(2014) 01 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal Nos. 102 and 103 of 2013 (O&M)

H.M. Mehra — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Haryana Value Added Tax Act, 2003 — Section 34, 34(1), 34(2), 36, 36(6)
Income Tax Act, 1961 — Section 263

Citation : (2014) 71 VST 437

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

Bench : Division Bench

Advocate : Rajesh Mahna, Umesh Sarwal and Avnish Jhingan, Advocate for the Appellant; Tanisha Peshwaria, Deputy Advocate-General, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of VAT Appeal Nos. 102 and 103 of 2013 as according to the learned counsel for the parties, the issue involved therein is identical. However, the facts are being extracted from ITA No. 102 of 2013. VAT Appeal No. 102 of 2013 has been preferred by the assessee u/s 36 of the Haryana Value Added Tax Act, 2003 (in short, "the Act") against the order dated July 8, 2013, annexure A5, passed by the Value Added Tax Tribunal, Haryana, Chandigarh (in short, "the Tribunal") in STA No. 174 of 2011-12, claiming following substantial questions of law:

(A) Whether the Commissioner in revision enjoys the supervisory jurisdiction to examine the order passed by the Assessing Officer to the extent whether the order passed by the taxing authority is correct or not?

(B) Whether the Commissioner in exercise of his power will either confirm the order or set aside the order and pass an assessment order if the Commissioner is satisfied that order passed by the Assessing/taxing Authority is erroneous and prejudicial to the interest of revenue?

(C) Whether all orders of the assessing officer in which there is application of mind to all the facts and claims decided in one way or the other can be termed as erroneous or challenging propriety of proceedings or legality of the order, which alone can be the basis of revision in terms of section 34(1) of the Act and scope thereof?

(D) Whether the powers and scope of provisions of section 34(1) of Haryana VAT Act being pari materia to the provision of section 263 of IT Act and is guided by the law laid down by the courts on income tax law, thus are binding precedent? For exercise of powers u/s 34(2) of the Haryana VAT Act the authority passing the order shall specify how he derives powers to pass order?

(E) Whether, on true interpretation of the notification dated March 31, 2003 and objections of the appellant, the Tribunal was right and justified in observing that the DETC who passed order of revision-cum-assessment order was in exercise of his powers u/s 34(1) of the Haryana VAT Act, 2003?

(F) That the appellants have been assessed year after year consistently for the past three years after the enforcement of the Haryana VAT Act, and the orders have attained finality and the appellants have never changed tax or claimed the transaction as ''sale'' the action being change of opinion. Therefore revision is not permissible.

(G) Whether the Deputy Excise and Taxation Commissioner-cum-Revisional Authority have the power of revision for the orders passed under the HVAT Act, 2003 by the Assessing Authority?

(H) Whether the Deputy Excise and Taxation Commissioner was competent enough to pass order u/s 34(1) of the Act whereas he himself is enjoying the power of Assessing Authority?

(I) Whether an officer enjoying the powers of Assessing Authority and revisional authority and district head can examine the order passed by Assessing Authority?

(J) Whether the Deputy Excise and Taxation Commissioner-cum-revisional authority was under obligation to confront the new material based on which he has changed the opinion?

(K) Whether consistency has to be maintained for assessment of different years of the same assessee based on same facts and material?

2. Briefly, the facts relevant for the decision of the controversy involved as available on the record of ITA No. 102 of 2013 are that the assessee is a company registered under the Companies Act, 1956 in the name and style of M/s. H.M. Mehra and Co. It is engaged in job-work of textile and embroidery. The Excise and Taxation Officer-cum-Assessing Authority, Sonepat vide order dated September 17, 2008, Annexure A. 1 framed the assessment holding that no transfer of property was involved in execution of job-work and hence no tax was leviable on job-work done by the assessee. The Deputy Excise and Taxation

Commissioner (ST)-cum-revisional authority (DETC) in exercise of revisional jurisdiction as Commissioner vide order dated August 30, 2011, annexure A3, held that since the assessee consumed material in execution of job-work of inter-State dealer, it is liable to pay tax under the Act on deemed sales and direction was issued to the assessing authority to issue challan of tax for Rs. 43,04,702 to the asses-see. Aggrieved by the order, the assessee filed appeal before the Tribunal. During the hearing, a preliminary objection was raised by the assessee that the Deputy Excise and Taxation Commissioner had no power of revision as the same laid with the Commissioner who could not delegate this power to any officer in terms of section 51 of the Act. The Tribunal vide order dated July 8, 2013, annexure A5, rejected the preliminary objection regarding jurisdiction holding that the Deputy Excise and Taxation Commissioner had jurisdiction to pass the order u/s 34(1) of the Act. Aggrieved by the order, the assessee is before this court through the present appeals.

3. The primary issue that arises for consideration is that whether the revisional power was properly conferred on the DETC or not. Learned counsel for the assessee submitted that the Act came into operation on April 1, 2003 whereas notification annexure A6 was issued by the State Government on March 31, 2003 whereby under sub-section (2) of section 34 of the Act, power had been conferred on various authorities to exercise revisional jurisdiction. According to the learned counsel, once the Act came into operation with effect from April 1, 2003, no valid notification could have been issued on March 31, 2003. Relying upon sub-sections (6) and (9) of section 36 of the Act, it was argued that though this point was not raised before the Tribunal but the same arises in the appeal and therefore the same can be urged before this court.

4. On the other hand, learned State counsel supported the order passed by the Tribunal.

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

6. It would be expedient to refer to certain provisions of the Act, which read thus:

1(3) It shall come into force on the appointed day.

...

2(c) ''appointed day'' means the 1st day of April, 2003, unless declared, by notification in the Official Gazette, otherwise by the State Government;

...

34. (1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.

(2) The State Government may, by notification in the Official Gazette, confer on any officer not below the rank of Deputy Excise and Taxation Commissioner, the power of the Commissioner under sub-section (1) to be exercised subject to such exceptions, conditions and restrictions as may be specified in the notification and where an officer on whom such powers have been conferred passes an order under this section, such order shall be deemed to have been passed by the Commissioner under sub-section (1).

...

36(6) The High Court may determine any issue which,--

(a) has not been determined by the Tribunal; or

(b) has been wrongly determined by the Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) and (8) ...

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeal or review under this section.

...

55. (1) The State Government may appoint a Commissioner for carrying out the purposes of this Act, and as many Additional Excise and Taxation Commissioners, Joint Excise and Taxation Commissioners, Deputy Excise and Taxation Commissioners, Assistant Excise and Taxation Commissioners, Excise and Taxation Officers, Assistant Excise and Taxation Officers and such other officers to assist him as it thinks fit and may authorize the Commissioner to appoint as many Taxation Inspectors and other officials to assist him as it thinks fit.

7. A combined reading of the aforesaid provisions shows that under sub-section (2) of section 34, the State Government is empowered to delegate power of revisional jurisdiction on an authority below the Excise and Taxation Commissioner but the officer should not be below the rank of DETC. The appointed date under title Act is April 1, 2003 when it came into operation unless different date is declared by notification in the Official Gazette by the State

Government. The question whether the notification issued prior, thereto under the provisions of the Act could confer valid jurisdiction on an officer to exercise revisional power or was there any other notification, would require to be adjudicated by hearing the parties after perusing the relevant material. Though this issue was not agitated before the Tribunal, but in view of provisions of sections 36(6) and 36(9) of the Act, it can be agitated in this court as it goes to the root of the case and particularly relating to assumption of jurisdiction by the revisional authority.

8. Accordingly, in the facts and circumstances of the case, it would be appropriate to set aside the order passed by the Tribunal and refer the matter back to it to adjudicate the same after hearing counsel for the parties in respect of the issues raised in accordance with law. Ordered accordingly. Both the appeals stand disposed of accordingly.