
(1956) 03 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 355 of 1955

Sugar Syndicate, Bahadargarh

APPELLANT

Vs

Excise and Taxation Commissioner, Punjab

RESPONDENT

Date of Decision : 16-03-1956

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab General Sales Tax Act, 1948 — Section 12, 22

Citation : AIR 1956 P&H 222 : (1956) 7 STC 336

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : C.L. Aggarwal, for the Appellant; S.M. Sikri, Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Bishan Narain, J.—The facts leading to the present petition under Article 226 of the Constitution are not in dispute. The Sugar Syndicate Bahadargarh was formed on 8-12-1940. It imported sugar and started selling it on 7-1-1950. The Syndicate was liable to pay sales tax under Sub-section (2) of Section 4, East Punjab General Sales Tax Act, 1948 (46 of 1948), on the sales effected after 31-3-1950.

The Syndicate, however, filed returns before the assessing authorities relating to sales made from 7-1-1950 to 31-3-1950 and paid Rs. 4,030/14/3 as sales tax on the sales for which it is alleged that the petitioner could not be made liable. The mistake was not discovered till sometime in September 1952 and the petitioner applied for refund of this amount u/s 12 of the Act. This application, however, was rejected by the Excise and Taxation Officer, Rohtak.

The revision petition filed by the petitioner on 24-3-1953 was also dismissed by the Assistant Excise and Taxation Commissioner, Punjab, by his order dated 15-1-1954 wherein he held that the application for refund was made after the expiry of limitation.

The petitioner then filed a petition for revision to the Financial Commissioner u/s 21(3) of the Act, but it was also dismissed on 25-4-1955 on the ground that as the petitioner had realised the amount of sales tax from its customers it was not proper to interfere with the order at such a late stage. The present petition was filed on 17-9-1955 for a writ of mandamus directing the Excise and Taxation Commissioner to refund this amount of Rs. 4,030/14/3.

2. It is conceded by the learned Advocate-General that the Syndicate was not liable to pay sales tax on sales effected from 7-1-1950 to 31-3-1950 and that its levy or collection was not warranted by the provisions of the Act. It is, however, urged on various grounds that this Court should not interfere with the order refusing to refund this amount.

The first argument advanced is that the Syndicate had realised this amount of tax from its customers and then paid it to the taxing authorities. This is undoubtedly so, but this fact does not affect the validity or invalidity of the levy or collection of the tax. Under the Act a dealer is liable to pay the sales tax on the taxable turnover every year at a rate fixed by notification u/s 5 of the Act. The term "taxable turnover" u/s 4 is stated to be gross turnover exceeding the taxable quantum which is also defined in this section.

It is therefore clear that a dealer is liable to pay this tax whether he realises it from his customers or not. It is well known that the dealers pass on the amount of tax to the customers but under the 1948 Act they are not bound to do so and they do not so to say act as collecting agents for the taxing authorities.

It appears to me therefore that the mere fact that the Syndicate had realised certain amounts from its customers under the belief which was obviously genuine that it was liable to pay the sales tax on sales held during January to March 1950 should not be taken into consideration when exercising discretion under Article 226 of the Constitution once it is held that the tax was illegally collected.

The invalidity of its levy and its collection is admitted by the respondent in the present case. The High Court should not hesitate to exercise its power under Article 225 of the Constitution to grant the necessary relief whenever a tax is illegally collected from a citizen of India. It would be travesty of Justice to compel a person to pay a tax which he is not legally bound to pay or to refuse to refund the tax illegally collected on merely technical grounds.

3. The learned Advocate-General then urged that the Syndicate did not avail of the machinery provided in the 1948 Act by failing to require the Financial Commissioner to refer the case to the High Court u/s 22 of the Act and therefore this Court should not quash the order impeached.

Under Section 21(3) the Financial Commissioner did not care to go into the legality of the tax but rejected the revision petition and refused to order refund on the ground that it was not proper to interfere with the order of the Assistant Commissioner. Thus the revision petition of the Syndicate was not dismissed by

him on a question of law and it is doubtful if an application u/s 22 if filed would have been competent.

In any case it is well settled that the existence of an alternative remedy per se does not operate as an absolute bar to the grant of relief under Article 226 of the Constitution although it is a circumstance that the High Court does take into consideration.

The remedy provided u/s 22 does not appear to me to be an adequate legal remedy in the present case when the Financial Commissioner has dismissed the petition for revision on the ground that it is not proper to refund the amount on grounds of propriety even if it be assumed that the legal position is decided in favour of the ass-essee. Moreover, it must be remembered that in the present case admittedly the tax has been collected without the authority of law.

4. I am also not impressed by the argument that the petitioning Syndicate should have filed a suit for the recovery of this amount of tax. This tax was assessed, levied and collected under the 1948 Act. Section 19 of this Act lays down that such orders cannot be called into question in any civil Court. There is no suggestion that this amount was not paid under this Act or that it was a voluntary gift to the Department although it may be that the returns made by the Syndicate were accepted as correct by the Excise and Taxation Officer u/s 11 (1) of the Act.

The application for refund was dismissed on the ground that it was barred by time u/s 10(4), but it is nobody's case that the syndicate had discovered this mistake before the expiry of the time fixed in this sub-section. Section 12 deals with refunds and it does not lay down any period of limitation for making an application for refund of tax and I am of the opinion that one taxation authorities should have refunded the amount of Rs. 4,030/14/3 illegally levied and collected from the Syndicate.

Our Constitution prohibits levy and collection of a tax except by authority of law (Art. 265) and the order of the Financial Commissioner dated 25-4-1955 disregards this provision of the Constitution.

5. I therefore accept this petition and direct by a writ of mandamus that the Excise and Taxation Commissioner should refund the amount of Rs. 4,030/14/3 to the Sugar Syndicate Bahadar- garh. As this amount had been realised from the customers, by the Syndicate, I leave the parties to bear their own costs of this petition.