

promotional post. It is true that certain matters relating to working of the petitioner as Superintending Engineer were also noticed while initiating action for reversion of the petitioner during the period of probation, as per note prepared by the Chief Administrator dated May 21, 1991. As per averments made in the written statement, adverse reports of the petitioner escaped the notice of the authorities at the time when he was promoted. That alone would not come in the way of the respondents in reverting the petitioner, particularly when matters relating to his functioning as Chief Engineer were considered threadbare at the time of passing the impugned order. Matters relating to functioning of petitioner as Superintending Engineer, which were noticed in the office noting, were not such matters which came to light after the promotion of the petitioner. As already stated above, such material was available, however, escaped notice. No penal consequences follow. After going through the record that has been produced today in the court by the official respondents, we are of the considered opinion that the kind of allegations that have been noticed by the Chief Administrator on May 21, 1991, and with which the higher authorities agreed, the action of reversion was entirely justified. That being so, it is not a fit case for interference in the writ jurisdiction of this Court and, therefore, the present writ petition is dismissed in limine. No order as to costs. The record is returned.

J.S.T.

Before : S. S. Sodhi & K. P. Bhandari, JJ.

M/S PUNJAB OIL MILLS, SARNA.—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

General Sales Tax Reference No. 2 of 1985.

20th January, 1992.

Punjab General Sales-tax Act, 1948—S. 11-A—Partnership firm making transaction of sale to another partnership firm having same partners but with different percentages of shares—Whether such transactions valid.

Held. that as a matter of law there can be a transaction of a sale or purchase by one firm to another where the partners of both the firms are the same, but whether or not the two entities are separate

and distinct would of course depend upon the peculiar facts and circumstances of the particular case.

(Para 5)

General Sales Tax Reference under Section 22 of the Punjab General Sales Tax Act, 1948 arise out of order dated 4th December, 1984 passed by Shri Paramjit Singh, Presiding Officer, Sales Tax Tribunal, Punjab in Misc. (Reference) No. 38 to 41 of 1983-84. The Sales Tax Tribunal Punjab referred the following questions of law to the High Court for their opinion:—

“Whether on the facts and circumstances of the case, the Tribunal was right in holding that a partnership firm cannot make a transaction of sale to a partnership firm with the same partners, though with different percentages of shares, and if the answer to the same be in the negative the effect thereof on the tax liability of the applicant-dealer.”

Vinod Aggl. Advocate and Satya Parkash Jain, Advocate, for the petitioner.

Rajiv Raina, A.A.G. Punjab, for the respondent.

JUDGMENT

S. S. Sodhi, J.

The controversy here is with regard to the sale by a partnership firm to another firm having same partners, but with different shares.

(2) After assessment for the years 1974-75 to 1977-78 had been finalised, proceedings under Section 11-A of the Punjab General Sales Tax Act, 1948 were subsequently initiated by the Assessing Authority on the basis of information that during these assessment years, the assessee had transferred goods to the firm M/s Punjab Oil Mills, Damtal (Himachal Pradesh). The assessee on its part took the plea that these transactions were inter-state sales and were thus not liable to tax. The tribunal on appeal held against the assessee by observing that a firm with the same partners remains the same, as mere difference in the proportion of shares of some partners is relevant only for the purpose of sharing profits, but does not alter the legal status of the firm at the time of transaction and therefore, same partners constituting two or more firms will continue to remain the same person and there cannot be any transaction of sale or purchase between them.

(3) On the other plea raised by the assessee, however, namely the claim by it of the benefit of the concessional rates under the

notification issued under Section 4(B) of the Act, the Tribunal remanded the case to the Assessing Authority for admitting affidavits and making fresh determination. This is what constitutes the factual back-ground leading to the following question being referred namely :—

“Whether on the facts and circumstances of the case, the Tribunal was right in holding that a partnership firm cannot make a transaction of sale to a partnership firm with the same partners, though with different percentages of shares, and if the answer to the same be in the negative the effect thereof on the tax liability of the applicant-dealer.”

(4) In dealing with the question posed it would be relevant to advert to the judgment of Supreme Court in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Ernakulam v. K. Kelukutty* (1), where a somewhat similar question arose and it was observed :—

“Now in every case when the assessee professes that it is a partnership firm and claims to be taxed in that status, the first duty of the assessing officer is to determine whether it is, in law and in fact, a partnership firm. The definition in the tax law defines an ‘assessee’ or a ‘dealer’ as including a firm. But for determining whether there is a firm the assessing officer will apply the partnership law, subject of course, to any specific provision in that regard in the tax law modifying the partnership law. If the tax law is silent, it is the partnership law only to which he will refer. Having decided the legal identity of the assessee, that it is a partnership firm, he will then turn to the tax law and apply its relevant provisions for assessing the partnership income.

Further :—

“Where it is claimed that they are not one but two partnership firms constituted by the same persons and carrying on different businesses, the assessing authority must test the claim in the light of the partnership law. It is only after that question has been first determined, namely whether in law there is only one partnership firm

or two partnership firms, that the next question arises; whether the turnover is assessable in the hands of the partnership firm as a taxable entity separate and distinct from the partners? There is first a decision under the law of partnership; thereafter the second question arises, the question as to assessment under the tax law. It is, clear, therefore, that reference must be made first to the partnership law."

(5) It would be apparent, therefore, that as a matter of law there can be a transaction of a sale or purchase by one firm to another where the partners of both the firms are the same, but whether or not the two entities are separate and distinct would of course depend upon the peculiar facts and circumstances of the particular case.

(6) Such thus being the situation as it now emerges, we reframe the question posed in the following terms

"Whether the Tribunal was right in holding that a partnership firm cannot make a transaction for sale to a partnership firm constituted by the same partners though with different shares therein."

(7) This question is answered in the negative in favour of the assessee and against revenue, but with the further observation that whether or not the sale by Messers. Punjab Oil Mills, Sarna to Messers. Oil Mills, Damtal (H.P.) be deemed to be a sale by one distinct firm to another be determined afresh by the assessing authority, keeping in view the observations and the principles laid down by the Supreme Court in K. Kalukutty's case (supra).

(8) This reference is disposed of accordingly. There will, however, be no order as to costs.

J.S.T.

Before : G. R. Majithia & Harmohinder Kaur Sandhu, JJ.

LAXMI NARAIN KAKA AND ANOTHER,—Appellants.

versus

BALBIR KAUR AND OTHERS.—Respondents.

Civil Misc. No. 5805-CII of 1991.

24th February, 1992.

Motor Vehicles Act (59 of 1988)—S. 173—First proviso—Deposit as mentioned before filing appeal—Date of accident should be taken