SALES TAX CASE

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

MESSRS CHARANJIT LAL-DES RAJ,—*Petitioner.*

versus

THE SALES TAX TRIBUNAL, UNION TERRITORY, CHANDIGARH,—*Respondent.*

Sales Tax Case No. 3 of 1972

April 23, 1973.

Punjab General Sales Tax Act (XLVI of 1948)—Section 22(1)—Word "tax" used therein—Whether includes "penalty"—Order of imposition of penalty—Question of law arising therefrom—Whether can be referred to the High Court under section 22(1).

Held, that "penalty" has a direct connection with the sales tax to which a dealer is assessed. The quantum of penalty has also a relation with the tax assessed or evaded. After the penalty is imposed, it takes the form of additional tax, which becomes recoverable from the dealer in the same manner as the tax assessed. Hence the word "tax" used in section 22(1) of the Punjab General Sales Tax Act, 1948, includes both tax assessed and penalty imposed and a reference on a question of law arising out of an order of the Sales-Tax Tribunal imposing penalty can be made under that section to the High Court. (Paras 2 and 5).

Petition under section 22(2)(b) and (3) of the Punjab General Sales Tax Act, 1948, praying that the Sales Tax Tribunal, Union Territory, Chandigarh be directed to state and refer the case to this Hon'ble Court for decision of the following questions of law arising out of his judgment, dated 22nd February, 1972, in appeal No. 20/1971.

(i) *Whether a registered dealer of U.T., Chandigarh, who purchases certain goods for sale from a Registered dealer of Haryana State, after issuing a declaration in form No. 'E' to the said Haryana Registered dealer, prescribed by the Haryana State Government,*—vide *its notification No. S.O. 41/C.A. 74/56/S-8/67, dated the 2nd May, 1967, commits any offence, under the Central Sales Tax Act, 1956 or the rules made thereunder of the notifications issued thereunder, when he transfers the said goods for sale due to certain reasons, to his branch office or head office in Punjab State or in any other State of the Union of India;*

(ii) *Whether the above-said Haryana State Government's notification prescribes any penalty whatsoever for the breach of the conditions laid down in the said notification, by the purchasing dealer of Chandigarh (U.T.);*

(iii) *Whether the breach of the conditions of the above-said Haryana State Government's notification, is covered under section 10(d) of the Central Sales Tax Act, 1956, for which penalty can be imposed upon the purchasing dealers of U.T., Chandigarh, under section 10-A of the said Act;*

(iv) *Whether the Assessing Authority (Sales Tax), U.T., Chandigarh, has jurisdiction to impose any penalty under section 10-A of the said Act on a Registered Dealer of U.T., Chandigarh, who has committed a breach of the conditions of the said notification issued by the Haryana State Government;*

(v) *Whether the applicant is a dealer in the said goods, so far as the U.T., Chandigarh is concerned, which he purchased from a Registered Dealer of Haryana State on 'E' form, and transferred the same goods to his branch office or head office in a State out of the U.T., Chandigarh;*

(vi) *Whether the words 'consumption or utilization' in the said notification, do include transfer of goods for sale by a registered dealer to his head office or branch office in a State out of U.T., Chandigarh;*

(vii) *That when the applicant transferred the said goods due to certain reasons, for sale to his head office or branch office out of U.T., Chandigarh; whether it can be held that he put the said goods to a different use other than the use for which the said goods were intended by him, at the time of purchase, of the same;*

(viii) *Whether the Haryana State Government, has any power under section 8(5) of the Central Sales Tax Act, 1956 to impose any condition for purchase of sale or transfer of goods from branch office to head office or from branch office to another branch office in different States, in the course of inter-state trade or commerce;*

(ix) *Whether 'E' form prescribed by the above-said Haryana State Governmnent's notification, is a substitute of 'C' form for making tax free purchases by Registered Dealers of different States, prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957. If the 'E' form is substitute of 'C' form, whether the goods purchased*

on the basis of 'C' form can be transferred to a branch office by another branch office or head office; situated in different States. In case they can transfer, whether penalty under section 10(d) read with section 10-A, can be imposed upon them for such transfer of goods;

(x) *Whether the branch office in U.T., Chandigarh can sell certain goods to his head office or branch office in another State. Whether such transaction can amount to a sale in the normal course of trade and commerce.*

(xi) *Whether the application filed before the Sales Tax Tribunal was incompetent and as to whether the expression "Tax" includes penalty.*

R. N. Narula, Advocate, *for the petitioner.*

Anand Saroop, Advocate, with M. L. Puri, Advocate, *for the respondents.*

JUDGMENT

Judgment of the Court was delivered by:—

TULI, J.—The petitioner is a firm dealing in kerosene oil and lubricants. It is registered as a dealer under the Punjab General Sales Tax Act (hereinafter called the Punjab Act) and the Central Sales Tax Act. For the years 1967-68, the Assessing Authority finalised the assessment by order, dated July 20, 1971, both under the Punjab Act and the Central Act. It was held by the Assessing Authority that the petitioner-firm had misused its certificate of registration inasmuch as goods were purchased from registered dealers of Haryana after issuing 'E' Form for consumption and utilisation in the Union Territory of Chandigarh, but instead thereof, the goods were sent to its branches at Khanna and Doraha in the State of Punjab and penalty of Rs. 7,500 was imposed. Against that order, the petitioner filed an appeal before the Deputy Excise and Taxation Commissioner which was dismissed on October 23, 1971. Further appeal to the Sales Tax Tribunal, Chandigarh, was also dismissed by order, dated February 22, 1972. The petitioner then made an application under section 22(1) of the Punjab Act for referring ten questions of law alleged to arise out of the order of the Tribunal. That application was dismissed by the Sales Tax Tribunal on June 27, 1972, on the ground that penalty was not included in the expression "tax" used in section 22 and hence the application was not competent. Feeling aggrieved the petitioner has filed the

present petition under section 22(2)(b) and (3) of the Punjab Act for a direction to the Sales Tax Tribunal to state the case and refer the questions of law mentioned in the application to this court for decision.

(2) Section 22(1) of the Act reads as under:—

> "Within 60 days from the passing of an order under section 20 or 21 by the Tribunal, affecting any liability of any dealer to pay tax under this Act, such dealer or the Commissioner may, by application in writing accompanied by a fee or one hundred rupees in case the application is made by a dealer, require the Tribunal to refer to the High Court any question of law arising out of such order."

The question that falls for determination in this case is whether the word "tax" used in this sub-section includes penalty. Penalty under this Act is imposed if the assessee commits any of the following defaults:—

(1) Non-filing of the return of turnover within the prescribed time.

(2) Non-deposit of advance tax with the filing of the return or otherwise.

(3) Non-payment of the tax after assessment.

(4) Misuse of the Registration Certificate.

It is thus evident that penalty has a direct connection with the sales tax to which a dealer is assessed and the quantum of penalty has also a relation with the tax assessed or evaded. After the penalty is imposed, it takes the form of additional tax which is recoverable from the dealer in the same manner as the tax assessed. In *C. A. Abraham* v. *Income-tax Officer, Kottayam and another* (1), the question for determination before the Supreme Court was whether the provisions of Chapter IV of the Income-tax Act, 1922, were applicable to the assessment of penalty which was imposable under section 28 of the said Act. It was held:—

> "The expression "assessment" used in these sections is not used merely in the sense of computation of income and there is in our judgment no ground for holding that when by section 44, it is declared that the partners or members of

(1) A.I.R. 1961 S.C. 609.

> the association shall be jointly and severally liable to assessment, it is only intended to declare the liability to computation of income under section 23 and not to the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof. Nor has the expression 'all the provisions of Chapter IV shall so far as may apply to such assessment' a restricted content: in terms it says that all the provisions of Chapter IV shall apply so far as may be to assessment of firm which have discontinued their business. By section 28 the liability to pay additional tax which is designated penalty is imposed in view of the dishonest or contumacious conduct of the assessee."

In a later case, *Commissioner of Income-tax, Andhra Pradesh* v. *M/s. Bhikaji Dadabhai and Co.* (2), their Lordships of the Supreme Court referred to the above observations in *Abraham's case* (supra) and observed as under:—

> "This court regarded penalty as an additional tax imposed upon a person in view of his dishonest or contumacious conduct. It is true that under the Hyderabad Income-tax Act, distinct provisions are made for recovery of tax due and penalty, but that in our judgment does not alter the true character of penalty imposed under the two Acts."

It is, thus, clear that penalty is an additional tax which is levied and recovered in the same manner as the original tax.

(3) The Gujarat High Court considered this matter in *Viswa and Co.* v. *The State of Gujarat* (3) and held on the interpretation of section 34(1) of the Bombay Sales Tax Act, 1953, that a question relating to the imposition of penalty under section 16(4) of the said Act could be referred to the High Court by the Tribunal under section 34(1). Section 34(1) of the Bombay Act is in identical terms as section 22(1) of the Punjab Act, and, therefore, this judgment is directly in point.

(4) The learned counsel for the respondent has, however, urged that the penalty is not included in the term "tax" and, therefore, no reference arising out of the order imposing penalty can be made to

(2) A.I.R. 1961 S.C. 1265
(3) (1966) 17 S.T.C. 581.

this Court under section 22 of the Act. Reliance is placed on a Single Bench judgment of this Court in *Maya Ram Bhatia* v. *The Deputy Excise and Taxation Commissioner* (4), wherein it was held—

> "It is thus clear that in 1964, when the petitioner filed the appeal, it was not necessary under the proviso to section 20 of the Act to pay the amount of penalty before appeal could be entertained."

In that case the final order of assessment was made on February 20, 1964 and an order imposing penalty of Rs. 25,000 was passed *ex parte* on September 15, 1964, after issuing a show-cause notice to the assessee. Against that order the assessee filed an appeal before the Deputy Excise and Taxation Commissioner who dismissed the same on February 18, 1965, on the ground that the amount of penalty imposed on the assessee had not been deposited before filing the appeal. The proviso to section 20, as in force at that time, was as follows :—

> "Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed and the penalty, if any, imposed on the dealer, has been paid."

That proviso was later on amended to read as under :—

> "No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the tax or of the penalty, if any, imposed or of both as the case may be."

It was by comparison of the language of the proviso to section 20 at different times that it was held that in 1964 the assessee was not liable to deposit the amount of penalty before filing the appeal. That judgment evidently is of no use in interpreting the word "tax" in section 22(1) of the Punjab Act. In *State of Andhra Pradesh* v. *Godavarthi Kasiviswanadham* (5), it was observed with reference to the provisions of the Andhra Pradesh General Sales Tax Act, 1957, that—

> "A clear dichotomy is kept up between tax and penalty throughout the Act. Sections 11, 14, 16, 17, 18, 21(4)(a)(i)

(4) 1969 P.L.R. 669.
(5) (1970) 25 S.T.C. 1.

and (ii) and 30(1)(a) use tax and penalty in juxtaposition and keep them distinct and separate. Imposition of tax does not always include levy of penalty. Section 14 maintains this distinction in clearer terms. In fact, this is the provision under which assessment of tax and levy of penalty are made."

At page 11 of the judgment it is observed:—

"Imposition and collection of penalty also are clearly dealt with in a number of provisions of the Act. It must necessarily be so. In a taxing statute of this nature, the Legislature must envisage and provide for cases, where the assessees attempt to contravene the provisions of the Act and to evade payment of rightful tax levied thereunder. If such contingencies are not visualised and such leaks are not plugged, no taxation law can be effectively and satisfactorily implemented. In order to satisfactorily and effectively implement their provisions, penalties are generally provided for in all taxation laws. Without such a sanction, there is the danger of evasion of tax. Thus, provision for levy and collection of penalties for contravening their requirements, has become an integral part of such enactments and one of their purposes. The argument that it does not form part of the purposes of the Act is thus a wholly untenable one."

At page 12 it is further observed—

"Any tax and/or any penalty assessed or levied under the Sales Tax Act, as payable by the deceased dealer, is payable out of the estate of the deceased dealer. Rule 23(1) clearly provides that they are to be paid only out of the estate of the deceased dealer. Such a provision appears to us to be quite reasonable also. If the deceased dealer had to pay tax and also penalty because of certain irregularities committed, his estate should not be permitted to escape from such liability. Had he been alive, they would have been collected from him and from his estate. It is unreasonable to permit the estate to escape this liability, because the dealer had died. If the tax is recoverable from his estate after his death, penalty also should equally be recoverable from it."

(5) It is, thus, clear that the penalty imposed becomes a part of the tax assessed and is recoverable in the same manner as the tax.

It is, therefore, reasonable to infer that the Legislature intended to allow a reference to be made to this Court of a question of law arising out of the order of Sales Tax Tribunal imposing a penalty on a dealer. If such a reference is not allowed, anomalous situation may arise in some cases. Supposing a dealer has been assessed to tax as well as to penalty and a reference is allowed on a question of law arising out of the order of the Sales Tax Tribunal in the case of the assessment of tax and that question is decided in favour of the dealer and it is held that the tax assessed was illegal or unjust. If no reference is allowed against the order imposing penalty and the penalty is recovered, there is no method by which the dealer can recover the amount of penalty illegally recovered by the Government from him. It will be only on a reference made to this Court that the non-liability of the dealer to pay penalty will also be adjudged on the ground that the tax assessed was not legal and so no penalty could be imposed on account of the non-payment of that tax. We, therefore, hold that the word "tax" used in section 22(1) of the Punjab Act includes both tax assessed and penalty imposed and a reference on a question of law arising out of the order of the Sales Tax Tribunal imposing penalty can be made under that section to this Court.

(6) This petition is, therefore, allowed and the Sales Tax Tribunal, Chandigarh, is directed to decide the application of the petitioner under section 22(1) of the Punjab Act made to it on merits and if any question or questions of law is/are found to arise out of its order, that question or those questions may be referred to this Court after drawing up a proper statement of the case. Since the matter was not free from difficulty, the parties are left to bear their own costs.

B. S. G.

APPELLATE CIVIL

Before A. D. Koshal, J.

CHHANKA RAM,—*Appellant.*

versus

REHMAN, ETC.,—*Respondents.*

Regular Second Appeal No. 1200 *of* 1968

April 24, 1973.

Transfer of Property Act (IV of 1882)—*Section* 53-*A—Agreement to sell property in favour of the tenant in possession—Continuance of tenancy not envisaged therein—Transferee—Whether holds the*