
(2000) 05 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4072 of 1998

H.M.T. Limited

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-05-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Haryana General Sales Tax Act, 1973 — Section 40

Citation : (2000) 126 PLR 27

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; N.K. Joshi, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J.—This writ petition is directed against the action of the Addl. Excise & Taxation Commissioner-cum-Revisonal Authority, respondent No. 2 in initiating action u/s 40 of the Haryana General Sales Tax- Act, 1973 (for short the HGST Act) and Section 9(2) of the Central Sales Tax Act, 1956 (for short "the CST Act") requiring the petitioner to show cause why the order of the Excise & Taxation Officer-cum-Assessing Authority, Panchkula dated 20.3.1997 be not set aside as the same suffered from certain errors.

2. Before resolving the issue it is necessary to advert to the relevant facts. The petitioner, a public limited company, is engaged in the manufacture of tractor and machine tools. Since one of its manufacturing unit is situated at Pinjore in Tehsil Panchkula in the State of Haryana, it is duly registered under the provisions of the HGST ACT and also the CST Act. The assessment of the petitioner for the year 1992-93 was framed by the Excise & Taxation Officer-cum-Assessing Authority, Panchkula on 20.3.1997, whereby an additional demand of Rs. 19.71,944/- was created. Aggrieved by the said order the petitioner filed an appeal before the Joint Excise & Taxation Commissioner (Appeals) Ambala.

During the pendency of the said appeal respondent No. 2 issue a notice dated 6.10.1997 for taking suo moto action u/s 40 of the HGST Act and u/s 9(2) of the CST Act proposing to set aside the order of the Assessing Authority dated 20.3.1997 on the ground that the same suffered from the following errors:-

"i) The assessing authority had allowed rebate to the tune of Rs. 59.98 lacs against admissible rebate of Rs. 53.93 lacs u/s 15-A of the H.G.S.T. Act, 1973. Thus, he had allowed excess rebate of Rs. 6.05 lacs.

ii) He had also wrongly allowed deduction of insurance charges as exempted sales of Rs. 6.02 lac under HGST Act and Rs. 43.72 lacs under CST Act. Such insurance charges were part and parcel of turnover and taxable at prescribed rate."

3. Against this show cause notice the petitioner furnished a reply raising a preliminary objection that the suo moto power u/s 40 of the HGST Act and u/s 9(2) of the CST Act could not be exercised as the petitioner had filed an appeal before the Joint Excise & Taxation Commissioner (Appeals) Ambala in which the application of the formula for levy of purchase tax on the raw material used in the manufacture of finished products itself had been challenged and the said appeal was pending for hearing on 23.1.1998. It was also pointed out that in the earlier years also the same issue was pending in appeals before the Sales Tax Tribunal. Thus, according to the petitioner one of the so called errors mentioned in the impugned notice dated 6.10.1997 was pending for adjudication in appeal. Therefore, it was argued that the suo moto jurisdiction to revise the order u/s 40 of the HGST Act and Section 9(2) of the CST Act could not be exercised.

4. The respondent No. 2 vide an interim order dated 3.2.1998 rejected the preliminary objection of the petitioner and directed it to argue the case on merits on 24.2.1998. However, no final order was passed by him either on 24.2.1998 or thereafter. Meanwhile the Joint Excise & Taxation Commissioner (Appeals), Ambala decided the appeal of the petitioner vide her order dated 20.2.1998. Vide this order the levy of purchase tax was upheld. However, since the petitioner had produced declarations forms ST-14 to the tune of Rs. 29,57,205/-, the matter was remanded to the Assessing Authority on this limited issue for entertaining the same.

5. Aggrieved by the order of the Joint Excise & Taxation Commissioner (Appeals), the petitioner filed an appeal before the sales Tax Tribunal on 13.3.1998 which is pending. It is in the background of these facts that the petitioner has challenged the validity of the notice dated 6.10.1997 issued by the respondent No. 2 and the interim order dated 3.2.1998 passed by him rejecting the preliminary objection raised by the petitioner. Notice of motion had been issued to the respondents for 25.3.1998. Since the respondents did not put in appearance despite service the respondents were restrained from passing a final order on the impugned notice till further orders.

6. We may now at this stage notice the provisions of Section 40 of the HGST Act

which read as under:-

"40. Revision.- (1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by, any officer appointed under sub-section (1) of section 3 of the Act to assist him or, any assessing authority or appellate authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit."

From the reading of the aforesaid provision it is apparent that the jurisdiction under this Section can be exercised by the Commissioner in cases pending before or disposed of by any of the following authorities.

- i) any officer appointed u/s 3(1) of the HGST Act; or
- ii) any assessing authority; or
- iii) an appellate authority other than the Tribunal.

7. As per the facts already noticed by us in the earlier part of the order it is evident that when the impugned notice dated 6.10.1997 proposing action u/s 40 had been issued, it was a case which had been disposed of by the assessing authority and was pending before the appellate authority viz. Joint Excise & Taxation Commissioner (Appeals). Thus, no fault could have possibly been found with the notice at that stage. However, it is evident that the Joint Excise & Taxation Commissioner (Appeals) had disposed of the appeal on 20.2.1998 and a further appeal before the Tribunal had been filed on 13.3.1998 which is pending. In such circumstances it is now a case which is pending before the Tribunal and therefore, the jurisdiction of the Commissioner u/s 40 of the HGST Act to pass an order u/s 40 is clearly excluded. We are, therefore, of the view that although the impugned notice dated 6.10.1997 was valid no order on the basis of the same could be passed after 13.3.1998 since on that date it became a case pending before the Tribunal. In this view of the matter, the impugned notice has now become infructuous and has to be quashed. We, therefore, allow this writ petition and quash the impugned notice dated 6.10.1997. However, there shall be no order as to costs.