
(1982) 03 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1026 of 1974

Siri Kant Harnam Dass Attar Chand Co.	APPELLANT
Vs	
The Assessing Authority, and Others	RESPONDENT

Date of Decision : 25-03-1982

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 5

Citation : (1982) 50 STC 391

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : B.K. Jhingan, for the Appellant; L.K. Sood, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—The petitioner-firm impugns the order of assessment(annexure PI) dated 31st August, 1971, relating to the year 196768, passed against it by the Assessing Authority, Ludhiana, and its affirmance by the Deputy Excise and Taxation Commissioner and the Sales Tax Tribunal, Punjab, vide their orders, annexures P2 and P3, dated 5th May, 1972, and 7th February, 1974, respectively, whereby certain deductions claimed by the petitioner firm u/s 5(2) (a)(ii) of the Punjab General Sales Tax Act, 1948 (forshort, the Act), for having made sales in favour of the registered dealers, were disallowed.

2. The grounds for not accepting the sales or for disallowing the claim of the petitioner firm, as disclosed in the impugned order, annexure PI, are:

- (i) The declaration form S. T. XXII submitted by the dealer did not indicate whether the purchases had been made by the registered dealers for (a) resale, (b) manufacturing, or (c) interState sales, etc.,
- (ii) The alleged purchasers who had furnished these declarations appear to be men of straw and could not make purchases of such heavy value, and
- (iii) Normally, sales of this magnitude are not cash transactions, and in the

ordinary course, should have been made through cheques, drafts, hundis, etc. In addition to this, it has also been noticed that the petitioner firm had failed to produce the dalals (agents) through whom these sales in favour of the registered dealers are alleged to have been made to prove the genuineness of these transactions.

3. The Deputy Excise and Taxation Commissioner, vide his impugned order, improved upon this by referring to the files of those registered dealers on whose declarations the petitioner firm was seeking reliance for the above noted deductions and observing that these declarations did not appear to be genuine. As already indicated, the Sales Tax Tribunal, vide order annexure P3, simply affirmed these two orders. In addition to the disallowance of the above noted deductions, as stated above, the petitioner firm has also been fastened with a liability of Rs. 7,200 by way of penalty u/s 10(7) of the Act.

4. Now, Shri B.K. Jhingan, the learned counsel for the petitioner-firm, urges with some amount of vehemence that none of the grounds, noticed above, on the basis of which the claim of the petitioner firm for the deductions u/s 5(2)(a)(ii) of the Act has been disallowed, can be said to be valid ground in law to disallow its claim. In fact, the learned counsel has made reference to the earlier judgments of this Court, namely, *Ram Pal Madan Gopal, Chaura Bazar, Ludhiana v. Punjab State* [1968] 22 STC 79, *Devinder Kumar Kewal Kumar v. State* [1972] 30 STC 352 and *Maharaj Mai Hans Raj v. State of Punjab* [1981] 48 STC 369, wherein, in somewhat similar circumstances, the claim of the petitioners for deductions u/s 5(2)(a)(ii) of the Act on some what similar grounds had been refuted by the authorities under the Act. Up setting this these judgments lay down that the declaration furnished by an assessee in form S.T. XXII is prima facie evidence of the sale having been made in favour of a registered dealer and has to be accepted unless the Assessing Authority has any cogent and reliable evidence to doubt the genuineness of the same or to reject the same. As already indicated, in the case in hand, no evidence has been referred to by any of the authorities under the Act, on the basis of which it could be said that the declarations furnished by the petitioner firm were either not genuine or bogus. What has been repeatedly said is that the petitioner firm could lead more and better evidence to establish the factum of sales either by producing the dalals (agents) through whom the sales had been made or the dealers to whom these sales had been made. If this approach has to be accepted, then the very purpose of furnishing these statutory declarations in the form S. T. XXII stands frustrated and then in each and every case, independently of these circumstances, evidence has to be led to prove the genuineness of the sales made by the assessee.

5. When a specific question was put to Mr. L.K. Sood, the learned counsel appearing for the respondent authorities, to refer to any evidence or material on record on the basis of which the authorities under the Act could possibly point out or hold that these declarations were not genuine or had not been made by the registered dealers in whose favour the petitioner firm claims to have made

the sales, he could not refer to any such evidence. He, however, pointed out that the Assessing Authority in his impugned order, annexure P1, has referred at one stage that on a particular date when the case of the petitioner firm in connection with the imposition of penalty u/s 10(7) of the Act was being examined, two dealers, namely, M/s. G.M. Gupta Hosiery and M/s. Great India Hosiery, who are alleged to have issued declarations in favour of the petitioner firm, were present and both these dealers denied their signatures on the declarations furnished by them. This observation, if read properly in the context in which it had been made, indicates that while cases of those dealers, namely, M/s. G.M. Gupta Hosiery and M/s. Great India Hosiery, were being dealt with by the Assessing Authority, they denied the issuance of any declaration in form S.T. XXII in favour of the petitioner firm. Neither those denials have even been put to the petitioner firm nor has it been afforded any opportunity to cross examine those dealers in the light of the declarations on which it sought to rely. After carefully examining the contents of the impugned order in the light of the above noted judgments of this Court, I find that there was no evidence, much less a reliable or dependable evidence, to show that the declarations furnished by the petitioner firm in form S.T. XXII were either not genuine or were forged. In the face of this conclusion of mine, the latter part of the order imposing a penalty on the petitioner firm u/s 10(7) of the Act for either furnishing incorrect return or accounts, or supplying incorrect information to the Assessing Authority, can also not be sustained.

6. For the reasons recorded above, the impugned orders, annexures P1, P2 and P3, are set aside and it is held that the petitioner firm is entitled to the deductions claimed (sales made in favour of the six dealers mentioned in these orders). The imposition of penalty on the petitioner firm is also set aside. I, however, pass no order as to costs.