
(1982) 12 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 12 of 1976

Vardhman Spinning and General Mills Limited

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-12-1982

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 22

Citation : (1983) 53 STC 335

Hon'ble Judges : Prem Chand Jain, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : J.P. Goyal, for the Appellant; S.L. Ahluwalia, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Jain, J.—M/s Vardhman Spinning and General Mills Limited, Ludhiana (hereinafter referred to as the petitioner), was assessed for the year 1969-70 by the Assessing Authority on 6th October, 1970. Earlier the Assessing Authority issued a notice u/s 10(6) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act), for showing cause as to why penalty should not be imposed for the short deposit of purchase tax for the quarters ending 30th June, 1969, 30th September, 1969, 31st December, 1969, and 31st March, 1970. The petitioner filed his reply and also appeared in person before the Assessing Authority. The position taken in the reply was that there was no short deposit of purchase tax for the 1st, 2nd and 4th quarters. However, the purchase tax for the 3rd quarter ending 31st December, 1969, had been short deposited due to some clerical error. There was no mala fide intention in the short remittance and in the circumstances no penalty deserved to be imposed.

2. On consideration of the entire matter, the Assessing Authority imposed a penalty of Rs. 6,000 on account of short deposit of purchase tax vide its order dated 6th October, 1979.

3. Feeling aggrieved from the orders of the Assessing Authority, the petitioner

preferred an appeal, but the same was rejected by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala.

4. Still dissatisfied, the petitioner preferred second appeal before the Sales Tax Tribunal, which was rejected on 30th January, 1975. Thereafter, the petitioner presented an application u/s 22(1) of the Act, requiring the Tribunal to refer to this Court a question of law arising from its order. The Tribunal accepted the application and has referred the following question of law for our decision :

Whether, on the facts and in the circumstances of the case, it was legal and just to impose penalty on the applicant in accordance with the provisions of Section 10(6) of the Punjab General Sales Tax Act.?

5. We have heard the learned counsel for the petitioner. It is contended by him that the penalty has been imposed on irrelevant consideration, that the petitioner had shown sufficient cause for the short deposit of purchase tax for the 3rd quarter ending 31st December, 1969, and that in the circumstances of the case, no penalty could legally be imposed.

6. We are afraid, we are unable to agree with the submissions made by the learned counsel. The Tribunal has considered all the material facts and the relevant observations out of that order read as under :

I find myself in agreement with the proposition of law cited by the learned counsel for the State. In the case of Hindustan Steel Ltd. Vs. State of Orissa, , it is held that the question whether a penalty should be imposed or not for failure to perform a statutory obligation is a matter of discretion of the authority. Categorical admission of the assessee of failure to deposit purchase tax for the quarter ending 31st December, 1969, was good enough to draw a conclusion for wilful default for the non-payment of purchase tax by the Assessing Authority and in imposing the penalty at a modest level. The error of the assessee-concern with an annual gross turnover running into several lakhs in filing the quarterly returns corresponding to the calendar year instead of the financial year through inadvertence is unworthy of any credit. The months of October and November are the harvesting and marketing season of cotton and cotton dealers effect huge purchases at about this time and need all the funds they can lay hands on and the failure of the appellant to pay up tax to the tune of Rs. 58,659.57 is understandable. Further, failure to submit revised returns and permissible u/s 10(5) is a circumstance that cannot be ignored. It is also obvious from the record that adequate opportunity was given and explanation of the assessee taken into consideration before the imposition of the modest penalty. I see no force in this appeal and accordingly reject it.

7. From the aforesaid observations, it is quite evident that no irrelevant consideration has prevailed with the Tribunal. The plea of the petitioner that quarterly returns were filed corresponding to the calendar year instead of the financial year, has rightly been rejected. There is no gainsaying that from the very beginning the petitioner has been filing quarterly returns corresponding to

the financial year. As earlier observed, the Tribunal was justified, in the circumstances of the case, to have negated the plea of the petitioner that sufficient cause existed for the short deposit of the purchase tax for the 3rd quarter.

8. In this view of the matter, the question posed for our decision is answered against the assessee. However, in the circumstances of the case, we make no order as to costs.

D.S. Tewatia, J.

9. I agree.