State of Haryana Vs Jiwan General Mills

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 31, 1989

Acts Referred: Haryana General Sales Tax Act, 1973 â€" Section 27, 27(1), 42, 68
Punjab General Sales Tax Act, 1948 â€" Section 5(1), 5(2)

Citation: (1990) 1 ILR (P&H) 332

Hon'ble Judges: S.S. Kang, J; J.S. Sekhon, J

Bench: Division Bench

Advocate: S.C. Mohunta, A.G. and S.K. Sood, DA, for the Appellant; S.K. Mittal and Birinder Singh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sukhdev Singh Kang, J.
M/s. Jiwan General Mills, Kaithal a registered dealer filed" four quarterly returns for the year 1972-73 showing

the gross turnover of Rs. 52,72,790.02 paise. In response to notice issued for assessment, a partner of the firm produced account books. It was

found that the entries correctly reflected the sales and no discrepancy was found in the account books. All sales were vouched. The learned

assessing authority observed that ""I have no reason to discard the account books of the dealer and as such the gross turn over as returned by the

dealer was taken for the purposes of assessment.

2. The dealer claimed deduction to the tune of Rs. 49, 36, .670.38 paise u/s 5(2)(a)(ii) of the Punjab General Sales Tax Act on account of sales

having been made to registered dealer. This claim was accepted except in relation to four transaction of sales, of cotton seeds worth Rs. 1,03,

042.50 paise to M/s Malikpuria Oil Mills, Kaithal, Rs. 8,01, .676.46 paise to M/s. Puran Chand Sarwan Kumar, Kaithal, Rs. 87. 436.88 paise to

M/s. Bal Raj Rameshwar Dass Kaithal, and Rs. 9479.10 paise to M/s. New Jagadhari Oil Mill. Regarding this, it was observed that the

purchasers are re-gistered dealers but they are manufactuters of oil. The cotton seeds sold to these dealers were of inferior quality which are

mostly used for crushing purposes. Thus, the claim of the Respondents of Rs. 3,76, 608.31 was disallowed and these were includ-ed in the taxable

turnover of the dealer on the plea that it was last seller of cotton seeds which were used for crushing purposes and the factory owner was liable to

tax. Aggrieved, the dealer filed the .appeals. The Deputy Excise and -Taxation Commissioner (Appeals) came to a conclusion that proper

opportunity has not been afforded to the Appellant to esatblish that the cotton seeds were sold to above mentioned dealers for resale and the

assessing authority failed to confront the purchasing dealers with the material available for determining whether cotton seeds purchased by them

were for sale or for use in manufacture of edible oils. It was further observed that as a matter of fact the assessing authority should have confronted

the purchasing dealers to verify the correct position but it has not been done so. In case the purchasing dealers purchase cotton seeds for use and

manufacture and not for resale, the Appellant-firm will be liable to pay tax being the last seller. In this view of the matter, he set aside the abovesaid

order and remanded the case to the assessing authority to make further enquiry from the purchasing dealers about the purchase of cotton seeds,

whether it was for re-sale or for use in the manufacture and that the Appellant should also be confronted after making enquiry from the purchasing

dealers before levying tax. Still dissatisfied, the dealer took an appeal before the Sale Tax Commissioner Haryana. This appeal was allowed. It

was contended by the Appellant before the learned Tribunal that the Appellant while selling cotton seeds was enjoined by law only to satisfy

himself that the sales were being made to registered dealer and that the purchasing dealer had furnished valid arid genuine declaration in Form ST-

XXII incorporating thereunder that the goods purchased were for re-sale. It was not for the selling dealer to question the correctness of the

statement made in the declaration. If the purchasing dealer makes a wrong statement in his declaration under Form-XXII while purchasing goods

which are exciseable to sale-tax then the authorities can proceed against such a dealer. There were ample provisions for that in the Act. In support

of this contention, the decision of this Court in Bhim Cotton Company v. Assessing Authority, Sangrur and Anr. 1973 R.L.R. 208, was cited,

wherein it was held as under:

The selling dealer could claim deductions from its gross turnover on proof of two conditions, namely, the person to whom the goods are sold

should possess a valid registration certificate and the goods should be sold to such a purchaser after it had furnished a statement in Form $.T.

XXII. The Petitioner-firm has satisfied both these conditions. Under these circumstances, it was not open to the Assessing Authority to re-open the

case of the Petitioner-firm and to create an additional demand against it.

It was also held,

If the purchasing-firm is guilty of violating any of the conditions mentioned in the declaration forms given by it, the Assessing Authority can proceed

against it under the second proviso to Section 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948 and in accordance with other provisions of

the Act.

This argument found favour with the learned Tribunal. He held that on the sales of cotton seeds made against valid registration certificates and

where Form S.T. XXII supplied by the purchasing dealer does not indicate that the goods are required for the purpose other than re-sale, the

selling dealer was not liable to pay tax. It was, however, observed that the departmental authorities may take such action as they deem fit against

the purchasing dealers for the recovery of the tax.

3. On an application moved by the State through Excise and Taxation Commissioner, Haryana, Chandigarh, u/s 42 of the Haryana General Sales

Tax, 1973, (the Act'' for short) the-Tribunal framed the following question and submitted it for our opinion:

Whether on facts and circumstances of the case, in light of Schedule ''D'' read with Clause (iii) of I Ind proviso to Section 5(1) of the Punjab

General Sales Tax Act, 1948, specifying the levy of tax in the case of cotton seeds at the stage of last sale, the Respondent firm is entitled to

deduct sales of such cotton seeds to crushing units on their furnishing declarations.

4. Mr. S. K. Sood learned Counsel appearing on behalf of the State of Haryana contended that though the assessment against a dealer had been

framed in pursuance of the provisions of the Punjab General Sales Tax, but in view of repeal and saving provisions contained in Section 68 of the

Act the appeal, revision etc. against such orders were to be decided in accordance with the provisions of the Act. He further contended that

Section 27 defines taxable turnover and the II Ird proviso to Sub-section (l)(a)(ii) lays down that for the purpose of allowing deduction the

assessing authority may examine the genuineness or otherwise of any sale or declaration with reference, among other things, to the financial

position, capacity to make purchases, nature and extent of business, and subsequent disposal of goods by the registered dealer to whom the sale is

shown to have been made against declaration. He further urged that by virtue of the provisions of Section 1 of the Act, the provisions of II Ird

proviso to Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 27 shall be deemed to have come into force on 1st May, 1949. Resultantly,

the Deputy Excise and Taxation Commissioner was fully competent to remand the case and direct the assessing authority to confront the

purchasing dealers and make enquiries therefrom, as to whether the cotton seeds purchased by them from M/s. Jiwan General Mills Ltd. had been

used for manufacture of oil and had not been re-sold. According to Mr. Sood, in the presence of proviso (iii) ibid, the selling dealer in the present

case was entitled to deduct the sales of cotton seeds to registered dealers on the strength of their declaration in Form S.T. XXII declaring that the

oil seeds had been purchased for re-sale. Even if the purchasing dealers were registered dealers and they had purchased taxable goods by

furnishing declarations in Form ST-XXII that the goods had been purchased for re-sale, the assessing authority could go into the matter and

investigate the financial position, capacity to make purchases, nature arid extent of business and subsequent disposal of the goods by the registered

dealers. We are afraid that this approach of Mr. Sood to the question posed for our opinion is not correct. The question has been framed and

proposed on the facts and in the circumstances of this case. As noted in the earlier part of the judgment, the assessing authority was satisfied with

the genuineness of the transactions of sale. He had accepted the factum of sales. He has also not come to the conclusion that the declaration in

Form ST-XXII furnished by the purchasing dealers were not genuine documents. Under the proviso, the assessing authority has been invested with

the powers to go into the genuineness or otherwise of any sale to a registered dealers on furnishing declarations in Form ST-XXII for the purposes

of allowing deductions. While investigating the genuineness of sale, it may, among other things, go into the financial position, capacity to make

purchases, nature and extent of business and subsequent disposal of goods made by the registered dealers to-whom the sale is shown to have

been made against that declaration. It is manifest that the investigation or enquiry shall be resorted to-only if there is any doubt regarding

genuineness of sale in question. We emphasise that there is not even a whisper in any of the orders that the sale by dealer to the purchasing dealers

enumerated in the orders of the assessing authority was not genuine or that there was any collusion between the selling dealer and the purchasing

dealers to evade tax. In somewhat similar circumstances, the final Court in Chwni Lal Parshadi Lal v. Commissioner of Sales, U.P., Lucknow

(1986) 62 STC 112, observed:

that when the Appellant, a registered dealer, had been granted exemption in the original assessment in regard to sales to registered dealers who

had furnished the requisite certificate in form III-A that the goods were intended for resale in the same condition, the assessing authority had no

jurisdiction to reopen the assessment on the basis that he had received information that the purchasing dealer had consumed the goods, especially

as the appellate authority had held that there was no collusion on the part of the Appellant, the selling dealer.

5. We are of the considered view that on facts and in the circumstances of the case, the dealer was entitled to deduct the sales of cotton seeds to

registered dealers on their furnishing declaration in Form S.T. XXII articulating that the goods were being purchased for re-sale from its taxable

turnover. We answer the question referred, in the affirmative.