Before S. S. Sandhawalia, C.J. and S. C. Mital, J.

SURJA RAM COTTON GINNING AND PRESSING FACTORY—*Petitioner*

versus

STATE OF HARYANA and another—*Respondents.*

Civil Writ Petition No. 2738 *of* 1976.

August 14, 1978.

Haryana General Sales Tax Act (20 of 1973)—*Sections* 25, 46, 47, 51 *and* 65—*Constitution of India* 1950—*Article* 20—*Punjab General Clauses Act* (1 of 1898)—*Section* 22—*Discretion vested in Commissioner to determine quantum of penalty under section* 46—*Whether unguided and unconstitutional*—*Sections* 25(5), 46, 47 *and* 51—*Whether operate in different fields*—*Failure to file returns*—*Whether constitutes a criminal offence and violates Article* 20—*Return to be submitted in the form prescribed by rules*—*Rules not framed under the Act for considerable time*—*Rules under the previous law*—*Whether deemed to have been framed under the Act.*

Held, that by virtue of section 46 of the Haryana General Sales Tax Act, 1973, the Legislature has itself prescribed the minimum and the maximum quantum of penalty of Rs. 5 and Rs. 10 respectively and this cannot be said to be a yawning gap and indeed is a narrow enough limit in itself. This apart, a provision regarding the imposition of penalty, cannot be so cut and dried as to rule out all discretion in the authority vested with the power to do so for meeting a wide variety of situations which must inevitably arise. Moreover, section 46 in itself prescribes a variety of safeguards and it expressly lays down that the penalty is to be imposed only if the default has been made without sufficient cause. Further it conforms with the requirements of natural justice by providing that the delinquent dealer must be given reasonable opportunity of being heard and it is thereafter only that the penalty within the narrow range prescribed by the legislature has been left to the discretion of the Commissioner or his delegate. The discretion herein has been vested by the Legislature in no ministerial or common place officer but in the Commissioner himself or a person appointed to assist him. It is obvious that the Commissioner under the Act is a high ranking authority and where discretion has been vested in the Government itself or its high ranking officials that by itself would be a material factor for upholding the constitutionality of a provision.

(Paras 6 to 8).

Held, that failure to deposit the tax and the default in the submission of returns are not identical things. One can happen in the absence of the other. Whilst the tax may be deposited under section 25(3) of the Act and a default in the filing of the returns may occur or vice versa where only there may be a submission of the tax return without complying with the requirements of the deposit of the tax. Therefore, sub-section (5) of section 25 of the Act is attracted only in the case of failure to pay the tax due and has no relevance in the context of a failure to submit the returns. Provisions of section 47 of the Act, however, are of an entirely different nature and operate in an altogether different field. The imposition of penalty thereunder on the failure to pay the tax due is neither automatic nor inevitable. Herein the Commissioner is vested with the discretion to levy the penalty and it is plain that the exercise of the power is in any case quasi-judicial in nature. The section in terms provides for affording to the dealer a reasonable opportunity of being heard before any orders adverse to his interest are passed. The penalty provisions are obviously discretionary and would clearly be imposed only for good and sufficient cause after complying with the principles of natural justice. Again, a reference to the plain language of section 51 of the Act would show that it only authorises the imposition of penalty in those cases where no other penalty is provided under this Act for such contravention or failure. That being so, when sections 25 and 46 themselves expressly deal with the situation of a failure to submit returns of tax etc. then section 51 cannot possibly be attracted to such a situation. (Paras 11, 12 and 14).

Held, that the default under sections 25 and 46 of the Act is not an offence and there does not appear any reason to say that the statute attaches any criminality, as well in terms to a failure to file tax returns as prescribed. That being so, Article 20 of the Constitution of India 1950 is not at all attracted and there is no question of double jeopardy which clearly arises in the context of criminal offences. (Para 13).

Held, that a plain reading of section 65 of the Act and section 22 of the Punjab General Clauses Act, 1898 would show that the Punjab General Sales Tax Act 1948 which was then applicable in Haryana was repealed and by virtue of the latter provision the rules framed thereunder would continue to be in force and would be deemed to have been made or issued under the Act. Thus during the period when the rules under the Act had not been framed, the mode and manner of the filing of the returns under section 25 of the Act remained adequately governed by the relevant provisions in the Punjab General Sales Tax Rules. (Para 15).

Amended Petition under Articles 226 *and* 227 *of the Constitution of India praying that* :

(a) *that Sections 46, 47 and 25 may be declared to be invalid and unconstitutional;*

(b) *Annexure "P-1" may be quashed by issuance of a writ of* certiorari;

(c) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, may be issued;*

(d) *that the costs of the petition also be awarded to the petitioner and further praying that the demand created by respondent No. 2 by passing order Annexure "P-1" and the recovery proceedings started thereon may kindly be stayed pending the decision of the writ petition.*

R. C. Dogra, Advocate, *for the Petitioner.*

S. C. Mohunta, A. G., *for the Respondents.*

S. S. Sandhawalia, C.J.

1. The constitutionality of section 46 of the Haryana General Sales Tax Act 1973 is the only question that has been agitated in this writ petition. At the very outset, however, it deserves recalling that a fragmentary challenge to the vires of sections 25 and 47 of the Act was also sought to be raised in the writ petition itself but at the stage of the arguments Mr. R. C. Dogra frankly conceded his inability to assail these provisions at all and in terms sought to confine his arguments against the constitutionality of section 46 only.

2. The facts, therefore, deserve recapitulation in the aforesaid context only. The petitioner-firm is admittedly a registered dealer under the Haryana General Sales Tax Act, 1973 (hereinafter called the Act) and it is not in dispute that for the material period of the quarters ending 31st of December, 1973 and 31st of March, 1974 respectively no returns as prescribed under the Act were filed on their behalf. Also the returns for the quarters ending the 30th of June, 1973 and the 30th of September, 1973 were filed late. Consequently show-cause notices under section 46 of the Act were served upon the petitioner-firm. In compliance therewith the Manager of the firm appeared and represented its case. However, the Assessing Authority, Sirsa by its order dated the 5th of April, 1976,—*vide* annexure P.1 imposed a penalty of Rs. 10,000 upon the petitioner-firm.

3. It is not in dispute that the aforesaid order of the Assessing Authority is appealable though the petitioner-firm did not apparently resort to that remedy. Mr. Dogra, however, frankly conceded that so far as this writ petition is concerned the matter is confined purely to the legal issue of the vires of section 46 of the Act. For facility of reference, therefore, this has first to be set down:—

> "S.46. If a dealer fails, without sufficient cause, to comply with the requirements of the provisions of sub-section (2) of section 25, 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 calculated at a rate which shall not be less than five rupees or more than ten rupees for every day during which the default continues."

In view of the reference to the provisions of section 25 herein above, it becomes equally necessary to reproduce the provisions of section 25:—

> "25(1) Tax payable under this Act, shall be paid in the manner hereinafter provided at such intervals, as may be prescribed.
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> (2) Such dealer 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.
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> (3) Before any registered dealer furnishes the returns required by sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India or the State 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.
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> (4) If any dealer discovers any omission or other error in any return furnished by him, he may at any time before the date prescribed for the furnishing of the next return by

him furnish a revised return, and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment in the manner provided in sub-section (3) of the extra amount.

(5) If any dealer fails to pay the tax due as required by sub-section (3), he shall be liable to pay in addition to the tax due simple interest on the amount due at one per centum per month from the date commencing with the date following the last date for the submission of the return under sub-section (2) for a period of one month and at one and a half per centum per month thereafter during the period he continues to make default in the payment :

Provided that for the purpose of calculation of the interest, any part of the month shall be deemed as one month and any part of one hundred rupees shall be deemed to be one hundred rupees."

4. A combined reading of the provisions of sections 25 and 46 of the Haryana General Sales Tax Act would broadly indicate the scheme laid out in the statute with regard to the submission of sales-tax returns and the payment of tax thereunder. The manner and the period of time at which it is to be done is to be prescribed by the rules made under the Act by virtue of section 2(i). It is not in dispute that the Haryana General Sales Tax Rules 1975 have been duly framed under the Act. The registered dealers are then enjoined by sub-section (3) of section 25 to deposit the tax due in the prescribed manner in the Government Treasury or the Reserve Bank of India or the State Bank of India and obtain a receipt, therefor from such Treasury or Bank. A reference to section 25(2) would then show that every registered dealer is bound to furnish the sales-tax returns by such dates and to such authority as may be prescribed and along therewith he must attach the receipt for the amount of tax deposited. No detailed reference is necessary to sub-section (4) of section 25 which pertains to the filing of the revised returns which may become necessary on the discovery of any omission or error in an earlier return. The material provision herein then is sub-section (5) which penalises the failure to pay the tax as required by the further condition that such default would involve the payment of simple interest therefor at the rates specified. As is plain section 46

then separately provides the penalties for a failure to furnish the prescribed tax returns.

5. In the context of the aforesaid scheme of the submission of returns and the payment of tax the core of the argument of Mr. Dogra whilst challenging the constitutionality of section 46 is that the legislature has vested an unguided discretion in the Commissioner or his delegate to impose any penalty ranging from Rs. 5 to Rs. 10 for every day during which the default or failure to file returns continues. With some vehemence it was contended that no guidelines have been prescribed by the legislature itself and it has been left to what the counsel called as the whim of the Commissioner or his delegate to either impose the minimum penalty of Rs. 5 or the maximum penalty of Rs. 10 per day.

6. To my mind it seems plain that the argument aforesaid is rather misconceived. What is manifest herein is the fact that the legislature has itself prescribed the minimum and the maximum amounts of Rs. 5 and Rs. 10 respectively. This cannot be said to be a yawning gap and indeed is a narrow enough limit in itself. This apart, I am unable to see how a provision regarding the imposition of penalty can be so cut and dried as to rule out all discretion in the authority vested with the power to do so for meeting a wide variety of situations which must inevitably arise. These may range from a wilful and desinged default to file the returns with the express purpose of evading or concealing the tax due on the one hand, to an inadvertent, honest or an unavoidable omission to do so on the other. Amongst the wide gamut of penal provisions, I am unable to recall any which does not leave a reasonable discretion to the authority concerned for its imposition. In terms the argument on behalf of the petitioners appears to be that no discretion at all should be granted to the Commissioner with regard to the quantum of the penalty and the same should either be laid down expressly by the legislature itself or be governed by a mathematically precise formula. This is neither possible nor desirable. Learned counsel for the respondent-State on an analogy of the criminal law rightly pointed to the widest discreation vested by the Penal Code to impose punishments ranging from an infinitesimal and unspecified fine to the heaviest terms of imprisonment or of both.

7. It has then to be recalled that section 46 in itself prescribes a variety of safeguards. Expressly it lays down that penalty is to

be imposed only if the default has been made without sufficient cause. Further it conforms with the requirements of natural justice by providing that the delinquent dealer must be given reasonable opportunity of being heard and it is thereafter only that the penalty within the narrow range prescribed by the legislature has been left to the discretion of the Commissioner or his delegate.

8. It is then to be noticed that the discretion herein has been vested by the legislature in no ministerial or commonplace officer but in the Commissioner himself or a person appointed to assist him. A reference to section 3(1) would show that the State Government alone is entitled to appoint the Commissioner as also the persons to assist him. It is obvious that the Commissioner under the Act is a high ranking authority. In innumerable decisions of the final Court, it has been held that where discretion has been vested in the Government itself or its high ranking officials that by itself would be a material factor for upholding the constitutionality of a provision.

9. When pressed, learned counsel for the petitioner had to frankly concede that not a single authority was available for the novel proposition advanced by him that the mere grant of a discretion to the punishing authority even when circumscribed by the maximum or the minimum amount imposable is one which may be termed as arbitrary and hence unconstitutional. I, therefore, find no merit in the contention aforesaid raised on behalf of the petitioners either in principle or in precedent. The same has, therefore, necessarily to be rejected.

10. An equally tenuous argument then advanced on behalf of the petitioners was that the failure to file the tax returns would expose the defaulting dealer simultaneously to three hazards under sections 25 and 46 cumulatively. The violation of both Articles 14 and 20 was sought to be invoked on the aforesaid hypothetical ground. Elaborating the contention it was argued that failure to file tax returns under section 25 would inevitably lead to a failure to deposit the tax due and this would straightaway attract the provisions of section 25(5) requiring the payment of interest thereon. The same default, according to the learned counsel, would expose it to the penalty proceedings for failure to pay the tax due according to the returns under section 47 of the Act. Lastly learned counsel contended that by virtue of section 51 of the Act this default may also be termed as an offence punishable thereunder.

11. Even on a consideration of the aforesaid submissions seriatim it would be evident that these appear to be without merit both individually and collectively. What first deserves highlighting in this context is the fact that the failure to deposit tax and the default in the submission of returns are not identical things. One can easily visualise where one may happen in the absence of the other. Whilst the tax may be deposited under section 25(3) a default in the filing of the returns may occur or *vice versa* where only there may be a submission of the tax returns without complying with the requirements of the deposit of tax. Therefore the basic fallacy of the argument to treat the two as identical or co-terminus. Sub-section (5) of section 25 of the Act is attracted only in the case of a failure to pay the tax due and has no relevance in the context of a failure to submit the returns. This provision is otherwise a meritorious provision and is directed against the abuse or the temptation of the dealers to keep back the tax due as money in their hand without the payment of interest. It was the learned counsel for the petitioner's own stand that herein the legislature has not left any discretion to any authority and the payment of interest in case of default in the deposit of tax is more or less automatic.

12. Provisions of section 47 of the Act, however, are of an entirely different nature and operate in an altogether different field. The imposition of penalty thereunder on the failure to pay the tax due is neither automatic nor inevitable. Herein the Commissioner is vested with the discretion to levy the penalty and it is plain that the exercise of the power is in any case quasi-judicial in nature. The section in terms provides for affording to the dealer a reasonable opportunity of being heard before any orders adverse to his interest are passed. The quantum of the imposable penalty is itself limited and is not to exceed one and a half times of the amount of tax which may be assessed against him under law. The penalty provisions are obviously discretionary and would clearly be imposed only for good and sufficient cause after complying with the principles of natural justice. It appears indeed to be a far cry to equate the situation under section 47 with the one under section 25(5) which plainly is a commercial deterrent providing for a liability to pay interest on the tax due which has not been deposited as required under section 25(3) of the Act.

13. The apprehensions of the learned counsel for the petitioner-firm that the failure to file returns would also be a criminal offence,

again appear to be not well conceived. The learned Advocate General, Haryana, firmly took the stand that the default under section 25 or 46 was certainly not an offence and could, by no stretch of imagination, be brought within the mischief of a crime on the existing provisions. Apart from the firm stand taken by the learned counsel for the respondents, there otherwise also does not appear any reason to say that the present statute attaches any criminality as well in terms to a failure to file tax-returns as prescribed. That being so, Article 20 of the Constitution is not at all attrated and the argument of double jeopardy which clearly arises in the context of criminal offences is wholly untenable.

14. It would be equally well to dispel some misapprehensions regarding the alleged applicability of section 51 of the Act also. Counsel contended that, apart from the applicability of sections 25 and 46, the penal provisions of section 51 would also be attracted for the same default. This argument is unacceptable because reference to the plain language of section 51 would show that it only authorises the imposition of a penalty in those cases where *no other penalty is provided under this Act for such contravention or failure.* That being so, when sections 25 and 46 themselves expressly deal with the situation of a failure to submit returns of tax, etc., then section 51 cannot possibly be attracted to this situation.

15. Lastly, it was contended rather feebly that section 25 of the Act required the submission of returns as prescribed which in turn was to be governed by the rules made under this Act. It was submitted in this context that for a considerable time no rules had been framed under the Haryana General Sales Tax Act of 1973. This contention is straightaway met by the combined reading of section 65 of the Act and section 22 of the Punjab General Clauses Act, 1898. By the former provision, the Punjab General Sales Tax Act, 1948, which was then applicable in Haryana was repealed and by virtue of the latter provision the rules framed thereunder would continue in force and would be deemed to have been made or issued under this Act. Nor is it in dispute that later the Haryana General Sales Tax Rules, 1975 were enacted in November, 1975 and rule 72 thereof in terms repealed the Punjab General Sales Tax Rules, 1949, which had obviously held the field uptill then under the Act. Consequently, it is plain that the mode and manner of the filing of the returns under section 25 of the Act remained adequately governed by the relevant provisions in the Punjab General Sales Tax Rules and later by the 1975 Rules expressly framed under the Act.

16. The writ petition being without merit is hereby dismissed with costs. This, however, would not preclude the petitioner-firm from pursuing its ordinary remedy by way of appeal if now available to it by virtue of section 58 of the Constitution (42nd Amendment) Act, 1976 against the impugned orders of the Assessing Authority.

S. C. Mital, J.—I agree

H.S.B.

Before S. S. Sandhawalia, C.J. and S. S. Dewan, J.

SRI CHAND and others—*Petitioners.*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ Petition No. 3365 *of* 1977.

August 18, 1978.

Haryana Ceiling on Land Holdings Act (26 of 1972) *as amended by Haryana Ceiling on Land Holdings (Amendment) Acts* (40 of 1976 *and* 18 of 1978)—*Section* 18(7), (8) *and* (9)—*Whether unconstitutional—Right of appeal conferred by the statute—Whether can be restricted by imposing conditions for its exercise—Failure to vest discretion in an authority to relax conditions in certain cases—Whether makes the conditions unreasonable.*

Held, that the right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the Constitution which may even remotely vest any such inalienable right in the citizens. That being so, it is evident that there is no inherent claim or right to appeal from an original forum. It is plain that the creator who confers such rights, namely, the legislature, can equally take the same away. It inevitably follows that if the whole right thus can be taken away it can equally be impaired, regulated or burdened with conditions onerous or otherwise. Thus the legislature is perfectly within its right to regulate the right of appeal conferred by it by imposing conditions or restrictions on its exercise. The Haryana Legislature has, therefore, in no way transgressed the limits of its authority by the insertion of sub-clauses (7), (8) and (9) of Section 18 of the Haryana Ceiling on Land Holdings Act, 1972.

(Paras 7 and 9).