P.C. Jain, in Jawahar Lal Siri Chand v. The Union Territory of Chandigarh and Ors. C.W. No. 433 of 1969 decided on 30th November, 1970, in which the following observations occurs:

The action against the Petitioner was rightly initiated and the mere fact that the Petitioner did not charge any sales tax from his customers or that he had already paid sales tax on the purchases made by him from his suppliers who were duly registered, is not a valid defence nor can he escape liability under the Act on these grounds.

That was also a case of an unregistered dealer and a similar plea, as has been raised in the instant case, was repelled by the learned Judge. That judgment lends support to the view that we have taken.

5. For the reasons given above, we answer the question, referred to us for opinion, in the negative. The Petitioner will pay costs to the Respondent. Counsel''s fee Rs. 100.

