

(1977) 03 SC CK 0012

In the Supreme Court Of India

Case No : ?Appeal (civil) 721 of 1972

The Assessing Authority, Patiala, District Patiala and Others	APPELLANT
Vs	
Patiala Biscuits Manufacturers (P) Ltd. now Dalmia Biscuits (P) Ltd.	RESPONDENT

Date of Decision : 01-03-1977

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 26, 5, 5(2), 7, 7(1)
Punjab General Sales Tax Rules, 1949 — Rule 26, 5

Citation : AIR 1977 SC 1339 : (1977) 6 CTR 185 : (1977) 2 SCC 389 : (1977) SCC 303 : (1977) 3 SCR 85 : (1977) 39 STC 381 : (1977) 9 UJ 242

Hon'ble Judges : S. Murtaza Fazal Ali, J;R. S. Sarkaria, J;P. N. Bhagwati, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

R.S. Sarkaria, J.—The short question involved in this appeal on certificate, directed against a judgment of the High Court of Punjab and Haryana is: whether the sales made to a dealer who has applied for registration under the Punjab General Sales Tax Act, 1948, before his application is allowed, are to be treated as sales to an unregistered dealer or registered dealer, when the registration is effected from the date of the application ?

2. M/s. Patiala Biscuits Manufacturers Pvt. Ltd, (hereinafter referred to as the assessee) appointed M/s. Rajpura Biscuit Company as their sole selling agents. The agents made an application on 1.1.1966 in the appropriate form for registration as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act). On the same day, the agents (referred hereinafter as the purchasing dealer) made a similar application for obtaining registration certificate under the Central Sales Tax Act. The appropriate Assessing Authority accepted both these applications and on March 27, 1966 issued the registration Certificate with effect from 1.1.1966.

3. The assessee filed their return for the quarter ending March 31, 1966 in April,

1966 and claimed deductions u/s 5(2)(a)(ii) in respect of sales of the value of Rs. 32,56,267.35 made by them between 1.1.1966 to 31.3.66 to the purchasing dealer. The Assessing Authority, Patiala rejected this claim and assessed tax, amounting to Rs. 1,99,558.94, on the proceeds of the sales made by the assesseees to the purchasing dealer between 1.1.1966, and 27-3 1966. The reason given by the Assessing Authority for refusing this relief to the assesseees was that during this period, the purchasing dealer was not in possession of the registration certificate, the same having been issued only on March 27, 1966.

4. The assesseees impugned the validity of this order of the Assessing Authority by a writ petition in the High Court, under Articles 226/227 of the Constitution. The High Court held that since the certificate of registration had been granted with effect from 1.1.1966, which was the date of the application, it could not be said that the sales during this period commencing from 1.1.1966, were made to an unregistered dealer. It further noted that apart from the assesseees, the purchasing dealer had also, been taxed with regard to the same transactions resulting in double taxation which was against the basic scheme of the Act, the Rules and the Notifications issued thereunder. On these premises, the High Court allowed the writ petition and quashed the impugned order to the extent to which it was contrary to Section 5(2)(a)(ii) of the Act in respect of sales made between 1.1.1966 and 27.3.1966. The High Court however granted a certificate under Article 133(1)(a) and (c) of the Constitution, on the basis of which the Revenue has come in appeal to this Court.

5. It would be appropriate to have, at the outset a look at relevant provisions of the Act and the Rules.

6. The material provision is in Section 5(2)(a)(ii) which reads as under :

In this Act the expression "taxable turnover" means the part of a dealer's gross turnover during any period which remains after deducting therefrom :

(a) his turnover during that period on -

(i) x ...

(ii) Sales to a registered dealer of goods...declared by him in a prescribed form as being intended for re-sale in the State of Punjab....

Provided that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form (obtained from the prescribed authority) is furnished by the dealer who sells the goods.

7. Section 7 provides for the registration of dealers. It says :

(1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a registration certificate.

(2) Every dealer required by Sub-section (1) to be registered dealer shall make

application to in this behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for registration is in order, he shall, in accordance with such rules and on payment of such fees as may be prescribed, register the application and grant him a certificate of registration in the prescribed forms which may specify the class or classes of goods for the purpose of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5.

(4) ...

(5) When any dealer has paid the amount of penalty imposed u/s 23 in respect of any contravention of Sub-section (1) of this section, the Commissioner shall register such dealer and grant him a certificate registration, and such registration shall take effect as it had been made under Sub-section (3) of this section on the dealer's application.

(6) ...

8. In case a dealer commits default in not getting himself registered as required by Section 7, certain consequences follow. u/s 11(6) such a defaulting dealer is liable to be assessed on the basis of best judgment, and the Assessing Authority may, in addition to the tax so assessed, impose on him by way of penalty a sum not exceeding one and half times that amount. Such a defaulter is further liable to prosecution u/s 23(1) for carrying on business as a dealer in contravention of the provisions of Section 7(1), and on conviction, he can be sentenced to fine not exceeding Rs. 1,000/-.

9. The application for registration has to be made to the appropriate Authority in the prescribed Form. The manner in which such an application is to be dealt with by the Authority is provided in Rule 5 of the Punjab General Sales Tax Rules, 1949 framed under the Act. This Rule as it stood before the amendment of October 10, 1966 was as follows :

When the appropriate Assessing Authority, after making any enquiry that he may think necessary, is satisfied that the applicant is a bona fide dealer and has correctly given all the requisite information that he has deposited the registration fee into the appropriate Government treasury and that the application is in order, he shall register the dealer and shall issue a certificate of registration in Form S. T. III or S. T. IV according as the dealer has one or more than one place of business in Punjab.

10. Rule 5 was amended by Punjab Government Notification No. GSR-237/PA 46/48/S-27/Amd (5)/66 dated 10th October, 1966, and in place of the last sentence commencing with the words "in form S. T..." of the old Rule, the following was substituted :

...Form S. T. IV which shall be valid from the date of receipt of application for registration by the Assessing Authority or from the date of commencement of the liability to pay tax, whichever is later.

Rule 26 provides :

A dealer, who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act, shall, on demand, produce in respect of such a sale the copy of the relevant cash memo or bill, according as the sale is a cash sale or a sale on credit, and a declaration in writing in Form S. T. XXII by the purchasing dealer or by his agent, that the goods in question are intended for re-sale in the State of Punjab or such goods are specified in his certificate of registration for use by him in the manufacture in the State of Punjab of any goods for sale.

11. Rule 26 was also amended later. The amended Rule is, in substance, the same, excepting that it was clarified that the dealer claiming deduction has to produce the declaration of the purchasing dealer, in the prescribed form, at the time of assessment.

12. The main contention of Shri K.S. Suri, learned Counsel for the appellant is that the declaration form prescribed under the old Rule 26, as it stood at the material time, required the purchasing dealer to specify at the time of the sale, in the prescribed Form S. T. XXII, the number of the registration certificate. Stress has also been placed on the words "registered and possesses" used in Sub-section (1) of Section 7 which according to Counsel, indicate that a dealer having a taxable turnover, cannot validly carry on his business, unless he is actually registered and is in physical possession of the registration certificate issued u/s 7. A compliance with the aforesaid mandatory requirement of Section 7(1) and Rule 26, Form XXII proceeds the argument-could be possible only if at the time of the sales in question, the purchasing dealer as well as the selling dealer, both were in actual possession of the requisite registration certificates. Shri Suri has adopted the reasoning of the Sales Tax Tribunal in Appeal No. 109 of 1967-68 (Parsh Soap Mills, Batala Road, Amritsar v. The State) decided on 12-2-1968.

13. It is contended that Rule 5, as it stood at the material time, did not empower the registering Authority to grant the registration Certificate retrospectively, effect from the date of the application. It is maintained, such a power was conferred on the Authority, only by the Punjab Government Notification No. GSR-237/PA 46/48/s. 27/A (5) 16 with prospective effect from October 10, 1966.

14. Taking the last point first, we are of opinion that the amendment of Rule 5 by the Punjab Government Notification, dated October 10, 1966, did not confer any new or additional power on the registering Authority. The power to grant the registration Certificate with effect from the date of the application was already there. The amendment was only clarificatory of the law as it stood prior to it. It only made explicit which was formerly implicit. A definite indication is available in the language of sub section (5) read with Sub-sections (2) and (3) of Section 7, itself, that the registering Authority had the power to give effect to the registration from the date of making the application.

15. Be that as it may, the words "has been registered and possesses a registration certificate" used in Sub-section (1) of Section 7 have to be construed in accord with the general tenor of the Section as a whole, and in a manner which would avoid oppressive, unreasonable and anomalous results. As rightly pointed out in *Chandra Industries Vs. The Punjab State and Others*, it could never be the intention of the Legislature that a dealer liable to pay tax who has in compliance with the requirements of Sub-sections (2) and (3) of Section 7, "done all which lay in his power to obtain the registration certificate, should pull down his shutters and keep his business closed under pain of being punished u/s 23(1) and await indefinitely the pleasure and leisure of the prescribed authority in issuing the registration certificate. Adoption of such a construction would be to make the applicant liable to punishment for the laches and delays of the authority and its office."

16. As regards the requirement enjoined by the Form prescribed under Rule 25, to enter the number of the registration certificate in the declaration of the purchasing dealer at the time of sale, the same has to be viewed with reasonable flexibility and reconciled with Rule 5 as clarified by the Notification, dated October 10, 1966. Thus construed harmoniously with the related statutory provisions, the requirement of Rule 26 will be substantially satisfied, if the number of the registration certificate granted subsequently, but covering retrospectively the period of the sales in respect of which deduction is claimed is supplied by the claimant along with the declaration of the purchasing dealer at the time of assessment to the Assessing Authority.

17. It is thus clear as daylight that at the relevant time, also, the registering Authority was fully competent to issue the registration certificate to the dealer with retrospective effect from the date of filing the application. A perusal of the registration certificate would show that it was, in terms, made effective from January 1, 1966. This is manifest from the words "the dealer is liable to pay tax w.e.f. 1.1.1966" used by the Authority, prominently, in the heading of the Certificate.

18. It necessarily follows therefore that during the period from 1-1-1966 to 27-3-1966, also, the purchasing dealer was a registered dealer possessing a registration Certificate within the contemplation of Section 7(1) of the Act. This being the correct position, the assesseees were entitled to the deduction u/s 5(2) (a)(ii) of the Act in respect of the sales made by them to the 1 purchasing dealer during the whole of the quarter ending 31st March, 1966. The High Court was therefore, right in determining the question posed, in favour of the assesseees and against the Revenue.

19. The appeal fails and is dismissed with costs.