

(1989) 08 P&H CK 0041

High Court Of Punjab And Haryana At Chandigarh**Case No:** General Sales Tax Reference No. 23 of 1983

State of Haryana

APPELLANT

Vs

Rohtas Industries

RESPONDENT

Date of Decision: Aug. 28, 1989**Acts Referred:**

- Haryana General Sales Tax Act, 1973 - Section 25(5)
- Haryana General Sales Tax Rules, 1975 - Rule 17, 2, 62

Citation: (1990) 97 PLR 194 : (1990) 79 STC 238**Hon'ble Judges:** Sukhdev Singh Kang, J; Jai Singh Sekhon, J**Bench:** Division Bench**Advocate:** S.K. Sood, D.A, for the Appellant; L.M. Suri, Senior Advocate and Arun Kumar, for the Respondent

Judgement

Sukhdev Singh Kang, J.

This is a reference u/s 42 of the Haryana General Sales Tax Act, 1973 (for short "the Act") made at the instance of the Excise and Taxation Commissioner, Haryana.

First the factual matrix :

The respondent-dealer was required to file return for the quarter ending 30th June, 1976, on or before 30th July, 1976. He made an application for extension of time for filing the return. The extension was granted and the dealer was permitted to file return on or before 6th August, 1976. Complying with this order the dealer filed his return and paid the tax on 5th August, 1976. However, the Assessing Authority was of the view, inspired by the decision of the Final Court in Haji Lal Mohd. Biri Works v. State of U.P. [1973] 32 STC 496, that u/s 25(5) of the Act the assessee became liable to pay interest on the amount of tax which became due and was not paid with effect from the date prescribed for filing the return. Liability to pay interest on the unpaid tax is created by the statute and the Assessing Authority has no discretion to grant any exemption from payment of any interest. The liability to pay interest is

automatic and arises by operation of law. He held that the dealer was liable to pay Rs. 9,393 as interest u/s 25(5) of the Act. Aggrieved, the dealer filed an appeal. The first appellate court affirmed the findings and conclusions of the Assessing Authority and held that despite the extension granted for filing the return, the dealer must pay interest. Still dissatisfied, the dealer went up in second appeal before the Sales Tax Tribunal, Haryana. The Sales Tax Tribunal, Haryana, held that on a conjoint reading of Section 25, Rules 2(q), 17 and 62 of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as "the Rules"), the competent authority can extend the time for filing returns. The prescribed date for submission of the return, in such a case, shifts to the date fixed by the competent authority for filing the return and as such the provisions of Sub-section (5) of Section 25 of the Act do not come into play. The dealer was not liable to pay interest. He allowed the appeal and quashed the orders charging interest on the amount of the tax which has not been paid by 30th July, 1976.

2. The Excise and Taxation Commissioner, Haryana, made an application u/s 42 of the Act and the Sales Tax Tribunal, Haryana, has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, interest was chargeable from the said firm under the provisions of Section 25(5) of the Act, for the assessment year 1976-77 for the quarterly return due on 30th June, 1976, which was filed and paid the tax on 5th August, 1976, though having been granted extension of time by the appropriate authority ?"

In order to resolve the legal issue posed in the question it will be apposite to read the relevant statutory provisions.

"25. Submission of returns and payment of tax.--(1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals, as may be prescribed.

(2) Such dealer as may be required to do so by the Assessing Authority by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority, as may be prescribed.

(3) Before any registered dealer furnishes the returns required by Sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India or the State Bank of India the full amount of tax due from him under this Act according to such returns and shall furnish along with the returns receipt from such treasury or bank showing the payment of such amount.

(4)

(5) If any dealer fails to pay the tax due as required by Sub-section (3) he shall be liable to pay in addition to the tax due simple interest on the amount due at one per centum per month from the date commencing with the date following the last date for the submission of the return under Subsection (2) for a period of one month and

at one and a half per centum per month thereafter during the period he continues to make default in the payment :

RULES

2(q) "quarter" means the period from--

- (i) 1st April to 30th June,
- (ii) 1st July to 30th September,
- (iii) 1st October to 31st December,
- (iv) 1st January to 31st March.

17. Payment of tax and submission of returns [Section 25].- (1) Every registered dealer or a dealer on whom a notice in form S.T. 8 has been served under Sub-section (2) of Section 25 in the State shall furnish return to the appropriate Assessing Authority in form S.T. 9 or in form S.T. 10 or both, as the case may be, for each quarter of a year, within thirty days of the expiry of the quarter.

(2) Each return shall be accompanied by--

- (i) a treasury receipt in form S.T. 11 or a crossed bank draft in favour of the Assessing Authority drawn on a Scheduled bank with a branch situated at the headquarters of the appropriate Assessing Authority or at the head office of the business of the dealer in respect of tax and surcharge due according to return ;
- (ii) a list in form S.T. 12 showing the sale of goods leviable to tax at the first stage of sale or purchase and certificates in forms S.T. 13 and S.T. 14 or duplicate copy of the cash memo, or bill, as the case may be.

62. Where in these rules a period is prescribed for doing a certain act, the appropriate authority may, for special reasons to be recorded in writing, extend that period from time to time."

3. It is clear from a perusal of the above quoted statutory provisions that a dealer is liable to pay tax in the manner provided at such intervals as may be prescribed. Every registered dealer is obliged to furnish returns by such dates and before such authority as may be prescribed. Before filing the return the registered dealer shall pay into the Government Treasury or the State Bank of India the full amount of tax due from him under the Act according to such returns and append the receipt regarding such payment with the returns. If a dealer fails to pay the tax, he shall be liable to pay in addition to the tax due simple interest on the amount due at one per centum per month from the date commencing with the date following the last date for submission of the return under Sub-section (2) of Section 25 of the Act for a period of one month and thereafter at the rate of one and a half per centum per month. It is thus clear that the liability to pay interest on the non-payment or delayed payment of tax commences with the date following the last date for

submission of the return under Sub-section (2) of Section 25 of the Act. Rule 62 clothes the appropriate authority with powers to extend the period prescribed for doing certain acts. The appropriate authority can, therefore, for special reasons to be recorded, extend the time prescribed for filing the returns or payment of tax.

4. The dealer in the present case was required to file the return and pay tax for the quarter ending on 30th June, 1976 by 30th July, 1976. However, he made an application under Rule 62 to extend the time for filing the return and payment of tax. This application was allowed and the dealer was permitted to do the needful by 6th August, 1976. The dealer complied with this order and furnished the return and paid the tax in accordance therewith on 5th August, 1976, i.e., well within the time prescribed.

5. It is true that in accordance with Sub-section (5) of Section 25 of the Act the dealer would have incurred a liability to pay interest on the tax due with effect from 30th July, 1976, if he had not applied for extension. 30th July, 1976, was the prescribed date. However, the competent appropriate authority extended the period prescribed for filing the return and payment of tax. Resultantly, the prescribed date for filing the return and payment of tax was shifted from 30th July, 1976 to 6th August, 1976. Under Subsection (5) of Section 25 of the Act, the liability to pay interest would have automatically and by operation of law accrued on 7th August, 1976, because that would have been the date following the last date for submission of return. The last date, as noticed earlier, for submission of return had however, been extended by the appropriate authority to 6th August, 1976. Since the return had been filed and the tax had been paid before the prescribed date therefor, the dealer did not incur the liability to pay interest.

6. We are not impressed by the submission of Shri S.K. Sood, learned counsel for the State, that in all cases irrespective of the orders of extension passed under Rule 62 of the Rules, extending the time for filing the return and payment of tax, the liability to pay interest shall accrue automatically by operation of law. This would have been the case if the provisions of Rule 62 of the Rules were not there. Mr. Sood further contended that the only effect of orders passed under Rule 62 of the Rules, extending the period for filing the returns and payment of taxes, is that the dealer will not incur penalty. We do not find any logic in this submission. Indeed, with the extension of time for filing of the return and payment of tax the dealer will be absolved from payment of any penalty but the dealer shall also be not liable to pay interest. The ratio of the decision in Haji Lal Mohd.'s case [1973] 32 STC 496 (SC) is not applicable to the case in hand. In that case their Lordships of the Supreme Court while construing the provisions of Section 8(1-A) of the U.P. Sales Tax Act, 1948, which had been framed on the lines of Section 25(5) of the Act, held that the liability to pay interest u/s 8(1-A) is automatic and arises by operation of law. There was nothing in the language of section which prevents the recovery of interest because of any stay order. The liability to pay interest is created by the statute and the Sales

Tax Officer has no discretion to grant any exemption from payment of interest. It had been argued in that case that interest on arrears of tax could not be realised for the period during which the recovery of tax remained stayed. In the present case recovery of arrears had not been stayed by any authority. Only the time for filing the return and payment of tax had been extended by the appropriate authority under Rule 62. However, in Haji Lal Mohd."s case [1973] 32 STC 496 (SC), no such statutory provision had been invoked or applied. Stay of recovery of arrears of tax and extension of time for filing the return and payment of tax are not one and the same thing. If in the present case the provisions of Rule 62 had not been invoked the case would be fully and squarely covered by the ratio in Haji Lal Mohd."s case [1973] 32 STC 496 (SC). However, the application of Rule 62 of the Rules clearly takes the case out of the purview of that ratio. Similarly the decision of their Lordships of the Supreme Court in Sales Tax Officer v. Dwarika Prasad Sheo Karan Doss [1977] 39 STC 36, is of no help to the Revenue. Therein their Lordships have reiterated the principle laid down in Haji Lal Mohd."s case [1973] 32 STC 496 (SC), that the liability to pay interest u/s 8(1-A) of the U.P. Sales Tax Act is automatic and arises by operation of law. To the same effect is the decision of the Andhra Pradesh High Court in Ramu and Co. v. State of A.P. [1979] 43 STC 510. It has been held therein that the liability to pay interest is automatic and arises by operation of law and the assessing authority is not under an obligation to issue a show cause notice before levying interest on the lax thereto. Mr. Sood has not brought to our notice any decision wherein after the period for filing the return and payment of tax has been extended by a competent authority by invoking a statutory provision, the dealer was still required to pay interest.

7. In the result, we hold that in view of the provisions contained in Section 25(5), Rules 2(q), 17, and 62 of the Rules, when the appropriate authority grants extension for filing the return and payment of lax, the prescribed date for that stands shifted to the date determined by the appropriate authority. If the return is filed and tax is paid by that date the dealer is not liable to pay interest. We thus answer the question in the negative and against the Revenue.