

PUNJAB AND HARYANA HIGH COURT

Malerkotla Power Supply Company

Vs

The Excise and Taxation Officer

Civil Writ No. 2210 of 1964

(Tek Chand, J.)

01.05.1968

JUDGMENT

Tek Chand, J.

1. This is a writ petition under Articles 226/227 of the Constitution of India on behalf of M/s Malerkotla Power Supply Company through its proprietor Shri Bhagwan Dass against the Excise and Taxation Officer, Sangrur, the Excise and Taxation Commissioner, Punjab and the State of Punjab, praying for issuance of an appropriate writ quashing the impugned orders of the Exice and Taxation Officer, Sangrur and the Assistant Excise and Taxation Commissioner, Punjab, - vide Annexures D and F, respectively.

2. The facts giving rise to this case are that Shri Bhagwan Dass was the sole owner of the Malerkotla Power Supply Company which supplies electricity which was made available to him by the Punjab State Electricity Board at 400 voltage and the petitioner-company in turn sells the same to its consumers and charges for the energy consumed. Under the Punjab General Sales Tax Act, electricity was free from the sales tax. Shri Bhagwan Dass owned another concern called M/s B.D. Brothers, Malerkotla, which dealt with electrical goods and appliances. Under the Punjab General Sales Tax Act, both these concerns had two separate certificates of registration in Form S.T. III. The sales tax numbers of these concerns were BAR III2550 and BAR III 1924, respectively. Later on, the authorities decided that there should be one certificate or registration as Shri Bhagwan Dass was the proprietor of both the concerns and that it should be in Form S. T. IV as prescribed by rule 5 of the Punjab General Sales Tax Rules.

3. On 1st of April, 1962, Shri Bhagwan Dass gifted his entire business which he was running under the name and style of M/s B.D. Brothers, Malerkotla, to his son Shri Chaman Lal and his grandson Shri Prem Kumar in equal shares. Consequently, he had to surrender the registration certificate No. BAR IV 1929 for having it amended in Form S.T. III. On 10th of April, 1962, he made an application submitting that since he had gifted M/s B.D. Brothers, Malerkotla, to his son and grandson, his registration certificate No. RC BAR IV 1929 be converted into S. T. III in respect of M/s Malerkotla Power Supply Company. One application was for registration under the Punjab General Sales Tax Act and the second under the Central Sales Tax Act,-vide copies

Annexures A & B. Finally, M/s B.D. Brothers, Malerkotla, were given a separate registration number both under the Punjab General Sales Tax Act and the Central Sales Tax Act. The petitioner's application dated 1st of April, 1962, remained pending without a final decision having been communicated to him.

4. On 30th of December, 1963, the petitioner again made an application for the registration of his concern under both the Acts. This application was made to the Assistant Excise and Taxation Officer. The petitioner was orally informed that his earlier registration number in Form S.T. IV had been cancelled and that he should make a fresh application. He then submitted a new application which is on a printed form, - vide copy Annexure C. Shri G.K. Bhalla, Excise and Taxation Officer, Sangrur, rejected the application by his order, dated 10th of January, 1964,-vide Annexure D for the reason that M/s Melerkotla Power Supply Company dealt exclusively in the distribution of electricity which was not "goods" as had been held by the Excise and Taxation Commissioner in the case of M/s Kumar Textile Mills, Amritsar. A copy of that order has been filed, - vide Annexure E. The petitioner filed a revision from the order of Shri G.K. Bhalla. It was heard by the Assistant Excise and Taxation Commissioner, Punjab, who by his order dated 26th of March, 1964, rejected the revision, - vide Annexure F. The reason given was that the electricity had been held not to be 'goods' within the meaning of Punjab General Sales Tax Act by the Excise and Taxation Commissioner in the case of M/s Kumar Textile Mills, Amritsar, referred to above. The contention of the petitioner is that under section 7 of the Central Sales Tax Act, he as dealer has a right to apply for registration under the Act and is entitled to a certificate of registration. This is important for the petitioner from the point of view of taxable turnover for the purchase of goods in inter-State trade or commerce. It is also his contention that as supplier of electric energy, he is seller of 'goods' within the definition of 'goods' which is the same under both the Acts. The petitioner also made another application for registration under the Central Sales Tax Act to the Excise and Taxation Officer, Sangrur, on 17th of June, 1964, alleging that he made inter-State purchases from Delhi in connection with the power house and that he was, therefore, liable to pay tax under the Punjab General Sales Tax Act as he had imported them into Punjab from Delhi, and on that account, he was entitled to be registered under the Central Sales Tax Act. If a person is registered under the Central Sales Tax Act, he could purchase goods in the course of inter-State trade and commerce by furnishing a declaration in form 'C' as is prescribed under the Central Sales Tax Rules and on the basis of that he is liable to pay only 2% Sales Tax. But if he is not registered under section 7 of the Central Sales Tax Act, the sales tax chargeable is 10 per cent. The dealer who sells to the petitioner would then charge 10% from the petitioner if he is not a registered dealer and thus, the petitioner stood to lose 8% on account of his not being a registered dealer. The action of the authorities in not granting to the petitioner the registration certificate would result in a considerable loss in enhanced tax which he would be required to pay. On the above allegations, the writ petition is sought to be sustained.

5. In the return filed on behalf of the respondents, the main contention is that the supply of electric energy is not tantamount to supply of goods within the definition given in the two Acts and objection of a preliminary character was also raised, namely, that there being an alternative remedy available to the petitioner, the writ petition ought not to be heard directly.

6. I may first deal with the preliminary objection which, to my mind, is devoid of merit. Section 11 of the Punjab General Sales Tax Act deals with assessment of tax and sub-section (7) lays down the mode of payment of the tax. It does not deal with registration of a dealer. Section 20 is

a provision for appeal, which may be made by a dealer aggrieved by any notice issued under section 11, sub-section (7). There is no other provision for an appeal from an order refusing registration. Section 21(1) provides for revision to the Excise and Taxation Commissioner in respect of proceedings pending before or which have been disposed of by any assessing or appellate authority under the Act. The right to revision, therefore, arises from a question relating to assessment of the tax and dealt with by the assessing authority. Under sub-section (3) to section 21, the Financial Commissioner has been given the power to call for the record of any case decided under the preceding sub-sections and if the decision is erroneous on an important question of law, he can pass such order as he may think fit. It will thus be seen that the revisional power has a bearing on the assessment of the tax. No appeal or revision is allowed from refusal to register a dealer under the Central Sales Tax Act. Section 22 of the Act contains a provision for referring a question to the High Court affecting the liability of any dealer to pay tax under the Act. On a point in issue between the parties in the instant case, no question arose which could attract section 22. Moreover, no objection has been raised by the respondents on the basis of not having invoked the provisions of section 22. There is no other remedy provided in the Act which could be resorted to by the petitioner before invoking the extraordinary jurisdiction of this Court. The petition to this Court under Articles 226/227 of the Constitution is competent in the absence of any other alternative remedy, efficacious or otherwise.

7. The main question in this case is whether electric energy should be deemed "goods" within the Punjab General Sales Tax Act or the Central Sales Tax Act. The definition under both the Acts is in identical language, namely "goods" means all kinds of movable property other than newspapers, actionable claims, stocks, shares or securities,-vide section 2(e) of the Punjab Act and section 2(d) of the Central Act. The terms "movable property" and "immovable property" are defined in identical languages in the Central General Clauses Act, vide sub-sections (26) and (36) of section 3 and in the Punjab General Clauses Act, - vide sub-sections (26) and (35), of section 2 and the definitions are reproduced below :-

"'Immovable property' shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

* * * *

"'Moveable property' shall mean property of every description except immovable property."

8. It will thus be noticed that the scope of the definition of movable property is very wide. Electric energy not being immovable, has to be deemed as movable property. Apart from the technical definition contained in the Punjab and Central General Clauses Acts, the question is whether electric energy has the commonly accepted attributes of a movable property. Electric energy is storable and admits of transportation. It can also be transmitted over long distances. It is fungible in so far as it admits of measurements and it also has the property of *res furtiva* in so far as it admits of theft,-vide section 39 of the Indian Electricity Act. Under that provision, a person who dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code. It was contended on behalf of the State that electric energy was not tangible in the sense that it could not be touched *res quae tangi non possunt*. It has the quality of giving shock but it can be touched at considerable danger of destruction or

injury. It certainly is perceptible both as an illuminant and a fuel and also in other energy giving forms. It was then contended that it could not be considered property. This contention is unsustainable. The word 'property' is used to denote the rights of ownership over corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal things. The term 'property' is *nomen generalissimum* and is of very broad signification embracing everything that has exchangeable value or which goes to make up a man's wealth extending to every species of valuable rights and interests and includes' real and personal property, easements, franchises, and incorporeal hereditaments. The term 'property' is used in two different senses; first it is applied to those external things which are the objects of rights or of dominion. It is also applied to the rights which a man may acquire in and to things. Whether 'property' is to be understood in a comprehensive sense or is to be given a restrictive meaning, must depend upon the statutory context. It cannot be denied that electric energy is not a property in either of the senses, and in so far as the term 'movable property' as used in the Punjab and Central, General Clauses Acts in contradistinction to 'immovable property', the electric energy must fall within the ambit of 'goods' even if in a sense it is intangible or invisible though discernible and perceivable.

9. It is well-known that electric energy is a 'property' capable of sale and may be the subject of larceny. It is true that before the advent of electrical energy, it could not be conceived that such a power could be the subject of larceny but like water, gas and oil, it partakes of an attribute of movement of flux.

10. In *Erie County Natural Gas and Fuel Company Limited and others v. Samuel S. Carroll and another*¹, which was a case for damages against the defendants for breach of contract resultant from non-supply of gas, it was held that the defendants had broken their contract and were liable for damages and gas was treated like any other property.

11. In *Kumbakonam Electric Supply Corporation Ltd. v. Joint Commercial Tax Officer*², it was held that electricity is "goods" for the purposes of the Madras General Sales Tax Act, 1959, and the Central Sales Tax Act, 1956. It was observed that both from the scientific as well as the economic point of view, electricity was as much property as gas or water which was subjected to a particular process.

12. In *Naini Tal Hotel Co., Ltd. v. Municipal Board, Naini Tal*³, the question before the Bench was whether in a suit to recover the price of electric energy supplied to the defendant, the article of the Limitation Act applicable was 52 or 96. It was held that article 52 was applicable and electric energy was "goods" within the meaning of the article which specified period of three years from "the date of the delivery of the goods."

13. In *M/s Nizam Sugar Factory, Ltd. v. The Commissioner of Sales Tax*⁴, it was held that steam like gas was "goods" for purposes of the Hyderabad General Sales-tax Act.

14. There was a reference to an order of the Excise and Taxation Commissioner, Punjab, in the case of M/s. Kumar Textile Mills, Amritsar, dated 31st of October, 1963, wherein he had expressed the view that electricity was not "goods" within the meaning of the Punjab General Sales Tax Act. I have carefully gone through the order and I do not find anything cogent or convincing therein, to lead me to subscribe to that view. One reason why electricity was not treated as "goods" was that it was not capable of being moved without support. That is no argument in holding that it is not a movable property. Gases and liquids need containers and

electricity has to pass through conductors, and the fact that it is fastened at one end to something attached to the earth is no ground for holding that the energy which could be transmitted to long distances has not the attribute of a movable property. The Punjab General Sales Tax Act itself recognises electricity as "goods". Under section 6 of the Act, no tax shall be payable on the sale of "goods" specified in the first column of schedule B subject to certain conditions and exceptions. In schedule B, against item 31 is electric energy. Thus, the Act itself lists electric energy as a tax-free "goods".

15. I am left with no doubt in my mind that electric energy falls within the definition of "goods" in both the Punjab as well as the Central Acts and the ground on which the application of the petitioner was rejected is erroneous. I would allow the petition and consequently quash the two impugned orders passed by Shri G.K. Bhalla, Excise and Taxation Officer, Sangrur, dated 10th of January, 1964, - vide Annexure D and by Shri M.L. Sondhi, Assistant Excise and Taxation Commissioner, Punjab, dated 26th of March, 1964,-vide Annexure F. The petitioner is entitled to be registered as a dealer under the law. The Excise and Taxation Officer, Sangrur, is directed to dispose of the application of the petitioner for registration as a dealer in the light of what has been observed above. In the circumstances, there will be no order as to costs.

Petition allowed.

Cases Referred.

11911 A.C. 105

21963 S.T.C. 600

3AIR 1946 All 502

4AIR 1956 Hyd 1945