(1963) 04 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 271 of 1962

Tulsi Ram Sud APPELLANT

Vs

The Excise and Taxation Commissioner and Another RESPONDENT

Date of Decision : 15-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 11A, 2, 5

Citation : (1963) 14 STC 526

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : D.C. Gupta, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J

1. This is a petition by one Tulsi Ram under Article 226 of the Constitution of India and is directed against the order of the Assessing Authority, Kangra, asking the petitioner to pay purchase tax amounting to Rs. 952-47 nP.

2. The petitioner is a registered dealer and also a tea merchant. He purchases tea from the growers directly and also from other registered dealers. He sells his tea through commission agents at Amritsar. With regard to the purchases in question declarations in the form prescribed were furnished and after examining the account books and the other evidence the officer concerned accepted the correctness of the returns and the turnover of the petitioner and levied the sales tax. Sometime thereafter on the 7th of August, 1961, the following notice (annexure "E") was issued to the petitioner :-

Whereas, in consequence of definite information in my possession, I have reasons to believe that the turnover of your business assessable to sales tax for the year ending the 31st March, 1960, has been underassessed, I, therefore, propose to re-assess the said turnover that has been under-assessed.

I hereby require you to show cause on 17th August, 1961, at Dharamsala...days of the service of this notice on you why the contemplated action should not be taken in your case.

Also bring account books for 1959-60 with you.

3. The petitioner contested the notice and the following order (annexure "F") was passed by the Assessing Authority on the 6th of December, 1961 :-

Having come to know that the dealer had utilized the goods purchased by him by availing the concession of tax-free purchases from registered dealers u/s 5(2)(a)(ii) for purposes other than for which these were purchased and had rendered himself liable to assessment of such purchases under the second proviso of Section 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948, notice u/s 11A read with Rule 63 was issued in response to which Shri Tulsi Ram appeared on 17th August, 1961, and his statement was recorded on solemn affirmation, according to which such purchases amounted to Rs. 6,311-11-3. He also admitted that these goods were utilized by him for sale by his commission agents and that he did not sell them....

4. It is this order which is the subject-matter of challenge in these proceedings.

5. It will be apparent from the order that the basis on which the purchase tax is sought to be levied is that the goods have been used by the dealer for purposes other than those for which these were sold to him. It is common ground that if the goods were sold directly by the dealer he would not be liable to the purchase tax as is now claimed from him. It is only claimed on the basis that the goods were sold through commission agents. Therefore, the short question that arises for determination is whether the sale through a commission agent is by a different person than by the dealer himself. "Dealer" is defined in Section 2(d) of the Punjab General Sales Tax Act, 1948, in the following terms :-

2. (d) ''Dealer'' means any person including a Department of Government who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Punjab, irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, ''dealer'' includes the local manager or agent of such person in Punjab in respect of such business.

Explanations:-(1) * * * * * (2) A factor, a broker, a commission agent, a dealer''s agent, an auctioneer or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not who carries on the business of selling, supplying or purchasing goods and who has in the customary course of business, authority to sell goods belonging to the principals or to purchase goods on their behalf, is a dealer.

6. This definition will show that the commission agent employed by a dealer is included in the term dealer and a dealer or his commission agents are not two different persons. Faced with this situation Mr. Doabia merely contended that no sales tax was paid on these goods by the commission agents. This contention is not borne out from the record. On the other hand, in paragraph 5 of the petition it is clearly stated that sales tax on these goods was paid and this fact is not denied in the return filed by the State. In this view of the matter the provisions of Section 5(2)(a)(ii) of the Act do not come into play. That being so, the order of the Assessing Authority is quashed and the assessment of the petitioner under the proviso to Section 5(2)(a)(ii) is set aside. The tax, if paid, should be refunded. The petitioner will have his costs, which are assessed at Rs. 50.

