(2004) 05 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12574 of 2002

Emkay Industries — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 04-05-2004

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 11

Citation : (2005) 139 STC 57

Hon'ble Judges : N.K. Sud, J;Hemant Gupta, J

Bench : Division Bench

Advocate : G.R. Sethi, Suvir Sehgal and J.S. Virdi, for the Appellant; Salil Sagar, Additional Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner has sought a writ in the nature of certiorari for quashing of notice dated July 4, 2002 calling upon the petitioner to appear before the assessing officer pertaining to assessment year 1997-98.

2. The petitioner-firm is registered as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter to be referred as "the Act") and is engaged in the manufacture and production of copper wire for sale. The petitioner-firm filed quarterly returns for financial year 1997-98 for all the quarters. The last date for filing the returns for the assessment year 1997-98 was April 30, 1998. The returns were filed before the said date. The assessing authority initiated proceedings for assessment under the Act for the assessment year 1997-98 with the issuance of notice dated September 4, 1998. The said proceedings were not completed and again the petitioner was called upon vide notice dated July 4, 2002 to appear before the assessing authority along with relevant account books, etc. for the said assessment year.

3. The petitioner-firm has challenged the said notice on the ground that by virtue of the Punjab General Sales Tax (Amendment) Ordinance, 1998 (Punjab

Ordinance No. 1 of 1998) followed by the Punjab General Sales Tax (Amendment) Act, 1998 (Punjab Act No. 12 of 1998) (hereinafter referred to as "the Amending Act") the Assessing Authority was to finalise the assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period. The last return for the year 1997-98 was required to be filed on or before April 30, 1998, therefore, the period prescribed for finalising the assessment has come to an end on April 30, 2001 and, therefore, the Assessing Authority could not issue notice for finalising the assessment in respect of the assessment year 1997-98.

4. Vide Amending Act, Section 11 of the Act was substituted with the following clause :

"(i) in Sub-section (1), for the words ''he shall assess the amount of tax due from the dealer on the basis of such returns'' the words ''he shall pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnishing the last return in respect of such period''."

5. The Ordinance was promulgated on March 3, 1998 whereas the Amending Act received the assent of the Governor of Punjab on April 15, 1998.

6. The respondent-State in its reply stated that notification dated April 15, 1998 would not be applicable to the assessment years prior to the date of issue of the notification as it would result into anomalous situation. It was stated that the amending Section 11 of the Act is prospective and not retrospective and, therefore, the proceedings for finalisation of assessment is within the jurisdiction of the Assessing Authority.

7. Learned counsel for the petitioner has relied upon recent decision of the division Bench of this Court in Oswal Agro Mills Ltd. v. State of Punjab (Civil Writ Petition No. 12974 of 2003, decided on 22-03-2004 Reported in [2005] 139 STC 51 SC).

8. Whether the amendment carried out by the amending Act creates substantive right in favour of the assessee for completion of assessment within the period prescribed and whether such substantive right would be applicable in respect of assessment year 1997-98 is a question which arises for determination before this Court.

9. We have heard learned counsel for the parties and we find that notice dated July 4, 2002 served upon the petitioner-firm for finalisation of assessment proceedings pertaining to assessment year 1997-98 is without jurisdiction and not sustainable in law. By virtue of Ordinance promulgated on March 3, 1998, Section 11 of the Act was substituted. The substituted provision prescribes a time-limit for the Assessing Authority to pass an order of assessment. Such Ordinance was followed by Punjab Act No. 12 of 1998 which received the assent of the Governor of Punjab on April 15, 1998. The Ordinance was promulgated before the return for the last quarter of assessment year 1997-98 was required

to be filed on or before April 30, 1998. Such return was filed before the said date. A division Bench of this Court in Civil Writ Petition No. 17178 of 2003 titled Khazan Chand Nathi Ram v. State of Haryana decided on March 22, 2004, Reported in Khazan Chand Nathi Ram Vs. State of Haryana and Others, has held that the amended provision of law as it existed on the date of filing of return or the date on which return is required to be filed would be applicable. It was held to the following effect:

"Section 4 of the Punjab General Clauses Act, 1898 (as applicable to the State of Haryana) is the relevant provision of law in such a situation where the subsequent Act while repealing the old Act has not provided for any retrospective operation of the new Act either expressly or by implication. Section 4 of the Punjab General Clauses Act contemplates that in the absence of any contrary intention expressly or impliedly, any right, privilege, liability or obligation under the old law will continue to be governed under the old law. The assessee has a right to file appeal under the HGST Act with a liability or obligation to pre-deposit the amount of tax, interest and penalty. Such obligation or liability confers a right in favour of the State to insist upon pre-deposit of tax, interest or penalty. From the judgments of the honourable Supreme Court in Hoosein Kasam Dada''s [1953] 4 STC 114 SC and Garikapatti Veeraya Vs. N. Subbiah Choudhury, it is apparent that the right of appeal is a vested right and accrues to the litigant and exists as on and from the date the lis commences. Such right is actually exercised when the adverse judgment is pronounced. Such right is to be governed by the law prevailing on the date of the institution of the suit or proceeding and not by the law that prevails on the date of its decision or at the date of the filing of the appeal.

In civil proceedings, lis commences on the presentation of the plaint or in cases claiming compensation under the Motor Vehicle Act on filing claim application. The question is when lis can be said to commence under the taxation laws. Section 25 of the HGST Act enjoins a duty upon an assessee to file quarterly return and deposit tax thereon. If such returns are accepted, there is no Us. Consequently, there would be no occasion for the parities to file an appeal. However, if such returns are not accepted, the cause of action will arise on the date when returns are required to be filed. The cause of action can be said to be arisen also when an assessee is called upon to furnish return on his failure to do so in terms of the provisions of the old Act. In fact, that is the relevant date as in Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur, .

In view of the above discussion, we hold that right of appeal is a vested right as if exists on the date of commencement of lis. The lis can be said to commence under the HGST Act on the date when return is filed or is required to be filed. Therefore, the provisions of Section 39(5) of the HGST Act would continue to govern the right of appeal vested in the petitioner which is saved in terms of Section 4 of the Punjab General Clauses Act, 1898 (as applicable to State of Haryana)."

10. The said view was applied in respect of amendment made by the State of Punjab in Oswal Agro Mills Ltd. Vs. State of Punjab and Others, as well.

11. The substituted Section 11 created a substantive right in favour of an assessee to get his assessment finalised within the time prescribed. Therefore, keeping in view the above principles laid down, the provisions of the amending Act would be applicable to the proceedings pertaining to the assessment year 1997-98 as the last date prescribed for the last return was after the promulgation of the Ordinance.

12. Consequently, we find that notice dated July 4, 2002, annexure P-2, could not be issued by the Assessing Authority for the purpose of completion of assessment after the expiry of period of three years from April 30, 1998. Accordingly, writ petition is allowed and notice dated July 4, 2002, annexure P2, is hereby quashed with no orders as to costs.

