(2011) 07 P&H CK 0197

In the Punjab And Haryana At Chandigarh

Case No : Punjab VAT Revision No''s. 2-4 of 2011

Excise and Taxation Commissioner and Another — APPELLANT

Vs

K.K.K. Mills — RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 21, 9
Punjab General Sales Tax Act, 1948 — Section 11, 11(3), 21
Punjab Value Added Tax Act, 2005 — Section 11(3), 21, 68(1)

Citation : (2012) 47 VST 31

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Piyush Kant Jain, A.A.G., Punjab, for the Appellant;

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of Punjab VAT Revision Nos. 2 to 4 of 2011 as common questions are involved therein. For brevity, the facts are being taken from VAT Revision No. 2 of 2011. This revision has been preferred by the State of Punjab u/s 68(1) of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated July 16, 2010 passed by the VAT Tribunal, Punjab (hereinafter referred to as "the Tribunal") for the assessment year 2001-02, claiming the following substantial questions of law :

(i) Whether the learned Tribunal has erred in law in holding that the revisional proceedings which were initiated within 2 years from the assessment order dated April 9, 2007 and concluded within three years from the said assessment order, was time-barred ?

(ii) Whether the learned Tribunal has erred in law in holding that the original assessment order passed on April 9, 2007 was time-barred u/s 11(3) of the PGST Act, when no objection was taken by the respondent at the time the same was passed and the respondent has accepted the same ?

(iii) Whether the respondent could take up the plea of time-barring against the assessment order dated April 9, 2007 (annexure P2), during the revisional proceedings taken u/s 21 of the PGST Act for the purpose of correcting the impropriety of the assessment order in so far as the levy of CST at two per cent on the inter-State sales made by the respondent to the Government Department against D forms and not against C forms ?

(iv) Whether the respondents were entitled to avail of the reduced CST at two per cent on the sale of yarn, which was made by them against D forms to Government Departments by taking recourse to notification dated July 13, 2001 in which the said concession was available only if declaration in form C were submitted as specified in the Central Sales Tax (Registration and Turnover) Rules, 1957 at the time of assessment ?

Put shortly, the facts necessary for adjudication as narrated in the revision are that the original assessment of the assessee was framed by the assessing authority, Ludhiana vide order dated April 9, 2007 u/s 9 of the Central Sales Tax Act, 1956 (in short, "the CST Act") read with section 11 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as, "PGST Act") showing a demand of Rs. 185. The revisional authority exercising suo motu powers u/s 21 of the PGST Act, initiated proceedings holding that in the assessment order dated April 9, 2007 inter-State sales amounting to Rs. 1,33,91,184 of yam, made to Government Departments against D forms were taxed at the rate of two per cent as Central sales tax instead of four per cent. The said revisional proceedings were contested by the assessee pleading that the original assessment was time-barred and that under the notification dated July 13, 2001, sales made to Government Departments were also included and reduced rate of tax at the rate of two per cent was applicable. The revisional authority rejected the pleas of the assessee holding that the assessee had not raised the objection regarding limitation while framing of original assessment and passing of order dated April 9, 2007. It was further held that the notification dated July 13, 2001 applied only to the sales of yarn against form C and not for sale in any other manner. Accordingly, the revisional authority revised the assessment u/s 21 of the CST Act at the rate of four per cent in respect of the sale made by the assessee against D form instead of at two per cent and passed the revised assessment order dated November 23, 2009 raising a demand of Rs. 2,46,338. Feeling aggrieved, the assessee preferred revision before the Tribunal. The Tribunal vide order dated July 16, 2010 set aside the order dated November 23, 2009 holding that the original assessment order was time-barred. According to the Tribunal, the assessment should have been framed within three years, i.e., on or before April 30, 2005, as the last date for filing the return for the relevant assessment year 2001-02 was April 30, 2002 whereas the assessment had been framed on April 9, 2007. Hence, the present revision petition by the State of Punjab.

3. We have heard learned State counsel for the petitioners.

4. According to section 11(3) of the PGST Act, the assessing authority is required to pass an assessment order within a period of three years from the last date

prescribed for furnishing the last return in respect of any period. In the facts of the present case the last date for filing of return for the assessment year 2001-02 was April 30, 2002 and the assessment could be framed up to April 30, 2005. It is not disputed that the assessing authority framed the assessment on April 9, 2007 which was beyond the period of limitation. Once that was so, the assessment order was void and without jurisdiction. The recourse to revisional proceedings by the Excise and Taxation Commissioner after the expiry of more than five years which were initiated on September 8, 2008 was, thus, bad. The decision of the Tribunal is in consonance with the provisions of the statute.

5. The learned counsel for the petitioners was unable to pin point any error or perversity in the order impugned herein which may warrant interference by this court. In view of the above, no substantial question of law arises in these revisions and, therefore, the same stand dismissed.