
(2003) 08 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2330 of 1982

State of Haryana

APPELLANT

Vs

Dharam Singh and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 133, 134, 135, 136, 137
Haryana General Sales Tax Act, 1973 — Section 19, 20, 21, 23, 23(1)
Haryana General Sales Tax Rules, 1975 — Rule 61

Citation : (2006) 143 STC 581

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : N.K. Joshi, A.A.G, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This is defendant's appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code") challenging judgment and decree dated August 13, 1982 passed by the Additional District Judge, Ambala, holding that the plaintiff-respondents are entitled to issuance of perpetual injunction restraining the defendant-appellant from recovering a sum of Rs. 6,971 or any other amount either itself or through its agent as arrears of land revenue or otherwise from the plaintiff-respondents.

2. Brief facts of the case which have led to the filing of the instant appeal are that plaintiff-respondents had filed Civil Suit No. 309 of 1979, 241 of November 2, 1977 for grant of perpetual injunction restraining the defendant-appellant from recovering a sum of Rs. 6,971 or any other amount from the plaintiff-respondents as arrears of land revenue or otherwise on account of the fact that they were sureties for the firm M/s. Gita Brothers, Naraingarh, with the Excise and Taxation Department. The surety bond submitted by plaintiff-respondent No. 1, Dharam Singh was neither accepted nor attested by or on behalf of Excise and

Taxation Department or any other person authorised by it. However, the department on furnishing the surety bonds by Dharam Singh plaintiff-respondent No. 1 on March 6, 1973 has issued sales tax licence to the firm M/s. Gita Brothers, Naraingarh. It was claimed by the defendant-appellant that surety bond stood accepted impliedly.

3. The learned trial court took the view that surety bond submitted by Dharam Singh, plaintiff-respondent No. 1, was for consideration and non-mentioning of word "accepted" is not material as long as sales tax licence was issued to the firm M/s. Gita Brothers and plaintiff-respondent No. 2, Pritam Lal should be deemed to have undertaken to pay the dues of plaintiff-respondent No. 1, Dharam Singh. The recovery was ordered to be effected from either of the two respondents and the suit was dismissed. However, the learned lower Appellate Court reversed the findings by observing that acceptance of the surety bond was required to be expressed and the word "acceptance" cannot be read into the surety bond. It further held that issuance of sales tax licence is of no consequence for the purposes of implying such an acceptance. Consequently, the appeal filed by the plaintiff-respondents was accepted by issuing perpetual injunction against the defendant-appellant restraining it to recover the aforesaid amount. The observations of the learned Additional District Judge in this regard read as under :

The sole submission made in appeal before me by Shri B.B Gupta, learned Counsel for the appellants, while impugning the correctness of the findings of the learned trial Judge on issue No. 1 whereunder he found that the impugned surety bond furnished by plaintiff No. 1 had been impliedly accepted, is that there could never have been any question of the so called implied acceptance of the surety bond in question and that on the other hand, it was imperative for the Excise and Taxation Department to formally accept the same through the competent authority who was required to record the word "accepted" with the date of acceptance and signatures. It appears that the learned trial Judge was by and large influenced by the fact that the department concerned had already issued the sales tax licence to M/s. Gita Brothers, Naraingarh, on the strength of the impugned surety bond for holding that there was implied acceptance thereof which was a valid and legal one. The learned trial Judge had also relied upon Dalichand Vs. The State of Rajasthan and Others, in arriving at the aforementioned conclusion. In that case, failure on the part of the Collector to mention the period in column No. 4 of the certificate, was a mere irregularity and no prejudice was held to have been caused to the surety on that score. However, in my considered opinion, in the instant case, the surety bond furnished by plaintiff No. 1 could also possibly be rejected for one reason or the other and, therefore, its formal acceptance was required to be conveyed to both plaintiff No. 1 and M/s. Gita Brothers, Naraingarh. Till the surety bond in question was formally accepted the same was merely an offer or proposal for standing surety and only its formal acceptance would have constituted a valid contract of guarantee between plaintiff No. 1 and the department concerned. The mere fact

that Dali Chand's case AIR 1970 Raj 112, inter alia, holds that provisions of Sections 133 to 139 of the Contract Act cannot apply to a surety bond executed in favour of the State, would not mean that the impugned surety bond was not to be formally accepted. Reference on this aspect of the matter may with profit be made to State of Uttar Pradesh v. Jayanand Lakhera 1971 U.J. SC 262. Shri Prem Nath, retired District Excise and Taxation officer, has admitted in his cross-examination among other things that all the witnesses/ sureties of the impugned surety bond had not put their signatures thereon [sic ?] in his presence and the Inspector also did not sign the same and that the surety bond in question does not bear the signatures of any one from the department in token of the acceptance or attestation thereof. The mere fact that plaintiff No. 1 had paid or deposited Rs. 2,000 under constrained circumstances while under arrest, is inconsequential. I, accordingly, hold that the so-called implied acceptance of the impugned surety bond is of no result and moment and I as consequential upset erroneous finding of learned trial Judge on issue No. 1. It is further held that the impugned surety bond is invalid and unenforceable.

4. Mr. N.K. Joshi, learned State Counsel, in support of the appeal has argued that for issuance of the sales tax licence, certain requirements are necessary to be satisfied for a dealer. Learned Counsel has made reference to Section 23 of the Haryana General Sales Tax Act, 1973 (for brevity, "Sales Tax Act") and rule 61 of the Haryana General Sales Tax Rules, 1975 (for brevity, "Sales Tax Rules"). According to the learned Counsel, the aforementioned provisions do not impose any obligation on the department to make any express endorsement of acceptance of a surety bond submitted by a surety. He has further urged that in the facts and circumstances of the case, the surety should be held bound by its terms especially when the department has issued the sales tax licence on the basis of aforementioned surety. Learned State Counsel has also referred to the statement of DW2 Prem Nath, retired District Excise and Taxation Officer who has made it absolutely clear that the licence was issued after furnishing of surety bond by plaintiff-respondent No. 1, Dharam Singh.

5. No one has put in appearance on behalf of the plaintiff-respondents.

6. After hearing learned State Counsel, I am of the view that this appeal is meritorious and deserves to be accepted. Section 23 of the Sales Tax Act and rule 61 of the Sales Tax Rules may be noticed which read as under :

23. Security from certain class of dealers.--(1) Where it appears to the authority to whom an application is made u/s 19 or Section 20 or Section 21 to be necessary so to do for the proper realisation of the tax payable or for the proper custody and use of the forms referred to in Section 27 he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration, a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the purposes of this Act.

(2) Where it appears to the Commissioner, or any other person appointed to assist him under Sub-section (1) of Section 3 to be necessary so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in Section 27 he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security or, if the dealer has already furnished any security in pursuance of an order under this Sub-section or Sub-section (1), such additional security, as may be specified in the order, for all or any of the aforesaid purposes.

(3) No dealer shall be required to furnish a security under Sub-section (1) or Sub-section (2) by the authority referred to therein, unless he has been given a reasonable opportunity of being heard and the amount of security that may be required to be furnished by any dealer under either of the aforesaid Sub-sections or the aggregate of the amount of such security and the amount of additional security that may be required to be furnished by any dealer under Sub-section (2), shall in no case exceed the tax payable, in accordance with the estimate of such authority, on the turnover of the dealer for the year in which such security or, as the case may be, additional security is required to be furnished.

(4) Where the security furnished by a dealer under Sub-section (1) or Sub-section (2) is in the form of a surety bond and the surety becomes insolvent or is otherwise incapacitated or dies or withdraws, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(5) The Commissioner or any person appointed to assist him under Sub-section (1) of Section 3 may, by order and for good and sufficient cause, forfeit the whole or any part of the security furnished by a dealer,--

(a) for realising any amount payable by the dealer under this Act ; or

(b) if the dealer is found to have misused any of the forms referred to in Section 27 or to have failed to keep them in proper custody :

Provided that no order shall be passed under this Sub-section without giving the dealer a reasonable opportunity of being heard.

(6) Where by reason of an order under Sub-section (5), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency in such manner and within such time, as may be prescribed.

(7) If a dealer fails to comply with an order under Sub-section (1) or Sub-section (2) or with the provisions of Sub-section (4) or Sub-section (6), the Commissioner or any person appointed to assist him under Sub-section (1) of Section 3, may, after affording the dealer a reasonable opportunity of being

heard, order,--

(i) that the forms referred to in Section 27 shall not be issued to him until the dealer has complied with such orders or such provisions, as the case may be, or

(ii) the rejection of the application for registration, or if the dealer is already registered under this Act, cancellation of his registration certificate, as the case may be. In the event of rejection of application for registration, or cancellation of the certificate of registration, as the case may be, the dealer shall be deemed to have failed to apply for registration for the purposes of Sub-section (1) of Section 29.

61. Furnishing of security. (Sections 9, 23, 36 and 37).--(1) The security required to be furnished under the Act, may be in the following forms, namely :--

(a) cash deposit in the Government Treasury under head "040--sales tax receipts" ;

(b) post office saving banks account, the account being pledged to the Commissioner or any officer authorised by him in writing in this behalf ;

(c) bank guarantee from a Scheduled Bank agreeing to pay to the State Government on demand the amount of security ;

(d) personal bond with solvent surety/sureties for the amount of security to the satisfaction of the Commissioner or any officer appointed by the State Government under Sub-section (1) of Section 3 to assist the Commissioner not below the rank of an Assistant Excise and Taxation Officer, but including the officer-in-charge of a barrier,

which shall be in form S.T. 50 on a non-judicial paper of the appropriate value ;

(e) Such saving certificate or bonds as are issued by Government of India, from time to time, to be pledged to the Commissioner or any other officer authorised by him in this behalf.

(2) The security furnished under Sub-section (1) or Sub-section (2) of Section 23 shall be maintained in full so long as the registration certificate continues to be in force.

(3) In the event of default in the payment of any tax, surcharge, interest, penalty or any other amount due, the security furnished by the dealer shall be liable to adjustment towards such amount, after intimation to him and the short fall in the amount of security shall unless ordered otherwise be made up by him within a period of fifteen days from the date of intimation in any of the ways specified in Sub-rule (1).

(4) The security furnished under Sub-section (7) of Section 36 or Sub-section (5) of Section 37 shall be forfeited, if the payment of the amount due on account of tax, surcharge, interest or penalty imposed is not made within the time allowed for the payment thereof and the goods detained shall continue to be detained at

the cost and risk of the owner thereof till the payment is made and the same are released by the competent authority or are disposed of by the said authority by public auction in the manner laid down in rule 47 or otherwise. The owner of the goods or his representative shall be liable to pay the expenses incurred for their custody during the period of detention and for the disposal thereof.

Explanation.--Person-in-charge of the goods or the goods carrier shall be deemed to be the representative of the owner of the goods.

7. A perusal of rule 61 of the Sales Tax Rules read with Section 23(1) of the Sales Tax Act would show that the competent authority is entitled to impose a condition for issuance of certificate of registration that the dealer must furnish in the prescribed manner and within such time, such security as may be specified for the purposes of ensuring proper utilisation of the tax payable. Rule 61 gives the detail of the forms which are required to be furnished by a surety. Clause (d) of rule 61 of the Sales Tax Rules postulates the method of surety by furnishing personal bond for the amount of security to the satisfaction of the specified officer, i.e., not below the rank of an Assistant Excise and Taxation Officer. It becomes further clear that none of the provisions requires the acceptance of surety bonds by the competent officer. The issuance of licence itself after furnishing of surety to the competent officer, therefore, would satisfy the requirement of Section 23 of the Sales Tax Act and rule 61 of the Sales Tax Rules.

8. If the view taken by the Additional District Judge is examined in the light of principles laid down in Section 23 read with Rule 61 of the Sales Tax Act and Rules, then no doubt is left that it has to be accepted that the issuance of sales tax licence was an implied acceptance of the surety bonds. The doubt lingering in the mind of the court, has been made absolutely clear by the statement of DW-3 Prem Nath. Therefore, the only view which could be taken is that the issuance of licence was after the acceptance of surety bonds by the defendant-appellant. Therefore, the impugned judgment of the learned Additional District Judge is liable to be set aside.

9. I am further of the view that the revenue of the State cannot be casually dealt with and in such like matters, no one should be allowed to wriggle out of the responsibility undertaken by him. Therefore, the recovery sought to be effected from the plaintiff-respondents is not hit by any illegality and the suit of the plaintiff-respondents is liable to be dismissed.

10. For the reasons recorded above, this appeal succeeds. The impugned judgment dated August 13, 1982 passed by the learned Additional District Judge, Ambala, is set aside and that of the learned Civil Judge dated July 22, 1980 is restored. The suit of the plaintiff-respondents is dismissed by upholding the recovery sought to be made from them.