

(2009) 01 P&H CK 0171
In the Punjab And Haryana At Chandigarh

Sona Knitwears

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5(2)(a)(ii)

Citation : (2009) 26 VST 262

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—On the directions issued by this Court in its order dated July 23, 1997 passed in S.T.C. No. 15 of 1994 in respect of the assessment year 1982-83, the Sales Tax Tribunal, Punjab, Chandigarh (for brevity "the Tribunal") has referred the following questions of law to the High Court for adjudication along with statement of facts:

"1. Whether, on the facts and circumstances of the case the sales made by the assessee against ST-XXII forms to seven registered purchasing dealers were rightly disallowed u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948?

2. Whether, on the facts and circumstances of the case, penalty was leviable u/s 10(7) of the Punjab General Sales Tax Act, 1948?

2. The facts which are significant to determine the question of law raised are discernible from the orders of the Assessing Authority, Appellate Authority, order dated October 30, 1992 of the Tribunal and the statement of facts. The original assessment for the assessment year 1982-83 in the case was framed by the Assessing Authority, Ludhiana on December 6, 1983 by raising an additional demand of Rs. 1,09,717 by rejecting the claim of the dealer that he was entitled to the benefit of grant of deduction from tax on sales made to the seven registered dealers u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act"). It is pertinent to mention that u/s 5(2)(a)(ii) of the Act sales to a registered dealer of goods qualify to be deducted from the "taxable

turnover". The Assessing Authority had also imposed penalty of Rs. 1,50,000 u/s 10(7) of the Act. The dealer preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division who vide order dated August 5, 1985, remanded the case back to the Assessing Authority with a direction to grant the dealer a proper opportunity of hearing. During the reassessment proceedings the seven registered purchasing dealers to whom the goods were sold, were summoned for cross-examination through the Taxation Inspector but the efforts made remained unsuccessful. Thereafter the dealer-petitioner was then asked to throw any light on the whereabouts of the seven purchasing dealers and the dealer was directed to produce them. However, he argued that it was the responsibility of the Department for securing the presence of the concerned persons for the purposes of cross-examination.

3. It is significant to notice that the dealer was directed to produce complete set of account books to ascertain the fact about the transactions claimed between the seller (petitioner) and the purchasers. The dealer remained unable to produce the account books. On October 22, 1986, he produced cash book and ledger but no purchase and sale bills were produced from which it could not be verified to whom the goods were delivered, whether the sale bills were signed by the purchasing dealer or not and whether the delivery of goods was actually effected or not. The dealer was further confronted with the signatures of Shri Rakesh Singla partner of one of the purchasing dealers, namely, M/s. Rakesh Enterprises, Ludhiana (RC 32100) on STI form which he had filed at the time of grant of registration certificate and the signatures appended by him on ST-XXII declaration form. The signatures of Shri Rakesh Singla, partner, on both the documents differ. On issuance of notice, Shri Inderjit, partner of the firm, did not initially appear but he eventually appeared through his counsel Shri M. L. Arora. He was supplied with a photocopy of the affidavit dated September 29, 1983 filed by Shri Rakesh Singla, partner of M/s. Rakesh Enterprises, Ludhiana and was confronted with the same fact. Consequently, the Assessing Authority on the basis of the aforementioned facts once again affirmed the original assessment and reassessed the case accordingly. The Assessing Authority also affirmed the penalty u/s 10(7) of the Act.

4. On appeal before the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala, the findings of the assessing officer were affirmed. However, the amount of penalty was reduced to Rs. 1,10,000.

5. The dealer further filed an appeal u/s 20(2) of the Act before the Tribunal. The Tribunal has recorded a categorical findings in its order dated October 30, 1992 which read thus:

... Law is well-settled that deductions u/s 5(2)(a)(ii) can be availed of by a dealer only against Jbid declaration forms issued by genuine buyers for the transactions actually having taken place. It is also well-settled that ST-XXII forms are only a prima facie evidence for sales having been made and these forms in no way can be taken as a conclusive evidence qua transactions between two dealers. The

facts as emerge from the case in hand are that all the seven dealers to whom the sales were alleged to have been made (i) issued fake declarations (ii) denied sales to them or (iii) did not exist. The appellant has failed to adduce evidence to substantiate its claim during the lengthy proceedings before the lower authorities. I find no force in the argument that the appellant was deprived of the opportunity to cross-examine the buyers by the Assessing Authority. In fact, efforts were made to do so but the buyers were not traceable. In this situation the appellant should have himself made efforts to produce them before the Assessing Authority with its account books to support the claim and get deductions. This was not done apparently because the transactions in all these cases were fake and invalid. ST-XXII forms were procured to legitimise the fake sales in collusion with the buyers. The entire case law relied upon by the appellant is distinguishable and this case stands on different footing. The fact stands established that the appellant tried to cover these false transactions by procuring invalid forms in connivance with the alleged buyers and actually no property in goods passed between the appellant and the alleged buyers. As such, claim of the appellant u/s 5(2)(a)(ii) was rightly disallowed in respect of all the seven dealers/buyers.

In the present case the dealer has connived with certain brokers of yarn trade to hoodwink the Revenue. With the intention to evade tax revenue he has filed incorrect returns by making bogus claim u/s 5(2)(a)(ii). In the circumstances the penalty u/s 10(7) of the Punjab General Sales Tax Act, 1948 has been rightly levied and same is sustained.

6. The dealer filed an application before the Tribunal u/s 22 of the Act claiming that substantial question of law would arise for determination of this Court which was rejected vide order dated August 27, 1993. However, the dealer approached this Court with the prayer that questions of law, in fact, have arisen. This Court vide its order dated July 23, 1997 passed in Section T. C. No. 15 of 1994 has directed the Tribunal to refer the aforesaid two questions for adjudication.

7. Mr. D. Section Brar, learned Counsel for the dealer, has vehemently argued that the seller can have no control over a registered purchaser and he has to rely upon the representations made by such a purchaser to him. According to the learned Counsel the legal obligation of the seller is to satisfy himself that the purchaser is a registered dealer and the goods purchased are specified in his certificate. He has insisted that there is no other duty cast on the seller. In support of his submission, learned Counsel has placed reliance on a judgment of the honourable Supreme Court rendered in the case of State of Madras v. Radio and Electricals Ltd. [1966] 18 STC 222. He has also submitted that facts and circumstances of this case are such that the dealer was entitled to cross-examination and therefore the petitioner was entitled to the benefits of deduction on sales u/s 5(2)(a)(ii) of the Act made by it to the seven registered dealers against ST-XXII form.

8. Ms. Sudeepri Sharma, learned State counsel, has however argued that the

aforesaid question of law proceeds on the assumption that there was genuine acceptable sale by the dealer to the registered purchaser. She has maintained that in view of the categorical findings recorded by the Tribunal doubting the transaction, it is not possible to grant any benefit of the provisions of Section 5(2)(a)(ii) of the Act against ST-XXII form. She has maintained that the Tribunal has categorically held that a dealer can avail of benefit of deduction against some genuine declaration issued by a genuine registered buyer for the transaction actually having been taken place. She has not disputed the proposition of law as laid down by the honourable Supreme Court in the case of Radio and Electricals Ltd. [1966] 18 STC 222 but has argued that the same would not be attracted to the facts and circumstances of the present case.

9. Having heard learned Counsel, we are of the considered opinion that in the facts and circumstances of this case no fault can be found with the view taken by the Tribunal holding that the assessee was not entitled to the benefit of deduction u/s 5(2)(a)(ii) of the Act in respect of the sales made to seven registered dealers by tendering ST-XXII form because the authenticity of these documents has been doubted. The sale transactions themselves have also been doubted because the dealer has failed to produce the sale and purchase bills. There is further evidence on record showing that authenticity about the transaction could not be verified as to how sales were effected, to whom the goods were delivered, whether sale bills were signed by the purchasing dealer or not, whether delivery of goods was actually effected or not. The dealer was confronted with the signatures of one Shri Rakesh Singla on the ST-I form which Shri Rakesh Singla had filed at the time of registration of his firm, namely, M/s. Rakesh Enterprises, Ludhiana. The signatures on the registration certificate did not tally with the ST-XXII declaration form submitted by the dealer. We are further of the view that the requirement of subjecting seven purchasing dealers to cross-examination would pale into insignificance on account of clinching facts. In such circumstances, the question No. 1 posed has to be answered against the dealer and in favour of the Revenue.

10. As a sequel to the answer to the first question it follows that the answer to question No. 2 has to be against the dealer and in favour of the Revenue.

11. The reference is accordingly disposed of in the above terms.