(2009) 02 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 6842 of 2007

Agrevo India Ltd. (Bayer Crops Science Ltd.) APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 41, 41(3), 41B, 44

Citation : (2009) 02 GUJ CK 0095

Hon'ble Judges : S.R. Brahmbhatt, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Tanvish Bhatt, for Wadia Ghandy and Co, for the Appellant; Dushyant Kumar, Ld. AGP for Respondents 1 - 2, for the Respondent

Judgement

D.A. Mehta, J.—Having heard the learned advocates appearing for the respective parties, the matter is taken up for final hearing and disposal today. Rule. Learned AGP is directed to waive service.

2. In case of the petitioner, regular assessment u/s 41(3) of the Gujarat Sales Tax Act, 1969 read with Central Sales Tax Act, 1956 were framed for 1998-1999 and 1999-2000. Respondent No. 2 authority issued notices for the purpose of reassessment on 18/3/2006. The said notices have been challenged in the present petition. According to the petitioner, the impugned notices are barred by limitation as provided in Section 44 of the Gujarat Sales Tax Act, 1969 (Gujarat Act). Though various other submissions are made on merits, it is not necessary to record & deal with the said submissions as the petitioner is to succeed on the ground of limitation only.

3. Provisions of Section 44 of the Gujarat Act permit the Commissioner to reopen any completed assessment, if the Commissioner has reason to believe that any sales etc., has escaped assessment, or has been under-assessed, or assessed at a lower rate in an order of assessment framed u/s 41 of the said Act. Under Clause (a) of Section 44 of the Gujarat Act, period of eight years from the end of the period to which the turnover relates is available to the Commissioner, where

the Commissioner has reason to believe that the dealer has concealed the sales, or any material particulars relating to the sales, or has knowingly furnished incorrect declaration or returns. In all other cases, the period of limitation is five years from the end of the period to which such turnover relates.

4. The case of the petitioner is that the period of five years for the two periods under consideration, namely, 1998-1999 and 1999-2000 has expired respectively on 31/3/2004 and 31/3/2005. If the Commissioner wants to invoke provisions of Section 44(a) of the Act, it is for the Commissioner to establish any concealment etc., as provided in the said provision. That the Commissioner has not been able to establish the same and hence, the petitioner must succeed.

5. On behalf of respondent authority, learned AGP has invited attention to the affidavit-in-reply dated 21/4/2007, where-under emphasis was laid on the averments made in Paragraph Nos. 3, 7 and 8 to submit that the petitioner has already been re-assessed by virtue of order dated 19/3/2007 framed u/s 44 of the Act, and therefore, the petitioner has an alternative statutory remedy of appeal and the Court should not interfere. It was further submitted that, during course of search carried out in the premises of the petitioner on 6/5/1999, certain records were seized which clearly indicate that some of the transactions shown to be Branch Transfers were infact inter-state sales and were therefore liable to be taxed accordingly. Therefore, in view of peculiar facts & circumstances of the case, pre-determined inter-State sales were wrongly allowed as transactions of Branch Transfers.

6. The stand of the respondent authority does not merit acceptance. Admittedly after the search proceedings on 6/5/1999, when alleged transactions are said to have been discovered, a provisional assessment was framed on 28/9/1999 u/s 41B of the Act, where the said transactions were brought to tax by treating the same as inter-state sales. Subsequently, when regular assessment was framed on 30/10/2002, u/s 41(3) of the Act, the very same transactions were allowed as Branch Transfers. Thus, it cannot be stated that the respondent authority did not have any material with it, and the petitioner had suppressed any material on the basis of which respondent authority was misled to frame the original assessment.

7. In fact in paragraph No. 8 of the affidavit-in-reply, following averments itself indicate that completed assessment has been re-opened not on basis of any concealment or furnishing of any incorrect particulars, but on account of an incorrect decision by respondent authority.

...However, when subsequently regular assessment was carried out, an order under the Provision of Section 41(3) of the Act was passed on 30.10.02 whereby those transactions were allowed as that of Branch Transfer. Order hereto annexed as Annexure-''C''. It is submitted that in view of the peculiar facts and circumstance of the case stated herein above, it is amply clear that the dealer''s (petitioner) pre-determined inter state sales were wrongly allowed as the Branch Transfer transaction in order dated 30.10.02.

8. In the aforesaid set of facts & circumstances of the case, it was open to the respondent authority to exercise powers u/s 44 of the Act on/or before 31/3/2004 and 31/3/2005 respectively for the two periods under consideration. Having failed to do so, respondent authority cannot be permitted to avail of the larger period of limitation of eight years in absence of any fact or material indicating that there was any concealment or furnishing of inaccurate material particulars by the dealer knowingly.

9. In the circumstances, the petition is allowed on the limited count of the impugned notices dated 8/3/2006, for the two periods under consideration, having been issued beyond the period of limitation under provisions of Section 44 of the Act. The said two notices are hereby quashed and set aside. Rule made absolute. There shall be no order as to costs.