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No. 122/25 which lies to the south of *killa* No. 122/16 and to the south-west of *killa* No. 123/20 has a level higher than that of either of them so that both of them can be irrigated without difficulty through *killa* No. 122/25. This means that if the impugned order of the Divisional Canal Officer is upheld, respondent No. 5 would get *khal* EXY merely for facilitating the irrigation of two of his *killas*, namely, 122/17 and 122/18 which also, as remarked by the Divisional Canal Officer, he can irrigate through *bharai* from the Dhuri Khal. It thus appears to me that the reconstruction of *khal* EXY which, as already stated, lies entirely in the fields belonging to the petitioner is not demanded by the ends of justice. However, I am not prepared to substitute my own judgment in this matter for that of the canal authorities who, when approached by either of the parties, would be at liberty to pass such orders as they may think just and proper in the circumstances of the case.

(8) In the result I accept the petition and not only quash the order of the Superintending Canal Officer (Annexure "H" to the petition) but also those passed by the two officers below (Annexures "C" and "G" to the petition). The petitioner shall have his costs of these proceedings. Counsel's fee Rs. 100.

B. S. G.

GENERAL SALES TAX REFERENCE

Before Prem Chand Pandit and Gopal Singh, JJ.

M/S GOYAL OIL MILLS, LUDHIANA,—Appellants.

versus

THE STATE,—Respondent.

General Sales Tax Reference No. 2 of 1969.

August 2, 1971.

Punjab General Sales Tax Act (XLVI of 1948 as amended by VII of 1967)—Sections 10(6) and 20—Purchase tax imposed on an assessee for a particular year—Assessee taking the matter to Court challenging his liability to pay the tax—Tax not paid on that score—Penalty imposed—Court holding the assessee not liable to pay the tax for that particular year—Act amended

to validate the tax and the penalty—Imposition of the penalty—Whether valid.

Held, that where a purchase tax is imposed on assessee for a particular year, he takes the matter to Court challenging his liability to pay the tax, does not pay the tax on that score and the Court holds him not liable to pay the tax for that particular year, the imposition of penalty under section 10(6) of Punjab General Sales Tax Act for non-payment of tax in these circumstances is invalid. If the assessee is not liable for payment of purchase tax for the assessment of a particular year as held by the Court, it does not stand to reason why penalty should be imposed on him for the non-deposit of this tax. The question of penalty arises only if the initial liability of the assessee is there. Thus it is a sufficient cause for the assessee not to file the returns regarding the tax and pay the same. The fact that the Punjab General Sales Tax Act, 1948 was amended by Act VII of 1967 validating the imposition of tax and the penalty, when the matter of the liability of assessee was pending before the Court, will not make any difference. The assessee being held not liable to pay the tax for a particular year by the Court, will still constitute a sufficient cause not to comply with requirements of sub-section (3) and (4) of Section 10 of the Act, the matter being sub-judice when Act VII of 1967 was enacted.

Application under section 22(1) of the Punjab General Sales Tax Act, 1948, made by Shri R. S. Randhawa, Presiding Officer, Sales Tax Tribunal, Punjab,—vide his order dated 16th November, 1968 for opinion to this Hon'ble Court on the following questions of law arising out of Misc. No. 38 of 1968-69 regarding the assessment year 1961-62.

- (a) *Whether in the facts and circumstances of the case it was not a case which was clearly covered by the provisions of section 5(2)(a)(ii) of the Punjab General Sales Tax Act and the petitioner entitled to claim deductions of sales made to M/s Iqbal Singh Rajinder Singh of Ludhiana?*
- (b) *Whether there is any evidence of the record to show that there is collusion between the petitioner and Baldev Singh of M/s Iqbal Singh Rajinder Singh and Baldev Singh is a man of no substance and sales effected to the said firm are not genuine,*
- (c) *Whether the purchase-tax amounting to Rs. 12,871/34 and penalty of Rs. 1800 could be imposed, the State having issued notification only on 26th of September, 1961, although the definition of 'purchase has been amended by Act 18 of 1960 which came into effect from 1st April, 1960? In other words, whether any purchase tax could be levied for the year 1961-62 on the basis of notification issued on 19th of April, 1958 although the definition of purchase-tax had been materially altered by Act 18 of 1960?*

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(d) *Whether the interpretation placed on section 21 of the Punjab Act 7 of 1967 by the learned Tribunal is erroneous and not sustainable in law?*

Bhagirath Dass Advocate with B. K. Jhingan, Advocate, for the appellant.

M. S. Sandhu, Deputy Advocate-General, Punjab, for the respondent.

JUDGMENT.

PANDIT, J.—(1) The following question of law has been referred to us for our opinion by the Sales Tax Tribunal at the instance of the assessee—

“Whether the imposition of the penalty of Rs. 1,800 upon the Firm under sub-section (6) of Section 10 of the Punjab General Sales Tax Act was legal and valid in the facts and circumstances of the case.”

(2) It has arisen in these circumstances. Firm Goyal Oil Mills of Ludhiana was engaged in the business of groundnuts etc. On 27th February, 1965, for the assessment year 1961-62, the Assessing Authority created a liability of purchase tax to the extent of Rs. 12,871.34 regarding this firm, and it also imposed a penalty of Rs. 1,800 under section 10(6) of the Punjab General Sales Tax Act, 1948 (hereinafter called the Act) on account of the delay in the payment of this tax by the said firm. Against this order the Firm filed an appeal before the Deputy Excise and Taxation Commissioner and the same was rejected on 17th March, 1966. Thereafter a revision was preferred and it was dismissed by the Joint Excise and Taxation Commissioner on 19th July, 1966. A second appeal before the Sales Tax Tribunal also met with the same fate on 9th April, 1968. Then an application under section 22(1) of the Act was made by the assessee to the Tribunal for referring the above mentioned question of law to this Court and that is how the matter has come before us.

(3) It is undisputed that the assessee did not pay the purchase tax within time. When asked by the Assessing Authority as to why he failed to make this payment in time, he stated that the matter regarding levy of purchase tax was in dispute and that this Court had stayed assessment and recovery of this tax in a number of cases. The Assessing Authority then imposed the above mentioned penalty on the Firm.

(4) Section 10 of the Act deals with the payment of tax and filing of the return by the assessee. The penalty is imposed under sub-section (b) thereof. The relevant part of section 10 reads—

“10. Payment of tax and returns,—

(1) xx xx xx

(2) xx xx xx

(3) Such dealers as may be required so to do by the assessing authority by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed :

Provided that, if any dealer establishes to the satisfaction of the assessing authority that his average taxable turnover does not exceed ten per cent of his average gross turnover, the returns to be furnished by such dealer under this sub-section shall be annual returns.

(4) Before any registered dealer furnishes the returns required by sub-section (3), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of tax due from him under this Act according to such returns and shall furnish along with the returns receipt from such Treasury or Bank showing the payment of such amount.

(5) xx xx x

(6) If a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (3) or sub-section (4) the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty a sum not exceeding one and a half times of the amount of tax to which he is assessed or is

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liable to be assessed under section 11 in addition to the amount of tax to which he is assessed or is liable to be assessed, and where no tax is payable, a sum not exceeding one hundred rupees.

(7) xx xx x

(5) Learned counsel contended that the assessee was not liable to purchase tax for the relevant year of assessment. The Supreme Court in **Bhiwani Cotton Mills Ltd. v. The State of Punjab and another** (1) also held that no purchase tax on groundnuts could be levied for the years 1960-61 and 1961-62. In order to validate the imposition of this tax the Punjab General Sales Tax (Amendment and Validation) Act, 1967 (7 of 1967) was enacted. The argument, however, was that if the assessee was not liable for the purchase tax at the relevant time, he had sufficient cause for not filing his returns or depositing the tax and therefore no penalty could be imposed for not making the payment of this tax within time, under section 10(6) of the Act.

(6) If the assessee was not liable for the payment of purchase tax for the assessment year 1961-62, as held by the Supreme Court in *Bhiwani Cotton Mills' case*, (1) it does not stand to reason why penalty should be imposed on him for the non-deposit of this tax. The question of penalty would arise only if the initial liability of the Firm was there. Thus there would be sufficient cause for the assessee not to file the returns regarding this tax and pay the same.

(7) Counsel for the Department referred to section 20 of Punjab Act 7 of 1967 and submitted that the imposition of the said purchase tax had been validated retrospectively and thereby the effect of the Supreme Court decision had been negated. Section 20(1) of Punjab Act 7 of 1967 says—

“20. Validation of assessments etc., in the case of groundnuts—

- (1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, any assessment, reassessment, levy and collection of any tax on the purchase of groundnuts made or purporting to have been made, any action or thing

(1) (1967) XX S.T.C. 290.

taken or done in relation to such assessment, re-assessment, levy or collection under the provisions of the principal Act, before the commencement of the Punjab General Sales Tax (Amendment and Validation) Act, 1967, shall be deemed to be as valid and effective as if such assessment, re-assessment, levy of collection or action or thing had been made, taken or done under the principal Act as amended by the Punjab General Sales Tax (Amendment and Validation) Act, 1967, and accordingly—

- (a) all acts, proceedings or things done or action taken by the State Government or by any other officer of the State Government or by any other authority in connection with the assessment, re-assessment, levy or collection of such tax shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;
- (b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax; and
- (c) no court shall enforce any decree or order directing the refund of any such tax.”

Counsel further argued that under this section even the imposition of the penalty had been validated, because it was also an action taken by the Assessing Authority in relation to the assessment in question.

(8) I am of the view that this contention is without any force. The order regarding the imposition of penalty was being challenged by the assessee and this matter was still *sub judice* when the Punjab Act 7 of 1967 was enacted. This is not a case where the penalty was imposed by the Assessing Authority and the assessee had not filed any appeal against the same, with the result that that order had become final. If such had been the position, it could perhaps be argued on the basis of the provisions of section 20 of Punjab Act 7 of 1967 that the imposition of penalty could not subsequently be challenged by the assessee in any proceedings. As I have said, this order was still under appeal when Punjab Act 7 of 1967, came into force. The question whether penalty should be imposed in a particular case is one of fact and has to be determined on the circumstances of each case. It will depend upon whether the assessee had sufficient cause not to comply with the requirements of the provisions of sub-section (3) or sub-section (4) of Section 10 of the Act. In the

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first eventuality no penalty could be imposed on him. In this particular case, the assessee was not liable to purchase tax for the year 1961-62 as held by the Supreme Court. That being so, it is not possible to hold that he had no sufficient cause for not depositing the said tax or filing the returns in connection therewith. The imposition of the penalty would, therefore, be not legal and valid in the facts and circumstances of this case.

(9) Learned counsel for the Department also submitted that the Firm had not taken this position before the Assessing Authority, i.e., he had not stated that he was not liable to purchase tax. All that he said was that the matter regarding the levy of purchase tax was in dispute and this Court had in a number of cases stayed the assessment and recovery of this tax.

(10) In my opinion this contention is also without any force. If the assessee was as a matter of fact not liable to this tax at the relevant time, it would, according to me, be a sufficient cause for him not to deposit that tax. It would be immaterial if instead of saying that he was not liable to pay the said tax, he merely stated that the levy of that tax was in dispute and this Court had stayed the assessment and recovery of that tax in a number of cases.

(11) It may be mentioned that this very view was taken in three Bench decisions of this Court in *M/s. Punjab Oil Mills v. The State of Punjab*, (2), decided by Mahajan J. and myself *M/s. Guru Nanak Oil Mills v. Punjab State*, (3) decided by Mahajan and Tuli JJ. and *M/s. Bharat General Mills, Ludhiana v. State of Punjab* (4) decided by Mahajan and Tuli JJ. It may be stated that the learned counsel for the Department submitted that the effect of section 20 of Punjab Act 7 of 1967 had not been noticed in any of these rulings. It is, therefore, that this contention had to be considered in the present case.

(12) In view of what I have said above the answer to the question referred to us is in the negative, that is, in favour of the assessee. In the circumstances of this case, however, there will be no order as to costs.

GOPAL SINGH, J.—I agree.

K.S.K.

(2) C.W. No. 1566 of 1967 decided on 16th April, 1968.

(3) S.T. Ref. 1 of 1969 decided on 1st December, 1970.

(4) S.T. Ref. No. 16 of 1969 decided on 3rd December, 1970.