
(2015) 04 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeal No. 4016 of 2007

Excise and Taxation Commissioner Chandigarh and Others

APPELLANT

Vs

Bharat Construction Corporation

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 33

Citation : (2015) 04 SC CK 0009

Hon'ble Judges : H.L. Dattu, C.J.I;R.K. Agrawal, J;Arun Mishra, J

Bench : Full Bench

Advocate : Anil Grover, AAG and Noopur Singhal, Advocate for Kamal Mohan Gupta, for the Appellant; Rajiv Agnihotri and Praveen Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 14932 of 2005, dated 07.03.2006.

2. The Respondent-herein is a proprietorship firm carrying on the business of building works contract. During the year 1995-1996, the Respondent was engaged in the construction of building of Army Welfare Housing Organization, Navy and other allied works. The Army Welfare Housing Organization made a payment of Rs. 7,95,83,112/- during the year 1995-1996. On the aforesaid amount, Rs. 15,91,662/- was deducted as tax at source. The Respondent filed its returns for the assessment year 1995-1996. The assessing authority not being satisfied with the returns filed by the Respondent, served several statutory notice to the Respondent but the Respondent did not appear before the assessing authority. Thereafter, the assessing authority has completed the assessment for the assessment year 1995-1996 and passed an ex-parte order dated 26.05.1999 raising an additional demand of Rs. 1,05,511/-.

3. After the receipt of the aforesaid assessment order the Respondent moved an application Under Section 33 of the Haryana General Sales Tax Act, 1973 (for short, "the Act") for rectification of the assessment order dated 26.05.1999. For one reason or the other, the said application has not been disposed of by the assessing authority within the time prescribed under the provisions of the Act. It was only in the year 2005, the Assessing Authority rejected the application for rectification of assessment order dated 26.05.1999 filed Under Section 33 of the Act on the ground that the rectification can be done only of a clerical or arithmetical mistake apparent from the records and it has to be done within two years of passing of the assessment order. Though, there was a statutory remedy available to the Respondent to challenge the order dated 02.05.2005, the Respondent did not resort to the same and thus the order passed by the assessing authority has attained finality.

4. Thereafter, the Respondent-herein has filed a Writ Petition before the High Court, inter alia, requesting the High Court to direct the Appellant(s) herein to refund the amount of Rs. 15,91,662/- (Rupees Fifteen Lakhs Ninety One Thousand Six Hundred Sixty Two Only) with statutory interest.

5. The High Court, in its judgment and order observed that the Respondent-herein had filed an application for rectification of the order of assessment passed for the assessment year 1995-1996 within the time prescribed under the Act. It was the bounden duty of the assessing authority to have considered the said application within a reasonable time and the assessing authority could not have rejected the application of the Respondent for rectification only on the ground of delay.

6. The High Court further notices that the assessment order passed by the assessing authority rejecting the application filed by the Respondent herein has attained finality. Despite the same the High Court has directed the Appellant to refund the amount of Rs. 15,91,662/- (Rupees Fifteen Lakhs Ninety One Thousand Six Hundred Sixty Two Only). In our opinion, the High Court should not have passed the order of refund as the assessment order passed by the assessing authority for the assessment year 1995-96 has attained finality. It is only when a rectification of application is considered and decided by the assessing authority then only the Respondent would be entitled for refund of the tax paid.

7. In view of the above, we cannot sustain the judgment and order passed by the High Court. Therefore, we allow this appeal and set aside the judgment and order passed by the High Court. We direct the assessing authority to consider the application filed by the Respondent dated 11.01.2000 Under Section 33 of the Act. Since the Respondent had filed the application for rectification of the assessment order within the time prescribed, we direct the assessing authority to consider that application and pass appropriate orders in accordance with law after affording opportunity of hearing to the Respondent herein.

Ordered accordingly.