

**(1970) 10 P&H CK 0014**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Letters Patent Appeal No. 247 of 1970

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|--------------------------------------------------|------------|
| The Excise and Taxation Commissioner and Another | APPELLANT  |
| Vs                                               |            |
| Guranditta Mall Shadi Parkash Rice and Oil Mills | RESPONDENT |

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**Date of Decision :** 05-10-1970

**Acts Referred:**

Punjab General Sales Tax Act, 1948 — Section 11, 20

**Citation :** (1973) 1 ILR (P&H) 47 : (1971) 27 STC 391

**Hon'ble Judges :** Harbans Singh, C.J.; Prem Chand Jain, J

**Bench :** Division Bench

**Advocate :** S.S. Kang and A.G, for the Appellant; Ram Lal Aggarwal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. The Excise and Taxation Commissioner, Patiala, and the District Excise and Taxation Officer, Ferozepore, have filed this appeal under Clause 10 of the Letters Patent, against the judgment and order of the learned Single Judge of this court in Civil Writ No. 3130 of 1969 decided on 19th January, 1970.

2. The short question that requires determination in this appeal is whether an appellate authority under the Punjab General Sales Tax Act, 1948 (herein after referred to as the Act), has or has no power to grant a stay in respect of the recovery of the amount of tax during the pendency of the appeal.

3. It was contended by Mr. Kang, learned counsel for the appellants, that under Sub-section (5) of Section 20 of the Act, no power is vested in an appellate authority to grant stay during the pendency of an appeal and that in the absence of a specific provision, power of staying the recovery proceedings cannot legally be exercised. On the other hand, it was contended by Mr. R.L. Aggarwal, learned counsel for the respondents/that the proviso to Sub-section (5) of Section 20 clearly indicates that power of stay exists in the appellate authority. The learned counsel, however, further contended that even if it is held that such power could

not be gathered from the proviso, then also such power being ancillary or incidental to the appellate power, could be exercised as such.

4. After hearing the learned counsel for the parties, we are of the view that there is considerable force in the contention of the learned counsel for the respondents and this appeal deserves to be dismissed. The relevant provision of the statute with which we are concerned, reads as under:

(5) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of tax or of the penalty, if any, imposed or of both, as the case may be:

Provided that if such authority is satisfied that the dealer is unable to pay the tax assessed or the penalty, if any, imposed or both, he may, for reasons to be recorded in writing, entertain the appeal without the tax or penalty or both having been paid or after part payment of such tax or penalty or both.

5. Under Sub-section (5), the appellate authority entertains the appeal only when it is satisfactorily proved that the tax or the penalty or both have been paid. Thus it means that payment of the amount of tax or penalty or both, as the case may be, is a prerequisite to the entertainment of the appeal by the appellate authority. However, a proviso is added to this sub-section authorising the appellate authority, for reasons to be recorded in writing, to entertain an appeal if it is satisfied that the dealer is unable to pay the tax or penalty or both or after part payment of such tax or penalty or both.

6. From the plain reading of the proviso, it is clear that in case of non payment of the tax, before entertaining an appeal, the appellate authority has been empowered to determine if the assessee is unable to pay the tax in full or the penalty and to pass an appropriate order, either exempting it in full or requiring part payment of the same. A fortiori the exercise of this wide power implies that in case of entertaining the appeal the appellate authority has power to stay the recovery proceedings and pass an order to that effect. If that be not so, it would be strange to find that the appellate authority is satisfied that the assessee is unable to pay the tax and still cannot relieve him from the harassment to be caused by the recovery proceedings. This could not be the intention of the Legislature. Thus we are clearly of the opinion that the appellate authority while using the powers given under the proviso in favour of the assessee, has implied power to stay the proceedings for the recovery of the tax. It is noteworthy that in the instant case the appellate authority not only got the part payment of the tax made but also secured the payment of the remaining amount by getting the property of the assessee hypothecated.

7. However, we need not dilate on this aspect more as we fully agree with the contention of the learned counsel for the respondents that the power to stay recovery of tax is ancillary or incidental to the appellate power. A similar question under the Income Tax Act came up for consideration before the Division Bench of the Kerala High Court in *M. K. Mohammed Kunhi Vs. Income Tax Officer*,

Cannanore, and Another, , where the learned Judge after reviewing some judicial decisions, held:

...that even without an express conferment, the appellate authority has the power to stay the proceedings and the collection pending appeal, as incidental or ancillary to its appellate jurisdiction.

8. To the same effect are the observations of Bhutt, J., of the Nagpur High Court in *The Burhanpur Taffiti Mill Ltd. v. The Board of Revenue, Madhya Pradesh, and Ors.* [1955] 6 S.T.C. 670 (MP) No contrary decision was cited by the learned counsel for the appellants. Moreover, it may be observed on the basis of the Government instructions as is evident from the letter dated 12th November, 1969 (copy annexure "C" to the writ petition). In that letter, addressed by the Excise and Taxation Officer and Assessing Authority, Ferozepore, to the respondent, it was stated thus:

In view of the Government instructions any such interim stay orders passed by the appellate authorities are to be treated to have been vacated after the expiry of 60 days and in your case that limitation has since expired. You are, therefore, requested in your own interest to deposit the sum of Rs. 74,765.44 outstanding against you as an additional demand created on 2nd July, 1969, for the year 1968-69 by 18th instant and produce treasury receipt on that date failing which besides penalty u/s 11(8) of the Punjab General Sales Tax Act, 1948, the amount will be recovered under the Punjab Land Revenue Act without any further reference to you.

9. From this letter, it is clear that the recovery proceedings were started on the ground that the period of stay, according to Government instructions, extends only up to 60 days, and not on the ground that the appellate authority had no power to stay the proceedings. Thus viewed from any angle, the conclusion arrived at by the learned Single Judge is unexceptionable and there is no warrant for holding that the appellate authority is not vested with the power of stay. No other point was urged.

10. For the reasons recorded above, this appeal fails and is dismissed with costs. Counsel's fee Rs. 200.