

(2016) 08 P&H CK 0369
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5780 of 2007 (O&M)

Mahabir Techno Limited

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 40

Citation : (2016) 4 PLR 149

Hon'ble Judges : Mr. Rajesh Bindal and Mr. Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep Goyal, Advocate, for the Petitioner; Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana, for the Respondent-State

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioner has approached this Court impugning the notices dated 22.1.2007 (Annexure P-12 and P-13) issued under Section 40 of the Haryana General Sales Tax Act, 1973 (for short, "the Act"), for the assessment years 1995-96 and 1996-97, respectively, for suo-moto revision of assessment.

2. Learned counsel for the petitioner submitted that the assessment of the petitioner for the year 1995-96 was framed on 28.3.2000, whereas for the year 1996-97, the same was framed on 31.7.2000. Notices under Section 40 of the Act and the Central Sales Tax Act, 1956 for the years 1995-96 and 1996-97 were issued on 3.7.2002. As the matter remained pending and were not finalised by the revisional authority and subsequently notices were issued on 22.1.2007, the petitioner filed CWP No. 5780 of 2007, which was allowed vide order dated 20.1.2010, opining that the notices were beyond limitation. The plea raised by the State relying upon the provisions of Haryana Value Added Tax Act, 2003, was rejected. The State went before Hon'ble the Supreme Court by filing Civil Appeal No. 6927 of 2011. On 11.8.2011, Hon'ble the Supreme Court while setting aside the order passed by this Court, remitted the matter back to consider the issue as

to whether the period provided in the section is for initiation of proceedings or conclusion thereof.

3. While referring to the provisions of Section 40 of the Act, under which power is sought to be exercised by the authorities, learned counsel for the petitioner submitted that the language plainly suggests that no order shall be revised after the expiry of period of five years from the date of order. It is the outer limit. This does not talk about issuance of show cause notice for initiation of proceedings. Referring to the language as used in Section 28(4) and 28(5) of the Act, learned counsel for the petitioner submitted that the Legislature had used different language in those sections where the intention is for initiation of proceedings and not for conclusion thereof. In support of the plea, reliance was placed upon judgment of Andhra Pradesh High Court in State of Andhra Pradesh v. Toshiba Anand Batteries Limited (and another cases) (1995) 096 STC 0664 and judgment of Hon'ble the Supreme Court in State of Andhra Pradesh v. Khetmal Parekh (1994) 093 STC 0406.

4. On the other hand, learned counsel for the State submitted that the matter has been remitted back by Hon'ble the Supreme Court to consider the issue as to whether the period as provided under the Act is the outer limit for conclusion of revisional proceedings or for initiation thereof. It has to be read in the manner which gives it a true meaning for the reason that an assessee can always delay the proceedings and as a result of which the process initiated will be frustrated.

5. Heard learned counsel for the parties and perused the paper book.

6. Before the issue is discussed on merits, it would be appropriate to refer to relevant provisions of the Act. Sections 28(4), 28(5), 31 and 40 of the Act are extracted below:-

SECTION - 28

(Assessment of Registered Dealer)

(1) to (3) xx xx

(4) If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the assessing authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the assessing authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

xx xx xx

SECTION -31

(Reassessment of Tax)

If in consequence of definite information which has come into his possession, the assessing authority discovers that the turnover of the business of a dealer has been under assessed, or has escaped assessment in any year, the assessing authority may, at any time within three years from the date of final assessment order and after giving the dealer a reasonable opportunity, in the prescribed manner, of being heard, proceed to reassess the tax payable on the turnover which has been under assessed or has escaped assessment.

xx xx xx

SECTION-40

(REVISION)

(1) The Commissioner may call on his own motion 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.

[Provided that no order, shall be so revised after the expiry of a period of five years from the date of the order.

[Provided further that the aforesaid limitation of period shall not apply where the order in a similar case is revised as a result of the decision of the Tribunal or any Court of Law].

(2) and (3) xx xx xx"

7. A perusal of provisions of Section 28(4) and 28(5) of the Act, which deal with assessment of a registered dealer shows that the language used is that in case of failure on the part of the assessee to file return or respond to a notice, the assessing authority may proceed to assess to the best of his judgment within five years after the expiry of such period, which would mean initiation of proceedings.

8. Similarly Section 31 of the Act, which provides for reassessment of tax, envisages reassessment in consequence of definite information which comes to the possession of the assessing authority on the basis of which it could be opined that the turnover of the business of a dealer has been under assessed, or has escaped assessment. The period provided is to initiate re-assessment proceedings within three years from the date of final assessment order.

9. In contrast to the aforesaid two provisions, Section 40 of the Act, which provides for revision, used the word, "so revised". Different words used by the Legislature in this section as compared to other two sections have to be given its true meaning. Plain reading of the language suggest that no order shall be revised after the expiry of a period of five years from the date of order. The only

meaning which can be assigned to the language used is that the proceedings have to conclude with the passing of the order. It is not merely initiation of proceedings for revision. Second proviso to Section 40(1) of the Act enlarges the limitation, if the revision is a result of any decision of the Tribunal or Court.

10. To somewhat similar is the language used in Andhra Pradesh General Sales Tax Act. The relevant provisions of Sections 20(1) and 20(3) of the Andhra Pradesh General Sales Tax Act, are reproduced as under:-

"(1) The Commissioner of Commercial Taxes may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including sub-section (2) of this section, and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as it thinks fit.

xx xx xx (3) In relation to an order of assessment passed under this Act, the powers conferred by sub-sections (1) and (2) shall be exercisable only within such period not exceeding four years from the date on which the order was served on the dealer, as may be prescribed."

(emphasis supplied).

11. While interpreting the aforesaid provisions, a Division Bench of Andhra Pradesh High Court in Toshiba Anand Batteries Limited's case (supra) opined that exercise of power of revision should conclude before the end of four years from the date of passing of the order, which is sought to be revised. Relevant para from the judgment are extracted below:-

"According to our view the exercise of powers of revision must come to an end within a period of four years from the date of passing of the order by the subordinate authority. The effect of section 20(3) of the APGST Act in our opinion, is that the revising authority is powerless beyond the period of four years to deal with the revision. The exercise of powers as a whole cannot extend beyond the period of four years from the date on which the order of subordinate authority was served on the dealer."

12. No judgment taking a contrary view was cited by learned counsel for the State.

13. If the facts of the case are read in the light of the enunciation of law, referred to above, the assessment of the petitioner for the year 1995-96 was framed on 28.3.2000 and for the year 1996-97, it was framed on 31.7.2000, the period of five years would expire on 28.3.2005 and 31.7.2005, for the respective two years. It is not in dispute that by that time the proceedings had not been concluded. Even in the earlier round of litigation, the petitioner had challenged the notices issued on 22.1.2007. Prior to that it is not the case of either of the

parties that in the matter before the Court any interim stay has been granted. The proceedings initiated for revision of the orders of assessment having not concluded within the period of five years from the date of order sought to be revised, as envisaged under Section 40 of the Act, the Revisional Authority now does not have any jurisdiction to pass the order.

14. For the reasons mentioned above, the writ petition is allowed. The impugned notices dated 22.1.2007 (Annexures P-12 and P-13) are quashed.