The Jagraon Co-operative Sugar Mills Ltd. Vs The State of Punjab

Civil Writ Petition No. 3701 of 1993

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 16, 1994

Acts Referred:

Punjab General Sales Tax Act, 1948 â€" Section 7

Citation: (1995) 109 PLR 400

Hon'ble Judges: N.K. Kapoor, J; Amrit Lal Bahri, J

Bench: Division Bench

Advocate: D.S. Brar and S.S. Brar, for the Appellant; R.K. Joshi, A.A.G., for the Respondent

Final Decision: Dismissed

Judgement

N.K. Kapoor, J.

Petitioner has sought issuance of writ of certiorari seeking quashing of the orders of respondents No. 2 and 3 with regard

to the amendment made in the registration certificate earlier issued under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the

Act") and to issue a writ of mandamus to respondent No. 4 to issue declaration forms ST-XXII in accordance with the registration certificate

issued originally.

2. Petitioner is engaged in the production of sugar and sugar by-products. Petitioner applied to the Assessing Authority, respondent No. 4 for

issuance of registration certificate u/s 7 of the Act which was granted vide order dated 5th May, 1989, copy thereof is Annexure P-1. As per this

registration certificate, the petitioner could buy anything including plant, machinery, etc. as find mention in the registration certificate originally

issued. Subsequently, the Deputy Excise and Taxation Commissioner purported to exercise the jurisdiction u/s 21 of the Act suo motu issued

notice to the petitioner to show cause why the registration certificate be not amended. In response to this notice, Shri Manoj Kumar, Accounts

Clerk appeared on 7th January, 1991 on behalf of the petitioner whereas Shri K.R. Garg, Excise and Taxation Officer appeared on behalf of the

State. However, the case could not be taken up as (he Presiding Officer was out of station and so the same was adjourned to 15th January, 1991.

On this date, petitioner did not put in appearance and so the proceedings of the case were conducted against him. Deputy Excise and Taxation

Commissioner exercising the powers of Commissioner ordered for the deletion of certain items which were mentioned in the registration certificate

on the ground that since the petitioner is wholly engaged in the manufacture of sugar which is tax free item covered by entry No. 62 of Schedule

''B'' and he is, thus not entitled to make purchase of those items on the strength of this registration certificate. It was further directed to strike such

items from the registration certificate. This order is dated 15th January, 1991. Annexure P-2.

3. Feeling dissatisfied with the order of the Commissioner, petitioner filed a review petition contending that the items which have been deleted from

the registration certificate were infact required to run the plant and machinery smoothly. Though, the petitioner''s primary activity was manufacturing

of sugar and in addition thereto, sold molasses and other by-products as well as in view of this position, the amendment ordered in the registration

certificate precluded petitioner''s purchases as a registered dealer, which is against the provisions of the Act and, therefore, prayed that the

petitioner be permitted to retain the certificate of registration as issued originally. This claim was seriously contested by State who tried to justify the

order passed by the Deputy Excise and Taxation Commissioner exercising the powers of Commissioner on the ground that petitioner is primarily

carrying out manufacturing of sugar, a tax free item whereas molasses as such is a by-product. This way the order impugned is perfectly in

conformity with the provisions of the Act. Revisional Authority, agreeing with the State counsel dismissed the review petition vide order dated 13th

November, 1991. Annexure P-3.

4. Once again, an application u/s 21 of the Act was filed by the petitioner seeking rectification of the earlier order dated 13th November, 1991 on

the ground that though the points raised by the dealer were noted yet the same were not adjudicated. According to the petitioner the registration

certificate could be justifiably amended only if the petitioner was wholly engaged in the manufacture of sugar, a tax free item. On scrutiny, it was

crystal clear that besides sugar petitioner is selling molasses and other items which are by products of sugar. These items are liable to tax u/s 4B of

the Act. The earlier certificate permitting the petitioner to purchase various items like plant, machinery, chemicals, oils, lubricants, pumps,

accessories etc. could not be excluded as purchase on these items was essential in smooth working of the machinery to manufacture sugar,

molasses and bagasse. Objections were also raised with regard to non affording of adequate opportunity in stating his view point and that the

Deputy Excise and Taxation Commissioner exercising the powers of Commissioner could not amend the registration certificate by wrongly

assuming that the petitioner deals in only sugar, a tax free item. The Presiding Officer once again examined the various aspects in detail but

somehow found no merit in any of the objections raised by the petitioner and thus, rejected the application vide order dated 29th May, 1992,

Annexure P-4. Simultaneously, petitioner filed an application u/s 22 of the Act for referring the following questions of law, which according to the

petitioner arise out of the order dated 13th November, 1991:-

(i) Whether the Deputy Excise and Taxation Commissioner in the grab of exercise of his delegated powers u/s 21 as Commissioner can

amend/revise or cancel the Registration Certificate granted u/s 7 of the Act?

(ii) Whether it is the Commissioner alone who could change/alter, amend or cancel the Registration Certificate u/s 7 and that too on the grounds

specifically mentioned therein?

(iii) Whether the so called order of amendment impugned in revision petition virtually amounts to cancellation of Registration Certificate?

(iv) Whether the order impugned in revision petition is not within the jurisdiction and illegal?

(v) Whether in the absence of any finding rather in the presence of a finding that good part of the sales affected by dealer attracted sales tax the

Registration Certificate could be virtually withdrawn is not exclusively dealing in tax free goods?

5. The Presiding Officer, Sales Tax Tribunal, vide order dated 16th June, 1992, Annexure P-5 came to the conclusion that none of the question of

law as framed by the petitioner arise out of the order dated 13th November, 1991, and, therefore, dismissed the application.

6. Pursuance to notice of motion issued by this Court, respondents put in appearance and filed written statement in the form of affidavit of Shri

M.R. Shukla, Excise and Taxation Officer (on behalf of respondents No. 1 to 4), Respondents have contested the claim of the petitioner on almost

all material points. Justifying the amendment of the Registration Certificate, respondents No. 1 to 4 have asserted that the same was necessitated as

the petitioner was wholly engaged in the manufacture of sugar which is a tax free item. This order was also necessitated in view of Section 5(2)(a)

(ii) of the Act which stated that the selling dealer could deduct from his gross turnover sales to a registered dealer of goods specified in his

certificate of registration for use by him in the manufacture in Punjab of any goods, other than goods declared tax free u/s 6 of the Act. Thus, with a

view to correct this tax evasion, a show cause notice was issued to the petitioner as to why the original certificate be not suitably amended and

after affording an opportunity of hearing to the petitioner, Deputy Excise and Taxation Commissioner exercising the powers of Commissioner

ordered for necessary deletion of the items from the Registration Certificate which order has been subsequently affirmed by the Revisional

Authority. The claim of the petitioner that he not only manufactures sugar but molasses and bagasse as well was contested and it was urged that

molasses and bagasse were in fact by-products and so it cannot be said that petitioner''s main business is to manufacture molasses and not sugar.

Respondents .also justified the order passed by the Deputy Excise and Taxation Commissioner exercising the powers of Commissioner on the

ground that no embargo can be put on the suo motu powers of a Revisional Court and as and when any act is found prejudicial to the State, the

Revisional Court can exercise supervisory powers and can pass any order in relation thereto as it may think fit. Respondents took support from the

case J.K Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Anr. 16 S.T.C. 563 and contended that since by an error

certain items were specified in the Registration Certificate, the same were ordered to be deleted u/s 21 of the Act as the scope is very wide. On

these submission, it was prayed that the present petition is devoid of merit and the same be dismissed.

7. Learned counsel for the petitioners has assailed the findings of the authorities on facts as well as law. According to counsel for the petitioner,

respondents have wrongly assumed that the petitioner is exclusively manufacturing sugar whereas as per averments made and as per certificate of

Registration, petitioner not only manufactures sugar but molasses and bagasse as well. Sale of later two items is subject to sales tax. This way the

authority by wrongly assuming that petitioner only manufactures sugar, a tax free item passed wholly erroneous order. Not only this, petitioner was

deprived to raise his view point at the threshold which amounts to denial of justice. Thirdly, the so called amendment virtually amounts to the

cancellation of the Registration Certificate. A bare look at the items now deleted as per Annexure P-1 leaves no manner of doubt that the

petitioner has been deprived of the benefit of being a registered dealer, thus, making him liable for payment of tax which action not only hits him

financially but is otherwise also discriminatory as almost all other co-operative mills in the State have been allowed to effect purchases of plant,

machinery, spare parts, coal, fire wood, chemicals, oils etc. on the strength of Registration Certificate and lastly Deputy Excise and Taxation

Commissioner exercising the powers of Commissioner u/s 21 of the Act cannot exercise the powers of Commissioner u/s 7(4) of the Act.

8. Facts are not in dispute. The petitioner firm is, as by its name, a co-operative sugar mill at Jagraon whose business is manufacture of sugar,

molasses and bagasse and press mud and sale. Originally the petitioner as per Registration Certificate Annexure P-1 was permitted to purchase

goods detailed below without payment of tax:-

Plant and machinery its parts for manufacturing sugar and molasses, spare parts, sugarcane, gunny bags, coal, firewood, chemicals, oil and

lubricants, furnace oil, consumable stores and hardware, lime store, electrical goods, electric motor and pumps and accessories, plastic goods, M.S. Plates, angles irons and steel for fabrication of machinery and parts, tools, and implements, sulpher.

9. This certificate was amended as per directions of the Commissioner dated 4th March, 1991. Presumably for reason that dominant purpose of

setting up mill is manufacturing of sugar and not molasses and bagasse, which infact are by products. Though there is not contest between the

parties that petitioner sells sugar, molasses and bagasse but it is being disputed as to whether manufacturing of molasses and bagasse is one of the

purposes of the mill. Molasses as per Concise Oxford Dictionary means ""uncrystallized syrup drained from raw sugar, syrup got from sugar in

process of refining treacle."" Both these products as per dictionary meaning are in the nature of by-products residue. It is not the case of petitioner

that they have set up the sugar mill to manufacture molasses or bagasse. It is in the process of refining sugar that these two residue items are

separated and are sold in the market. It is different matter that molasses and bagasse have become valuable. This by itself would not lead us to

conclude that the factory was set up to manufacture sugar, molasses and bagasse. Dominant purpose remains manufacturing of sugar, a tax free

item. All the items which have been ordered to be excluded from the Registration Certificate, Annexure P-1 are infact required for the smooth

working of the plant and machinery set up to manufacture sugar. Learned counsel for the petitioner has placed reliance on the decision of the Apex

Court in J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Anr., for the view that the expression ''in the

manufacture of goods'' should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods.

Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing

of goods would be commercially inexpedient, goods required that process would fall within the expression ''in the manufacture of goods'' since the

items now deleted as per Annexure P-1 too are needed for manufacture of molasses and bagasse, the decision by the authority was fully

unjustified. Interestingly, the aforesaid judgment too has been relied upon by the respondents. On a careful perusal of the aforesaid judgment, we

find that the same rather supports the contention of the respondents as is clear from the following observations of the Apex Court: -

Under Section 7(4) of the Central Sales Tax Act, 1956, a certificate of registration granted u/s 7(1) may be cancelled by the authority granting it,

interalia, for any sufficient reason. If on account of some error, the certificate specified articles which did not fall within the terms of Section 8(3)(b)

of the Act read with rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957 the error would manifestly be ""sufficient reason

within the meaning of Section 7(4) authorising the cancellation of the certificate qua the items which were erroneously included.

10. Since there was an error in mentioning of certain items which the petitioner could purchase without payment of sales tax, authorities were

justified in reviewing the same and order exclusion of those items from the Registration Certificate. We also find no force in the submission of the

learned counsel for the petitioner that the exclusion of the items noticed in the earlier part of the judgment amounts to cancellation of the

Registration Certificate. This argument is rather far fetched. As regards the denial of opportunity of hearing while ordering amendment of the

Registration Certificate, facts on record speak otherwise. Learned Deputy Excise and Taxation Commissioner exercising the powers of

Commissioner has specifically noted that despite notice of the date of hearing, none came present on behalf of the dealer and so he chose to

proceed exporter. Even otherwise, it is not the case that the petitioner could be said to have been prejudiced in any manner. In fact on perusal of

the order passed by Presiding Officer, Sales Tax Tribunal, it becomes crystal clear that at each given item the petitioner was asked to substantiate

his claim. Even while examining the application u/s 22 of the Act, Presiding Officer has examined each one of the questions of law raised in full

detail. As a last resort, counsel for the petitioner submits that Deputy excise and Taxation Commissioner could not order amendment/cancellation

of the Registration Certificate u/s 7 of the Act. We find this objection too without any substance. Section 7 sub-clause of the Act reads thus:-

The Commissioner may from time to time, by order, amend or cancel any certificate of registration on:-

(a) information furnished u/s 16, or

(b) information received that the dealer has violated any provision of this Act or the rules made thereunder; or

(c) any other sufficient cause including misuse of the certificate or cessation of liability to payment of tax under this Act;

Provided that no order affecting any person adversely shall be made under this sub-section without affording him a reasonable opportunity of being

heard.

11. A bare perusal of the aforesaid provision reveals that Commissioner can order for amendment or cancellation of the certificate of registration in

the given circumstances. Clause (c) envisages cancellation for any other sufficient cause. All that it envisages is a right of hearing is to be afforded to

the person concerned. Admittedly, the Commissioner has delegated powers to the Deputy Excise and Taxation Commissioner as per Section 15

of the Act. Commissioner, otherwise also has inherent powers of superintendence and control of jurisdiction, which he can delegate as well, as per

section 15 of the Act. Construed so, the order passed by the authority amending the registration certificate cannot be termed to be without

jurisdiction.

12. Thus, we find no merit in any of the submissions made by the petitioner and consequently, dismiss this petition. However, parties are left to

bear their own costs.