Bal Chand Pardeep Kumar Vs State of Punjab and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 17, 2009

Acts Referred: Punjab General Sales Tax Act, 1948 â€" Section 21, 4B

Citation: (2009) 25 VST 420

Hon'ble Judges: M.M. Kumar, J; H.S. Bhalla, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.M. Kumar, J.
The dealer-petitioner has approached this Court for quashing order dated April 23, 2001 (annexure P6) passed by the

Assessing Authority-cum-Excise and Taxation Officer, Ferozepur, reassessing the tax liability of the dealer-petitioner on the basis of audit

objection. It is appropriate to mention that the assessment for sales tax liability in respect of assessment year 1991-92 was framed on September

17, 1993 (annexure P1) and tax deduction at eight per cent in respect of cotton seed cake (khal) was also reflected in the assessment order.

However, on September 26, 1995, a notice was issued by the Assistant Excise and Taxation Commissioner-cum-Revisional Authority, u/s 21 of

the" Punjab General Sales Tax Act, 1948 (for brevity, ""the Act""), proposing to make reassessment. The dealer-petitioner filed reply contesting the

proposal to reassess (annexures P3 and P4). However, no action was taken. On June 18, 1996, the Assessing Authority intimated the dealer-

petitioner that definite information is in the possession of the officer, which leads to the belief that the turnover of his business was liable to

reassessment. As a consequence thereof the reassessment order was passed on April 23, 2001 (annexure P6). The assessing officer raised

additional demand by levying tax u/s 4B of the Act and levied tax at four per cent on the value of the cotton seed consumed in the manufacture of

oil and oil cake sent on consignment basis. The Assessing Authority passed the order by holding as under:

Proportionate purchase value of cotton seed used for manufacture of cotton seed oil cake and cotton seed oil so consigned. (1 consignment of

cotton seed oil 53,49,162. 2. Consignment of Cotton seed oil cake :Rs. 1,53,14,401).

A. Purchase value of cotton seed used in the manufacture of khal consigned with reference to ratio of 3/4 value : Rs. 72,40,660.

B. Purchase value of cotton seed used in the manufacture of cotton seed oil in the ratio of 3/4 : 53,49,162.

C. Total cotton-seed consumed in the manufacture of cotton seed oil and cotton seed oil cake sent on consignment basis (72,40,660 +

28,20,000) : 1,00,60,660.

Tax levied at four per cent : Rs. 4,02,426

Tax already paid : Rs. nil

Net due : Rs. 4,02,426

Issue TDN/challan form for 4,02,426 along with copy of order to the dealer with the directions to make the payment within 15 days from the date

of receipt of orders.

2. Mr. K. L. Goyal, learned Counsel for the dealer-petitioner has vehemently argued that merely on the basis of audit objection, assessment

proceedings cannot be reopened, especially when the judgment of the Tribunal on the date of assessment, i.e., September 17, 1993 was in favour

of the dealer. He has placed reliance upon the judgments rendered in the cases of Mittal Silicate & Oil Mills, Bathinda v. State of Punjab (1985]

STI 239 (Trib) and D. Vir & Co., Abohar v. State of Punjab [1982] STI 129 (Trib). He has further submitted that in a similar situation when

reassessment was framed on the basis of audit objection, a Division Bench of this Court in the case of Haryana Co-operative Sugar Mills Limited,

Rohtak v. State of Haryana [1997] 107 STC 103 : [1996] 8 PHT 144, had held that reassessment cannot be framed merely on the basis of audit

objection because it would not constitute information as per the provisions of law. Mr. Goyal has maintained that while forming the opinion, the

Division Bench has placed reliance on the judgment of the honourable Supreme Court in the case of Indian and Eastern Newspaper Society, New

Delhi Vs. Commissioner of Income Tax, New Delhi, .

3. Piyush Kant Jain, learned Additional Advocate-General, Punjab, has however, submitted that u/s 21 of the Act, no such bar could be

incorporated as long as the tax liability is imposable and sustainable in the eyes of law. According to the learned Counsel, the tax liability u/s 4B of

the Act is leviable as has been interpreted by the Tribunal in its order rendered in the case of Dabra Industries Ltd., Muktsar v. State of Punjab

[1995] 1 PHT 107.

4. After hearing learned Counsel for the parties and perusing the paper book with their able assistance, we are of the considered view that the

instant petition merits acceptance. The assessment in respect of assessment year 1991-92 in respect of the dealer-petitioner, has attained finality on

September 17, 1993, when initial assessment was framed. The law does not permit reassessment on the ground that an audit objection has been

raised and such an objection would not constitute ""definite information"" within the meaning of Section 11A of the Act. In that regard, reliance has

been rightly placed by the learned Counsel for the dealer-petitioner on a decision of the Division Bench of this Court in the case of Haryana Co-

operative Sugar Mills Limited, Rohtak [1997] 107 STC 103 : [1996] 8 PHT 144, which deals with somewhat similar controversy. In that case the

provisions of Section 31 dealing with reassessment under the Haryana General Sales Tax Act were under consideration, which are in pari materia

to Section 11A of the Act. The Division Bench in para 4 has held as under : (page 105 of STC)

The question that arises for our consideration is whether the audit note as received by the Assessing Authority was ''definite information'' within the

meaning of Section 31 of the Act. In our opinion, the answer has to be in the negative. In the opinion of the audit party the tax was leviable u/s 9

and on receipt of the note the Assessing Officer changed his opinion and re-opened the assessment so as to levy tax u/s 9 of the Act. The opinion

of the audit party cannot constitute information on the basis of which the Assessing Authority could reopen the assessment u/s 31 of the Act. The

matter is not res Integra. The question whether art audit objection constitutes information so as to entitle the Assessing Authority to reopen the

assessment within the meaning of Section 31 stands concluded against the Revenue and in favour of the assessee by a judgment of the Supreme

Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, and two Division Bench judgments of

this Court in Commissioner of Income Tax Vs. Aggarwal Textile Mills, and in Commissioner of Wealth-tax v. Smt. Savitri Devi [1985] 114 ITR

345 (P&H)

5. In the present case the dealer-petitioner filed its return on September 17, 1993 as per the law prevailing at that time, which is evident from the

perusal of the order passed by the Tribunal in the cases of Mittal Silicate & Oil Mills [1985] STI 239 (P&H) (Trib) and D. Vir & Co. [1982] STI

129 (P&H) (Trib). The change of law subsequent to the finalisation of assessment on September 17, 1993 would not constitute a basis for framing

reassessment. Therefore, reliance of the Revenue on the judgment of the Tribunal in Dabra Industries Ltd. [1995] 1 PHT 107, has to be ignored

because that view was expressed on April 29, 1994, which is subsequent to the date of assessment. If such a course is permitted then every

assessment would be liable to be re-opened u/s 11A of the Act, whenever new interpretation by higher courts is received. Thus, it is not possible

to permit reassessment on that basis.

6. For the aforementioned reasons, this petition succeeds and order of reassessment, dated April 23, 2001 (annexure P6) is set aside.