(2014) 01 P&H CK 0274

In the Punjab And Haryana At Chandigarh

Case No : Vatap No. 152 of 2013 (O&M)

Excise and Taxation Commissioner — APPELLANT

Vs

Morinda Cooperative Sugar Mills Ltd. — RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 11, 11(4)
Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2014) 45 GST 110 : (2014) 76 VST 316

Hon'ble Judges : Anita Chaudhary, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : G.R. Sethi and Varun Chadha, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the revenue u/s 68(2) of the Punjab VAT Act, 2005 (in short, "the Act") against the order dated 1.3.2013, Annexure A.1 passed by the VAT Tribunal, Punjab, (in short, "the Tribunal") for the assessment year 1998-99, claiming following substantial questions of law:--

(i) Whether the learned VAT Tribunal was justified in applying the ratio of the judgment Emkay Industries Vs. State of Punjab and Others, , when the facts in that case and facts of the case under appeal were distinguishable?

(ii) Whether the learned VAT Tribunal was not required to take into consideration the fact that the dealer (respondent in this case) and his counsel never objected to the notice dated 8.7.2003 and submitted to the jurisdiction of the Assessing Authority and continued to attend the proceedings and produced account books on the basis of which the final assessment order dated 22.8.2003 was passed?

Briefly, the relevant facts as narrated in the appeal are that the respondent-assessee is running a sugar mill and is engaged in the manufacture of sugar and bye-products from sugarcane. Assessment for the year 1998-99 was framed by the Assessing authority vide order dated 22.8.2003, Annexure A.3 creating an additional demand of Rs. 27,42,794/-. Not satisfied with the order, the respondent assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala (DETC) who vide order dated 27.5.2005, Annexure A.2 affirmed the order of the assessing authority. Still not satisfied, the assessee filed appeal before the Tribunal with the plea that as per provisions of section 11(4) of the Punjab General Sales Tax Act, 1948 (in short, "the 1948 Act"), the assessment was required to be completed within three years from the last date of filing of the last quarterly return of the relevant assessment year and thus the assessment for the year in question was required to be completed by 30.4.2002 whereas the assessment order had been passed on 22.8.2003 which is alleged to be barred by limitation. The Tribunal vide order dated 1.3.2013, Annexure A.1, relying on the judgment of this Court in Emkay Industries Vs. State of Punjab and Others, held that the assessment was barred by limitation and that the assessing authority did not have the jurisdiction to frame assessment. Consequently the appeal was allowed. Hence the present appeal by the revenue.

2. We have heard learned counsel for the parties and perused the record.

3. The point that arises for consideration in this appeal is whether the assessment order which was passed on 22.8.2003 u/s 11 of the 1948 Act was within limitation.

4. It was not disputed that Section 11 of the 1948 Act was amended w.e.f. 3.3.1998 by Ordinance 1 of 1998 and limitation of three years for completion of the assessment was provided therein. It was urged on behalf of the respondent-assessee that in such a situation, the assessment order could not be passed after 30.4.2002.

5. In Emkay Industries''s case (supra), the assessment year was 1997-98. The assessee had filed its return before the date prescribed i.e. 30.4.1998. A notice dated 4.9.1998 was issued for the finalisation of the return but the assessment was not finalised by the Assessing authority. On 4.7.2002 i.e. after expiry of three years, the assessee received another notice for appearance and finalisation of the assessment. The notice which was received by the assessee on 4.7.2002 was challenged before this Court wherein it was observed that when the return was filed, there was no limitation of three years for finalisation of assessment. By virtue of Ordinance dated 3.3.1998 which received the assent of the Governor of Punjab on April 15, 1998, Section 11 of the 1948 Act was amended and it provided time limit of three years for assessing authority to pass the order. The revenue insisted that the amended provisions were not applicable in the case. However, this court held that as per the amended law, limitation came to an end on 30.4.2001 whereas the notice was served on 4.7.2002. It was held that the substituted Section 11 of the 1948 Act created a substantive right in favour of an assessee to get his assessment finalised within the time prescribed. The facts of the instant case being similar to Emkay Industries''s case (supra), the assessment was required to be finalised within three years. The provisions of the

amending 1948 Act would be applicable to the proceedings pertaining to the assessment year 1998-99 as well as the last date prescribed for the filing of the returns was after the amendment of the provisions of Section 11 of the 1948 Act. In the present case, the assessment order was required to be passed by 30.4.2002, whereas the same has been passed on 22.8.2003. Thus, there can be no escape from the finding that the assessment order dated 22.8.2003 is barred by limitation. In view of the above, no substantial question of law arises in this appeal. Consequently, finding no merit in the appeal, the same is hereby dismissed.