

PUNJAB AND HARYANA HIGH COURT

Chandra Industries

Vs

Punjab State

Letters Patent Appeal No. 3 of 1971

(Harbans Singh v. Ranjit Singh Sarkaria, JJ.)

05.01.1972

JUDGMENT

R.S. Sarkaria, J. & Harbans Singh, C.J.

1. This appeal under Clause X of the Letters Patent against an order, dated December 16, 1970, of the learned Single Judge dismissing Civil Writ No. 2655 of 1970, Arises out of the following facts :-

2. M/s Chandra Industries are a registred firm carrying on the business of manufacture of refrigeration and air-conditioning machinery at Jullundur. The firm is also registered as dealer under the Punjab Generals Sales Tax Act, 1948 (hereinafter referred to as the Act), The mode of payment of the sales tax is quarterly. The petitioner firm accordingly submitted four quarterly returns for the year 1966-67 to the appropriate authority. The gross turn-over for the first quarter (April 1, 1966 to June 30, 1966) in the return (which only is relevant for the purpose of this case) was Rs. 2,45,456.96. The petitioner-firm claimed a deduction/exemption from the tax, inter-alia, for an amount of Rs. 1,53,475.32 in respect of the first quarter, on the ground that this item represented the sale proceeds of the goods sold to M/s Refrigeration Products on May 31, 1966. This claim was disallowed by the Assessing Authority on the grounds that on the date of the sale, registration certificate under the Act, though it was proved that on the date of the sale an application for such registration of the purchasing dealer was pending, and, in fact, the requisite certificate of registration was granted to the purchasing dealer on June 3, 1966. The first appeals of the assessee was dismissed by the Appellate Authority on June 30, 1969. Their second appeal was also dismissed by the Sales Tax Tribunal on August 5, 1970. Aggrieved by that order of the Assessing Authority (upheld by the Appellate Tribunal) M/s Chandra Industries invoked the writ jurisdiction of this Court under Article 226 of the Constitution.

3. The only question that falls to be determined in this case is : whether a dealer registered under the Act is in the matter of his liability to pay tax, entitled under section 5(2)(a)(ii) to deduct from his gross shift turnover proceeding of the sales of goods made to a dealer during the period when

the application of the latter for getting himself registered as a dealer under section 7 of the Act is pending with the department. This question further narrows down into the issue : whether a registration certificate obtained under section 7 of the Act takes effect from the date of its issue or from the date on which an application for obtaining such certificate is made in the prescribed manner.

4. It is not disputed that the application by the purchasing dealer in the present case for obtaining the necessary registration certificate was made in March, 1966. The registration certificate was granted about three months thereafter on June 3, 1966, i.e., about three days after sales in question. It is nobody's case that this delay in the issue of the certificate was due to any defect in the application or any fault of the applicant. We, therefore, take it that this delay in issuing the certificate was only due to the remissness of the office.

5. It will be appropriate to notice here the relevant provisions of the Act, and the rules framed thereunder. They are :-

"2(d) 'dealer'- means any persons including a Department of Government who in the normal course of trade sells or purchases any goods that are actually delivered for the fact that purpose of consumption in the State of Punjab, irrespective of the fact tot the main place of business of such persons is outside the said State and where the main place of business of any such persons is not in the said State, 'dealer' includes the local manager or agent of such person in Punjab in respect of such business."

"2(i) ' turnover' includes - the aggregate of the amounts of the sales and purchases and parts of the sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time, of, or before, delivery thereof."

"4 'Incidence of taxation' -

(1) x x x x x

(2) Every dealer to whom sub-section (1) does not apply or who does not deal exclusively in goods declared to be tax-free under section 6 shall be liable to pay tax under this Act on the expiry 30 days after the date on which his gross turnover during any year first exceeds the taxable quantum.

Provided that in the case of a dealer who imports any goods for sale or use in manufacturing or processing, or who manufactures or processes any goods for sale, the liability to pay tax shall commence with effect from the date on which his gross turnover during any year first exceeds the taxable qauantum.

4(2A) Notwithstanding anything contained in subsection (1) and (2), no tax on the sale of any goods shall be levied if tax on their purchases is payable under this Act."

"4(3) Every dealer who has become liable to pay tax under thsi Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such

expiry as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease."

"4(4) x x x x x

(5) in this Act, the expression 'taxable quantum' means -

(a) * * * *

(b) * * * *

(c) * * * *

(d) In relation to any other dealer, 40,000 rupees: provided that the registration of dealers already registered under this clause shall not be cancelled until their turnover in each of three consecutive years does not entitle them to cancellation under clause (b) of sub-section (6) of section 7.

"5 (1) Subject to the provision of this Act, there shall be levied on the Taxable turnover every year of a dealer a tax at such rates not exceeding six naya Paisa in a rupees as the State Government may by notification direct :

Provided

"5 (2) In this Act, the expression 'taxable turnover' means that part of a dealer's gross turnover during any period which remains after deducting therefrom -

(a) his turnover during that period on -

(1) * * * * *

(ii) Sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under sub-section (1-A) declared by him in a prescribed form as being intended for resale in the State of Punjab or Sale in the Course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for use by him in the manufacturing in Punjab of any goods, other than goods declared tax-free under section 6 for sale in Punjab and on sales to a registered dealer of container or other materials for the packing of such goods :

Provided that in case when such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods :

Provided further that when goods are used by the dealer to whom these are sold for purpose other than those for which these were sold to him, he shall be liable on the sale of such goods, as the State Government may by notification, direct in respect of a class of dealers specified in such notification, notwithstanding that such purchase is not covered by a clause (ff) of section 2."

"7 (1) No dealer shall, *while being liable to pay tax* under this Act, carry on business as a leader unless he has been registered and possesses a registration certificate.

(2) Every dealer required by sub-section (1) to be registered shall make application in this behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for registration is in order, he shall in accordance with such rules and on payment of such fees as may be prescribed, register

the applicant and grant him a certificate of registration in the prescribed form which may specify the class or classes of goods for the purpose of sub-clause (ii) of clause (a) of sub-section (2) of section 5.

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

(a) information furnished under section 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.

(5) When any dealer has paid the amount of penalty imposed under section 23 in respect of any contravention of sub-section (1) of this section, the Commissioner shall register such dealer and grant him certificate of registration, and such registration shall take effect as if it had been made under sub-section (3) of this section on the dealer's application.

(6)

"11(6) ...in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed a sum not exceeding one and half time that amount."

23(1) Whoever contravenes or fail to comply with, any of the penalty provision of this Act or rules made thereunder or any order or direction made or given thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees, and where such contravention is a continuing one, to a daily penalty not exceeding fifty rupees, during the period of the continuance of the contravention or failure .

(2) An officer of the rank of a Deputy Excise and Taxation Commissioner appointed under sub-section (1) of section 3 may, after affording to the dealer a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (1)

... ..

6. The old rule 4 which was in force at the time of the sale in question reads as under :-

"5. When the appropriate Assessing Authority, after making any enquiry that may think necessary, is, satisfied that the applicant is a *bona fide* dealer and has correctly given all the requisite information that he has deposited the registration fee into the appropriate Government treasury and that the application is in order, he shall register the dealer and he shall issue a certificate of registration in form ST 111 of ST IV according as the dealer has one or more than one place of business in Punjab."

7. This rule was amended by Punjab Government Notification No. GSR-237/PA.46/48/S-27/AMD-(5)/66 dated October 10, 1966 and in place of the last sentence commencing with the words "in form S.T." of the old rule, the following was substituted:-

".....In form S.T. IV which *shall be valid from the date of receipt of application for registration* by the assessing Authority or from the date of commencement of the liability to pay tax, whichever is later."

"Rules 26. A dealer, who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provision of sub-clause (ii) of clause (a) of sub-section 5 of the Act, shall, on demand, produce in respect of such a sale or a sale the copy of the relevant cash memo or bill, according as the sale is a cash sale on credit, and a declaration in writing in form S.T. XXII by the purchasing dealer or by his agent, that the goods in question are intended for re-sale in the State of Punjab or such goods are specified in his certificate of registration for use by him in the manufacturing in the State of Punjab of any goods for sale."

8. From S.T XX11 of the declaration to be furnished under the old rule 26 is as under:-

"FORM S.T. XXII

Declaration to be furnished by a registered dealer purchasing goods from another registered dealer.

(See rules 26 and 27-A of the Punjab General Sales Tax Rules,1949)

I.....holder of registration certificate No..... hereby declare that I have purchased the goods hereinafter mentioned for the purpose of:

(1) use in the manufacture in the State of Punjab of any goods for sale :

(2) resale in the State of Punjab ; or

(3) Sale in the course of inter-State trade or Commerce;or

(4) Sale in the course of export out of the territory of India; and the goods so purchased for the purpose mentioned at (1) above are duly specified in my aforesaid registration certificate.

Description of goods	Quantity	Price	Number and date of cash memo or bill issued by the selling registered dealer.	Full signature of the selling dealer.
----------------------	----------	-------	---	---------------------------------------

Full signature and complete address of the dealer or his authorised agent."

Place

Date

9. I have quoted the relevant provision of the Act and the Rules (as in force at the material time) to show that there is nothing in them which expressly or by necessary intendment compels the interpretation that the Registration Certificate shall take effect from the date of its issue and not from an earlier date. On this crucial point, the Act is silent, though there is a clear mandate that in certain situations specified in sub- section, (5) of section 7, a registration Certificate issued by the

commissioner, 'shall take effect if it had been made under sub-section (3) of section 7 *on the dealer's application*'. It is a cardinal principle of interpretation that statutes which impose pecuniary burdens or penalties have to be construed strictly, and if on a certain point such a statute is silent or its language is ambiguous, the doubt is to be resolved by adopting the construction which is beneficial to the taxpayer and which avoids inconsistency and repugnance among its various provisions or to any constitutional provision. Sub-sections (2) and (3) of section 7 read with rule 5 impose reciprocal obligations and duties on the dealer (liable to pay tax) and the registering authority. All that is required of such a dealer is that he should make an application in the prescribed manner, setting forth all the requisite information in form ST I & II to the Prescribed Authority (Which is the Assessing Authority). The application should be accompanied by a Treasury Receipt showing payment of the requisite fee. As is apparent from the use of the word 'shall' in sub-section (3) of imposed on the Prescribed Authority to register 'the applicant, if; (a) his application is in order; (b) the prescribed fee has been paid : and (c) the authority is satisfied that the applicant is a *bona fide* dealer and the information given by him is correct.

10. The question is; can such a dealer, who honestly and diligently does all that he is required to do by sub-sections (2) and (3) of section 7 and Rules 5, be penalised under section 23(1) read with sub-section (1) of section 7 ? In my opinion, the answer to this question must be in the negative.

11. Sub-section (1) of section 7 is not to be construed in isolation; but is to be read together with sub-sections (2) and (3) of the same section. Similarly, section 11(6) and section 23(1) are complementary to each other. The words 'registered' and "possesses a Registration Certificate' in section 7(1), therefore, take colour from the succeeding sub-section (2) and (3). It could never be the intention of the legislature that a dealer liable to pay tax, who has done all which lay in his power to obtain the registration certificate, should pull down his shutters and keep his business closed under pain of being punished under section 23(1) and awaits indefinitely the pleasure and leisure of the Prescribed Authority in issuing the Registration Certificate. Adopting of such a construction would be to make the applicant liable to punishment for the laches and delays of the Authority and its office.

12. The dealer's duty to make application to get himself registered starts with his liability to pay tax. In the instant case, Messrs Refrigeration Products admittedly, submitted the application for registration in March, 1966 in the prescribed form, along with the prescribed fee to the Prescribed Authority. The application did not suffer from any defect whatever. It was in order in all respects. The applicants had thus done all that they could do for obtaining the registration Certificate. Whatever else remained to be done, was the responsibility of the Authority and the period of three months in issuing the Certificate was merely due to delay and laxity on the part of its office. During the interregnum between the making of the application (March 1966) and the issue of the Certificate (June 3, 1966) the applicant's status could not be that of an unregistered dealer liable to penalty; under section 11(6) and 23(1), as by making the application in the

prescribed manner, that had discharged their part of the statutory obligation to obtain the Certificate. Their liability to pay tax and the making the application being co-terminus, the certificate, though granted three months later, would relate back to the date of the application.

13. It is to be noted that the Act lays down a tax collecting agency, it does not impose a restraint on one's fundamental right to carry on trade or business the very fact that only a *bona fide* dealer is competent to make an application under section 7(2) for registration Certificate presupposes that the applicant is buying and selling goods in his normal course of trade. The provision requiring the making of the declaration under section 5(2) (a) (ii) in Form S.T. XXII, has been made only for the purpose of ensuring collection and payment of the tax. It means that the tax is to be charged by the last the from whom goods pass ultimately to the consumer. It is such a dealer who would be the agent of the State for the purpose of collection and payment of tax.

14. Nor is there anything in section 5(2) (a) (ii) which in clear and unambiguous terms lay down that the Registration Certificate takes effect from the date of its issue and not from the date of the application. Rather, the first proviso to section 5(2) (ii) read with the old Rule 26 and Form S.T. XXII, quoted above, shows that the required declaration of the purchasing dealer or his agent in the prescribed form may not be obtained simultaneously with the sale. It may be obtained subsequently and furnished along with his return by the selling dealer if the latter wants the amount of any such to be deducted from his gross turnover. In the absence of anything to the contrary in the Act, it will be in consonance with the reason and equity to hold that the intention of the Legislature was that in the incurrence of liability to pay tax, the registration certificate takes effect from the date of the submission of the application. To hold otherwise, would be to penalise the applicant-dealer for the lapse and vagaries of the office of the Prescribed Authority.

15. The matter can be looked at from another aspect also. Rules 5 was amended by a Government Notification dated October 10, 1966. (The amended Rules 5 is reproduced above). The amended Rules 5 expressly says that the Registration Certificate can be valid from the date of the application. Assuming for the sake of argument that the provision of the Act particularly, section 5 and 7 read together are susceptible of one and only one construction, i.e., that the registration certificate takes effect only from the date of the issue of such certificate, then the amended Rules 5 laying down something to the contrary, being repugnant to and inconsistent with the parent Act, would be invalid. It is however, nobody's case that the amended Rules 5 is invalid or *ultra vires* the Act. This rule in our judgment, was amended in October 1966, only by way of clarification of the origin of intent of the Legislature. In this connection, It is noteworthy that while interpreting the corresponding provision of section 5(2) if the Pepsu General Sales Tax Ordinance, 2006 B.K- the language of which was (so far as material for the discussion) identical with the corresponding section 5(2)(a)(ii) of the Punjab Act. Shri P.K. Wattal Financial Commissioner (Taxation) of Pepsu held as far back June, 1955, that the registration certificate related back to the date of the application. This is what he said in *Re: Ramdhari Ram Chander*¹:-

".....the interest of justice demand that the assessing authority should have recourse to their own records where the fact of registration is to be verified instead of throwing the

entire burden of proof on the assesses. I am also inclined to accept the contention of the petitioner that it is the date of application for a registration certificate which should be taken into account and not the date of issue of the registration certificate, inasmuch as the responsibility for delay lies on the shoulders of the Sales Tax Authority for which the dealers should not be made to suffer."

16. In the view we take, we are fortified by a judgment of the Orissa High Court in *Subash Chandra Ghose v.State of Orrisa* ²The judgment was of a Division Bench consisting of C.J. Mishra and S. Acharya, J. There, the application for registration under section 7 of the Central Sales Tax Act, 1956 made by an assessee was defective in many particulars but the assessee rectified those defects when opportunity was given to him under rule 5(2) of the Central Sales Tax (registration and Turnover) Rules, 1957 and the authorities ultimately granted him the certificate of registration. The Department treated the assessee as not having been registered for the period between the date of making the application and registered for the period between the date accordingly assessed him to sales tax under rule 12(6). The learned Chief Justice who spoke for the Bench, set aside this assessment with these observations:-

"Once the registration certificate was granted, It must be operative from the date of the application. It was not open to the department after the grant of registration certificate to say that during the relevant period the assessee was an unregistered dealer. That conclusive was possible only if the application had been rejected for non-removable of defects when it could be said that an application for registration had been filed."

Though the facts of the case were different, yet the principle laid down is fully application in the instant case.

The third case cited by Mr. Awasthy is *Oriented Paper Mills Ltd. v. Commissioner of Sales Tax, Madhya Pradesh, Indore and another* ³That was a case of amendment of the registration certificate. The question was; whether the amendment would take effect from the date of the order or relate back to the date on which the purchasing dealer applied for amendment of the registration certificate. The learned Chief Justice (who spoke for the Bench) observed :-

In regard to the date of effectiveness of the amendment in the registration certificate, the Act or the Central Sales Tax (registration and Turnover) Rules, 1957, does not contain any provision indicating the date from which any amendment in the certificate would be effective. The amendment can be effective either from the date on which the purchase dealer applies for amendment of the registration certificate. In our opinion, it would, however be equitable and reasonable to hold that where the purchasing dealer applies for amendment of registration certificate it is the date on which he makes the application for amendment that should be taken as the date of effectiveness of the amendment if it is allowed. It is easy to see that considerable time may elapse between the making of an application for amendment of the registration certificate and the passing of the final order allowing the amendment. The responsibility for the delay in allowing the amendment lies

on the shoulders of the sales tax authority for which clearly the dealer cannot be made to suffer."

We are in respectful agreement with the principle enunciated in the aforesaid rulings.

18. In the light of what has been said above, we hold that the Registration Certificate issued to Messrs Refrigeration Products took effect from the date of the application made by them under section 7(2) of the Act in March, 1966. The result would be that on the date of the sale of Rs. 1,53,475.32, the purchasing dealer would be deemed to be a registered dealer and the declaration obtained from in the prescribed form subsequently by the selling dealer duly conformed to section 5(2)(a)(ii) and the relevant rules. We would, therefore, reverse the finding of the learned Single Judge and answer the question posed in the affirmative. In the result, Civil Writ No. 2655 of 1970 is allowed and the impugned orders of the Assessing Authority are quashed and the case is remanded for a fresh decision in the light of the observations made above.

Appeal accepted.

Cases Referred.

1(1955) 6 S.T.C. 430

2(1970) 26 S.T.C 211

3(1969) 23 S.T.C. 308