

Assessing Authority, Patiala District ... vs M/S. Patiala Biscuits Mfg. Co. Now As ... on 1 March, 1977

Equivalent citations: 1977 AIR 1339, 1977 SCR (3) 85, AIR 1977 SUPREME COURT 1339, 1977 2 SCC 389, 1977 TAX. L. R. 2021, 1977 3 SCR 85, 1977 SCC (TAX) 303, 1977 REV LR 450, 1977 UPTC 311, 1977 2 SCJ 437, 39 STC 381, 1977 U J (SC) 242

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, P.N. Bhagwati, Syed Murtaza Fazalali

PETITIONER:

ASSESSING AUTHORITY, PATIALA DISTRICT PATIALA ANDORS.

Vs.

RESPONDENT:

M/S. PATIALA BISCUITS MFG. CO. NOW AS DALMIABISCUIT PVT. LTD

DATE OF JUDGMENT01/03/1977

BENCH:

SARKARIA, RANJIT SINGH

BENCH:

SARKARIA, RANJIT SINGH

BHAGWATI, P.N.

FAZALALI, SYED MURTAZA

CITATION:

1977 AIR 1339

1977 SCR (3) 85

1977 SCC (2) 389

ACT:

Punjab General Sales Tax Act, 1948--Assessee entitled to certain deductions if seller and buyer are registered dealers--Both applied for registration--Certificates issued later with retrospective effect--Dealers--If should be in physical possession of registration certificate at the time of sale to claim deduction.

HEADNOTE:

According to (a)(ii) of the Punjab General Sales Tax Act, 1948, taxable turnover means the part of a dealer's gross turnover during any period which remains after deducting therefrom the turnover during that period, on

sales to a registered dealer of goods declared by him in a prescribed form as being intended for re-sale in the State. Section 7(1) provides that no dealer shall carry on business as a dealer unless he has been registered and possesses a registration certificate. Rule 5 of the Punjab General Sales Tax Rules, 1949 as amended in October 1966 provides that the certificate of registration issued by the Assessing Authority shall be valid from the date of receipt by him of the application for registration or from the date of Commencement of the liability to pay tax whichever is later. Rule 26 provides that a dealer claiming deduction under s. 5(2)(a)(ii) shall produce on demand the cash memos or bill and a declaration in writing by the purchasing dealer that the goods specified in the certificate of registration are for use by him.

The assessee (respondent) and the purchasing dealer, the sole selling agent of the assessee, made applications on January 1, 1966 for registration as dealers. The registration certificates were issued to them on March 27, 1966 with retrospective effect from January 1, 1966.

The Assessing Authority rejected the assessee's claim for deduction under s. 5(2)(a)(ii) of sales made by them to the purchasing dealer on the ground that during the period between January 1 and March 31, 1966, the purchasing dealer was not in possession of the registration certificate.

In a petition under Art. 226 of the Constitution the High Court held that since the certificate of registration had been granted with effect from January 1, 1966, i.e. the date of application, it could not be said that the sales during the quarter were to an unregistered dealer.

On appeal it was contended that to be entitled to deduction under the Act both the purchasing and selling dealers 'should be in physical possession of the registration certificate at the time of sale.

Dismissing the appeal,

HELD: The assessees were entitled to deduction under s. 5(2)(a)(ii) in respect of sales made by them to the purchasing dealer during the quarter.

[90 G]

(a) At the relevant time, the registering authority was fully competent to issue the registration certificate to the dealer with retrospective effect from the date of filing of the application. The amendment of r. 5 made in October 1966 did not confer any new or additional power on the registering authority but was only clarificatory of the law. The language is clear that the registering authority had the power to give effect to the registration from the date of making the application. [90 F; A]

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(b) The words "has been registered and possesses a registration certificate" should be construed in accord with the general tenor of the section as a whole, and in a manner which would avoid oppressive, unreasonable and

anomalous results. So construed it could never be the intention of the legislature that a dealer liable to pay tax, who has in compliance with the requirements (2) and (3) 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 and await indefinitely the pleasure and leisure of the prescribed authority in issuing the registration certificate. Adoption of such a construction would be to make an applicant liable to punishment for the laches and delays of the authority and its office. [90 B-C]

Chandra Industries v. The Punjab State & Ors. 29, S.T.O. 558, approved.

(c) The requirement of r. 26 will be substantially satisfied if the number of the registration certificate is supplied by the claimant alongwith the declaration of the purchasing dealer at the time of assessment to the Assessing Authority.

[90 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 721 of 1972.

(From the Judgment and Order dated 13.10.1970 of the Punjab & Haryana High Court in Civil Writ No. 1831 of 1968). K.S. Suri, for the appellants.

R.S. Sharma and A. D. Mathur, for the respondent. The Judgment of the Court was delivered by SARKARIA, J.--The short question involved in this appeal on certificate, directed against a judgment of the High Court of Punjab and Haryana is: Whether the sales made to a dealer who has applied for registration under the Punjab General Sales Tax Act 1948, before his application is allowed, are to be treated as sales to an unregistered dealer or registered dealer, when the registration is effected from the date of the application ?

M/s. Patiala Biscuits Manufacturers Pvt. Ltd. (hereinafter referred to as the assessee) appointed M/s. Rajpura Biscuit Company as their sole selling agents. The agents made an application on 1.1.1966 in the appropriate form for registration as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act). On the same day, the agents (referred hereafter as the purchasing dealer) made a similar application for obtaining registration certificate, under the Central Sales Tax Act. The appropriate Assessing Authority accepted both these applications and on March 27, 1966 issued the registration Certificate with effect from 1.1.1966.

The assessee filed their return for the quarter ending March 31, 1966 in April, 1966 and claimed deductions under s. 5(2)(a)(ii) in respect of sales of the value of Rs. 32,56,267.35 made by them between 1-1-1966 to 31-3-1966 to the purchasing dealer. The Assessing Authority, Patiala rejected this claim and assessed tax, amounting to Rs. 1,99,558.94. on the proceeds of the sales made by the

asses- sees to the purchasing dealer between 1.1.1966 and 27.3.1966. The reason given by the Assessing Authority for refusing this relief to the assesseees was that during this period, the purchasing dealer was not in possession of the registration certificate, the same having been issued only on March 27, 1966.

The assessee impugned the validity of this order of the Assessing Authority by a writ petition in the High Court, under Articles 226/227 of the Constitution. The High Court held that since the certificate of registration had been granted with effect from 1-1-1966, which was the date of the application, it could not be said that the sales during this period commencing from 1.1.1966, were made to an unregistered dealer. It further noted that apart from the assesseees, the purchasing dealer had also, been taxed with regard to the same transactions resulting in double taxation which was against the basic scheme of the Act, the Rules and the notifications issued thereunder. On these premises, the High Court allowed the writ petition and quashed the impugned order to the extent to which it was contrary to s.5(2)(a)(ii) of the Act in respect of sales made between 1.1.1966 and 27.3.1966. The High Court however granted a certificate under Art. 133(1)(a) and (c) of the Constitution, on the basis of which the Revenue has come in appeal to this Court.

It would be appropriate to have, at the outset, a look at the relevant provisions of the Act and the Rules. The material provision is in s. 5(2) (a) (ii) which reads as under:

"In this Act the expression "taxable turnover" means the part of a dealer's gross turnover during any period which remains after deducting therefrom:

(a) his turnover during that period on

(i)

(ii) sales to a registered dealer of goods declared by him in a prescribed form as being intended for re-sale in the State of Punjab

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

Section 7 provides for the registration of dealers. It says:

"(1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a registration certificate. (2) Every dealer required by sub-section (1) to be registered dealer shall make appli-

cation 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 7--240SCI/77 such rules and on payment of such fees as may be prescribed,

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

(4) ...

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

(6) ..

In case a dealer commits default is not getting himself registered as required by Sec. 7, certain consequences follow. Under s.11(6) such a defaulting dealer is liable to be assessed on the basis of best judgment and the Assessing Authority may, in addition to the tax so assessed, impose on him by way of penalty a sum not exceeding one and half times that amount. Such a defaulter is further liable to prosecution under s. 23 (1) for carrying on business as a dealer in contravention of the provisions of s. 7(1), and on conviction, he can be sentenced to fine not exceeding Rs. 1,000/-.

The application for registration has to be made to the appropriate Authority in the prescribed Form. The manner in which such an application is to be dealt with by the Authority is provided in Rule 5 of the Punjab General Sales Tax Rules, 1949 framed under the Act. This Rule as it stood before the amendment of October 10, 1966 was as follows:

"When the appropriate Assessing Authority, after making any enquiry that he 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 shall issue a Certificate of registration in Form S.T.III or S.T. IV according as the dealer has one or more than one place of business in Punjab."

Rule 5 was amended by Punjab Government Notification No. GSR237/PA 46/48/S-27/Amd(5)/66 dated 10th October, 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 Assess-

ing Authority or from the date of commencement of the liability to pay tax, whichever is later."

Rule 26 provides:

"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 provisions of subclause

(ii) of clause (a) of sub-section (2) of section 5 of the Act, shall, on demand, pro-

duce in respect of such a sale the copy of the relevant cash memo or bill, according as the sale is a cash sale or a 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 manufacture in the State. of Punjab of any goods for sale."

Rule 26 was also amended later. The amended Rule is, in substance, the same, excepting that it was clarified that the dealer claiming deduction has to produce the declaration of the purchasing dealer, in the prescribed form, at the time of assessment.

The main contention of Shri K.S. Suri, learned Counsel for the appellant is that the declaration form prescribed under the old Rule 26, as it stood at the material time, required the purchasing dealer to specify at the time of the sale, in the prescribed Form S.T. XXII, the number of the registration certificate. Stress has also been placed on the words "registered and possesses" used in sub-section (1) of Sec. 7, which according to Counsel, indicate that a dealer having a taxable turnover, cannot validly carry on his business, unless he is actually registered and is in physical possession of the registration certificate issued under Sec. 7. A compliance with the aforesaid mandatory requirement of s. 7(1) and Rule 26, Form XXII--proceeds the argument--could be possible only if at the time of the sales in question, the purchasing dealer as well as the selling dealer, both, were in actual possession of the requisite registration certificates. Shri Suri has adopted the reasoning of the Sales-Tax Tribunal in Appeal No. 109 of 1967-68 (M/s. Darshan Soap Mills, Batala Road, Amritsar v. The State) decided on 12-2-1968.

It is contended that Rule 5, as it stood at the material time, did not empower the registering Authority to grant the registration Certificate retrospectively, with effect from the date of the application. It is maintained such a power was conferred on the Authority, only by the Punjab Government Notification No. GSR-237/PA 46/48/S-27 Amd.(5)/16 with prospective effect from October 10, 1966. Taking the last point first, we are of opinion that the amendment of Rule 5 by the Punjab Government Notification, dated October 10, 1966, did not confer any new or additional power on the registering Authority. The power to grant the registration Certificate with effect from the date of the application was already there. The amendment was only clarificatory of the law as it stood prior to it. It only made explicit which was formerly implicit. A definite indication is available in the language of sub-section (5) read with sub-sections (2) and (3) of s. 7, . itself, that the registering Authority had the power to give effect to the registration from the date of making the application. Be that as it may, the words "has been registered and possesses a registration certificate" used in sub-s. (1) of s. 7 have to be construed in accord with the general tenor of the Section as a whole, and in a manner which would avoid oppressive, unreasonable and anomalous results. As rightly pointed out in *Chandra Industries v. The Punjab State and ors.*(1), it could never

be the intention of the Legislature that a dealer liable to pay tax who has in compliance with the requirements of sub-sections (2) and (3) of s. 7, "done all which lay in power to obtain the registration certificate, should pull down his shutters and keep his business closed under pain of being punished under s. 23(1) and await indefinitely the pleasure and leisure of the prescribed authority in issuing the registration certificate. Adoption such a construction would be to make the applicant liable to punishment for the laches and delays of the authority and its office."

As regards the requirement enjoined by the Form prescribed under Rule. 26, to enter the number of the registration certificate in the declaration of the purchasing dealer at the time of sale, the same has to be viewed with reasonable flexibility and reconciled with Rule 5 as clarified by the Notification, dated October 10, 1966. Thus construed harmoniously with the related statutory provisions, the requirement of Rule 26 will be substantially satisfied, if the number of the registration certificate--granted subsequently, but covering retrospectively the period of the sales in respect of which deduction is claimed--is supplied by the claimant along with the declaration of the purchasing dealer at the time of assessment to the Assessing Authority. It is thus clear as daylight that at the relevant time, also, the registering Authority was fully competent to issue the registration certificate to the dealer with retrospective effect from the date of filing the application. A perusal of the registration certificate would show that it was, in terms, made effective from January 1, 1966. This is manifest from the words "the dealer is liable to pay tax w.e.f. 1.1.1966" used by the Authority, prominently, in the heading of the Certificate.

It necessarily follows, therefore, that during the period from 1.1.1966 to 27.3.1966, also, the purchasing dealer was a registered dealer possessing a registration Certificate within the Contemplation of s. 7(1) of the Act. This being the correct position, the assessee; were entitled to the deduction under s. 5(2)(a)(ii) of the Act in respect of the sales made by them to the purchasing dealer during the whole of the quarter ending 31st March 1966. The High Court was therefore, right in determining the question posed, in favour of the assessee and against the Revenue.

The appeal fails and is dismissed with costs.

P.B.R
(1) 29, S.T.O. 558.

Appeal dismissed.