(1989) 08 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 5 of 1983

State of Punjab — APPELLANT

Vs

Neera Trading Co. — RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21(3)
Punjab General Sales Tax Rules, 1949 — Rule 55

Citation : (1990) 78 STC 123

Hon'ble Judges : Sukhdev Singh Kang, J;Jai Singh Sekhon, J

Bench : Division Bench

Advocate : D.S. Brar, for A.G, for the Appellant;

Judgement

Sukhdev Singh Kang, J.—The Assessing Authority, Ludhiana, filed a revision petition u/s 21(3) of the Punjab General Sales Tax Act, 1948 (for short, "the Act") on behalf of the State of Punjab against the order of the Joint Excise and Taxation Commissioner, Punjab exercising the powers of the Commissioner, dated 22nd June, 1976, The Presiding Officer, Sales Tax Tribunal, Punjab dismissed the revision petition as incompetent. The learned Presiding Officer had, followed his own decision in Wellman (India) Put. Ltd., Amritsar (Appeal No. 102 of 1979-80 decided on March 25, 1981). The State of Punjab filed an application u/s 22(1) of the Act for reference of a question of law arising out of the order of the Tribunal. This application was allowed and the Presiding Officer has referred the following question of law for our opinion :

"Whether the Assessing Authority, Ludhiana is not competent to file appeal/ revision before the Sales Tax Tribunal and whether the appeal filed by him is without jurisdiction and as such incompetent ?"

2. It has been held by the Presiding Officer of the Tribunal that the Assistant Excise and Taxation Officer cannot file a revision petition on behalf of the State of Punjab without any express authority. There was no provision in the Act clothing the Assistant Excise and Taxation Officer with the power to file an appeal on

behalf of the State Government. The Department had not been able to produce any document before the Presiding Officer indicating that the Government had authorised the Assistant Excise and Taxation Officer to file revision petition on its behalf. He referred to the provisions of Section 250(2) and 271 of the Income Tax Act, 1961, to conclude that such a power had been explicitly conferred on the authorities under that Act.

3. Mr. D.S. Brar, learned counsel appearing for the Department, has brought to our notice Memorandum No. ST. III. 80/4792-4811, dated 1st October, 1980 and contended that the Assistant Excise and Taxation Officer has been specifically empowered to file appeal before the Tribunal. In order to appreciate this contention it will be apposite to read this memorandum :

"It has been observed that where the order passed by an appellate authority is considered not favourable to the Revenue, the district officers instead of filing appeal before the Sales Tax Tribunal against the appellate order, approach this office for taking suo motu action u/s 21(1) of the Punjab General Sales Tax Act, 1948. In such cases, they should resort to legal action by challenging the appellate order before the Sales Tax Tribunal in appeal in time, but most often they do not take timely action, with the result that the appeal before the Tribunal becomes barred by time and then approach this office for taking suo motu action u/s 21(1) ibid. You are, therefore, requested to ensure, that where an Assessing Authority or any officer, viz., Assistant District Attorney attached with Deputy Excise and Taxation Commissioner (Appeals) finds that the order of the appellate court in question is neither legal nor proper, it should be straightway taken up in appeal before the Sales Tax Tribunal within the permissible time limit."

4. We have carefully perused the above memorandum and regret our inability to accept this contention raised on behalf of the Department. The memorandum does not in any way authorise the Assessing Authorities to file appeals on behalf of the Stale Government. It was only to remind them that they should take timely action and approach the higher authorities to file appeals against the orders which were detrimental to the interests of the Revenue. Mr. Brar also referred to Rule 55 of the Punjab General Sales Tax Rules to contend that the Assistant Excise and Taxation Officer assists the Excise and Taxation Commissioner in the discharge of his duties and as such he is competent to file the appeal. This argument is also untenable. No express authority by the Excise and Taxation Commissioner authorising the Assistant Excise and Taxation Officer to file revision petition has been brought to our notice. Power of superintendence invested by Rule 55, ibid., does not percolate to every Assistant Excise and Taxation Officer in the State of Punjab without any express authority.

5. For the reasons mentioned above, we answer the question in the affirmative and against the Department.

