

(2008) 07 P&H CK 0103
In the Punjab And Haryana At Chandigarh

Guru Nanak Dev Rice Mills	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 21

Citation : (2008) 17 VST 315

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The assessee, who was a dealer registered under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as, "the Act") and engaged in the business of rice shelling, has filed this VAT appeal against the order dated February 15, 2008 passed by the VAT Tribunal, Punjab, whereby the revision filed by the assessee under Sub-section (3) of Section 21 of the Act against the order dated August 9, 2006 passed by the Assistant Excise and Taxation Commissioner-cum-Revisional Authority, Hoshiarpur, revising the assessment of the appellant in exercise of suo motu revisional power u/s 21(1) of the Act, has been dismissed.

2. The brief facts of the case are that for assessment year 1996-97, the assessment of the assessee was framed by the Assessing Officer on March 27, 2000 and the assessee was allowed the refund of Rs. 90,702 on account of excess purchase tax deposited by him. This refund was granted to the assessee while coming to the conclusion that the assessee was not liable to pay purchase tax on the purchase of paddy out of which rice manufactured by the assessee was sent out of India.

3. After the expiry of more than six years, the revisional authority in exercise of the suo motu power contained in Sub-section (1) of Section 21 of the Act, issued notice to the assessee on March 4, 2006 for revising the order of assessment

dated March 27, 2000 on the ground that in view of the decision of this court in *Veerumal Monga and Sons v. State of Haryana* reported in [2001] 123 STC 158 : [2000] 16 PHT 304, decided on July 13, 2000, the purchase tax was leviable on the paddy purchased by the assessee, and the assessing officer while committing grave illegality had illegally ordered for refund of Rs. 90,702. The assessee objected to the re-opening of the assessment on the ground of limitation as well as on the ground that the said judgment pertains to the State of Haryana and the same is not applicable in the State of Punjab as the provisions of the Act are different.

4. The revisional authority vide its order dated August 9, 2006 passed the order while observing that in view of the decision dated July 13, 2000 rendered by this court in *Veerumal Monga's case* [2001] 123 STC 158 : [2000] 16 PHT 304, the assessee was liable to pay the purchase tax on the paddy out of which rice manufactured by the assessee was sent out of India, and raised the demand of Rs. 90,702. The said order was subsequently rectified vide order dated March 20, 2007, whereby the amount of Rs. 90,702 was reduced to Rs. 71,185.

5. Feeling aggrieved against the aforesaid order, the assessee filed a revision before the VAT Tribunal, which has been dismissed by the impugned order.

6. Before the VAT Tribunal, the assessee challenged the aforesaid impugned order on the ground that the revisional authority could not have exercised suo motu power u/s 21(1) of the Act for re-opening of the assessment after expiry of the period of six years, particularly when the reason recorded in the notice was known to the department even in the year 2000 as the decision in *Veerumal Monga's case* [2001] 12b STC 158 (P&H) : [2000] 16 PHT 304 (P&H) was rendered on July 13, 2000. Thus, there was no justification with the revisional authority in exercising the revisional jurisdiction u/s 21(1) of the Act in April, 2006 after expiry of more than six years of the original assessment.

7. In this appeal, the assessee has raised the following substantial question of law for consideration of this court:

Whether the learned AETC was within its power to assume jurisdiction of revision, after the expiry of five years from the date of assessment period or from the passing of the original order of the Assessing Authority?

8. We have heard the learned Counsel for the parties on the aforesaid substantial question of law, which, in our opinion, is arising from the order of the VAT Tribunal.

9. Learned Counsel for the appellant argued that under the Act for exercising the suo motu power u/s 21(1) of the Act, no period of limitation has been prescribed. However, learned Counsel submits that the revisional authority can exercise the said power within a reasonable period if sufficient reasons exist to exercise the said power on that date. While referring to the decision of this court in *Bhatinda District Cooperative Milk Producers Union Limited v. State of Punjab* [2007] 8

VST 418, learned Counsel submitted that this court in the said case has laid down the following principles in which the revisional authority can exercise the suo motu power u/s 21(1) of the Act (page 428):

(i) the period prescribed for completing assessment does not control exercise of revisional jurisdiction;

(ii) even when no limitation has been prescribed, the power of revision has to be exercised within a reasonable period. What is reasonable period has to be decided in facts of each case for which no hard and fast rule could be laid down.

10. Learned Counsel submitted that applying the above principles to the present case, the revisional authority was not justified to revise the assessment order dated March 27, 2000 after the expiry of more than six years, particularly when the ground on which the revision was made was available in the year 2000 itself. Learned Counsel for the appellant further referred to the decision of the Supreme Court in *State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd.* [2007] 10 VST 180, wherein the aforesaid judgment of this court was upheld while observing that the revisional jurisdiction should ordinarily be exercised within a period of three years and in any event the same should not exceed the period of five years.

11. On the other hand, learned Counsel for the respondent-State submitted that the revisional authority was fully justified in revising the assessment order dated March 27, 2000 even after expiry of the period of five years because in terms of the decision of this court in *Veerumal Monga's case* [2001] 123 STC 158 : [2000] 16 PHT 304 and the judgment of the Supreme Court in *Monga Rice Mill v. State of Haryana* [2004] 135 STC 549 : [2004] 23 PHT 418, the assessee was liable to pay the purchase tax on the paddy. He submitted that as per the Division Bench decision of this court in *Bhatinda District Cooperative Milk Producers Union Limited v. State of Punjab* [2007] 8 VST 418, what is reasonable period has to be decided on the facts of each case. Since in the present case the assessee was liable to pay the purchase tax on the paddy, the revisional authority was fully justified in revising the order of assessment even after expiry of more than six years.

12. Undisputedly, in the present case the assessing officer framed the assessment for the year 1996-97 vide order dated March 27, 2000 and determined a refund of Rs. 90,702 on account of excess payment of purchase tax. After expiry of six years, the revisional authority issued notice to the assessee to revise the said assessment order in exercise of the suo motu power u/s 21(1) of the Act only on the ground that as per the decision dated July 13, 2000 given by this court in *Veerumal Monga's case* [2001] 123 STC 158 : [2000] 16 PHT 304, the purchase tax was leviable on the paddy out of which rice manufactured by the assessee was sent out of India, though the said judgment was known to the department in the year 2000 itself. Section 21 of the Act gives the revisional jurisdiction to the Commissioner, "who may of his own motion call

for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit". The said power of the Commissioner by notification issued by the State Government under Sub-section (2) of Section 21 of the Act has been conferred on the Assistant Excise and Taxation Commissioner. u/s 21 of the Act, no period of limitation has been prescribed for exercising the said power. It is well-settled that if no period of limitation has been prescribed under the statute for exercising a power, the statutory authority must exercise its jurisdiction within a reasonable period as held by the Supreme Court in *State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd.* [2007] 10 VST 180. (What shall be a reasonable period would depend upon the nature of the statute, the rights and liabilities thereunder and other relevant factors). While considering the scheme of the Act, the Supreme Court in the aforesaid judgment has laid down that though under the Act no period of limitation has been prescribed for exercising the revisional power u/s 21(1) of the Act, but the said power must be exercised within a reasonable period, which, according to the Supreme Court, is three years. In the said judgment, keeping in view the scheme of the Act, it has also been observed that in any event the said period should not exceed the period of five years. In that case, the Supreme Court has upheld the decision of this court in *Bhatinda District Cooperative Milk Producers Union Limited's case* [2007] 8 VST 418 where the exercise of suo motu revisional jurisdiction for setting aside the assessment order after the expiry of more than five years, was held to be unreasonable.

13. Undisputedly, in the present case, the revising authority revised the order of assessment dated March 27, 2000 after the expiry of more than six years only on the ground that as per the decision in *Veerutnal Monga's case* [2001] 123 STC 158 : [2000] 16 PHT 304, the dealer (assessee) was liable to pay the purchase tax on the paddy and the assessing officer had wrongly ordered the refund of the excess purchase tax while coming to the conclusion that the dealer was not liable to pay the purchase tax on the paddy out of which rice manufactured by the assessee was sent out of India. In our opinion, in the facts and circumstances of the case, the revising authority was not justified in exercising the revisional power after the expiry of more than six years, particularly when the revising authority was aware of the said judgment in the year 2000 itself. The revising authority neither in its notice nor in its order nor the Counsel for the State before this court assigned any reason as to why such notice was being issued after a period of six years. There was no reason or justification with the department to explain this delay of six years when the department was very much aware of the judgment in *Veerutnal Monga's case* [2001] 123 STC 158 : [2000] 16 PHT 304. Therefore, in our opinion, in this case the revisional authority has not exercised the revisional jurisdiction u/s 21(1) of the Act within a reasonable period.

14. Thus, the orders passed by the revising authority as well as the VAT Tribunal are liable to be quashed. Accordingly, the appeal is allowed and the impugned

orders dated August 9, 2006 passed by the revising authority as well as the VAT Tribunal dated February 15, 2008 are hereby quashed with no order as to costs and the order dated March 27, 2000 passed by the assessing officer is restored.