(2006) 10 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Kshetriya Punjab Khadi Mandal APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 22(2)(b)

Citation : (2007) 8 VST 34

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Rajesh Bindal, J.—The petitioner has approached this court by filing the present petition u/s 22(2)(b) of the Punjab General Sales Tax Act, 1948 (for short, "the Act") seeking a direction to the Sales Tax Tribunal-II, Punjab (for short, "the Tribunal") for referring the following questions of law for opinion of this court:

(i) Whether, in the facts and circumstances of the case, levy of penalty and interest under the Act ought to be deleted in view of law laid down by the honourable Supreme Court ?

(ii) Whether the penalty and interest should be levied on the petitioner when there is no finding of any contumacious conduct on the part of the applicant in filing the return nor there is any concealment of gross turnover in the return ?

2. After hearing learned Counsel for the petitioner at the time of motion hearing, notice was issued confined to imposition of penalty only.

3. We have heard learned Counsel for the parties on the question of penalty. As the facts of the case are not in dispute, keeping in view the judgment of this court in Chaudhary Tractor Co., Tohana v. State of Haryana S.T C. No. 19 of 1992, decided on May 29, 2006 Reported at [2007] 8 VST 10 (P&H) we treat the question of penalty as having been referred to this court and proceed to answer the same.

4. It is pleaded that the assessee is a charitable organisation registered under

the Societies Registration Act, 1860. It is non-profit making institution established for the development of khadi and village industries with the object of giving employment to the people, having its works at different places in Haryana, Punjab, Himachal Pradesh, Delhi and Union Territory of Chandigarh. For the assessment year 1999-2000, the assessee filed its return declaring a gross turnover of Rs. 1,34,27,953.54 and claiming exemption as per notification issued by the State Government u/s 30 of the Act. It is further pleaded that though on the date of filing of the return, the exemption granted had already expired, but being the past experience, where the State Government had restored the exemption with retrospective effect, the assessee claimed exemption as the matter was pending consideration with the Government and was being pursued. While framing assessment, the Assessing Authority, while levying tax, also charged interest for the delayed payment and also levied penalty of Rs. 15,000 u/s 10(6) and Rs. 2,000 u/s 13(3) of the Act. In appeal, the assessee failed. It is not in dispute that though the assessee was hopeful that exemption would be restored later on with retrospective effect, it was not restored. Accordingly, in terms of the assessment framed, the amount of tax assessed on the basis of the turnover disclosed by the assessee was paid.

5. As far as question of penalty is concerned, the fact that the assessee is a non-profit organisation and that on an earlier occasion, the exemption having been restored with retrospective effect, the fact having not been controverted by the State, we do not find any mens rea in assessee''s not depositing the tax along with the return and hold that the penalty, as mentioned above, was not leviable in the facts and circumstances of the present case. Accordingly, we answer the question in favour of the assessee holding that there was no justification for levy of penalty on the assessee.

6. The petition is disposed of in the manner indicated above.

